National University of “Kyiv-Mohyla academy”
Center for the Research of Rule of Law and its Implementation in the National Practice in Ukraine

The rule of law in public administration and local self-government

European standards guide

Folke Bernadotte Academy
Swedish government agency for peace, security and development

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The Rule of Law in Public Administration and Local Self-Government: European Standards Guide / General edition: Mykola Koziubra, compliers and authors of comments: Volodymyr Venher, Mykola Koziubra, Oleksiy Tseliev; Center for the Research of Rule of Law and its Implementation in the National Practice in Ukraine of the National University of "Kyiv-Mohyla academy", Folke Bernadotte Academy. – Kyiv, 2018. – 396 p.

The Rule of Law in Public Administration and Local Self-Government: European Standards Guide is a collection of regulatory acts of judicial practice etc. that contain agreed and recognized by the international and / or European community principles and norms of human rights and the rule of law in the activities of state authorities and local self-government. Each section of the publication is accompanied by scientific and practical comments of experts aimed at explaining the use of relevant documents in the practice of the bodies of public administration (local self-government) and their officials, and at increasing the efficiency of their work.

The target audience is the employees of the public administration bodies, primarily the bodies of state power and local self-government, international and national public organizations, scientists, judges, lawyers, political scientists, specialists in the field of rulemaking, in particular, at the local level.

Recommended for publication by the Academic Council of the Faculty of Law of the National University of "Kyiv-Mohyla Academy" (Minutes of December 02, 2019 № 10)

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The publication is produced as part of the project "Local Self-Government and the Rule of Law in Ukraine" implemented by Folke Bernadotte Academy with financial support from Sweden.

Opinions, conclusions or recommendations are those of authors and compilers of the Report and do not necessarily reflect the views of the Swedish Government. Authors and compilers are solely responsible for the content of this publication.

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Abbreviations

FBA – Folke Bernadotte Academy

EU – European Union

ECHR – European Court of Human Rights

Convention - Convention for the Protection of Human Rights and Fundamental Freedoms

CSCE – Conference for Security and Cooperation in Europe

NGO - Non-governmental organisation

ODIHR – OSCE Office for Democratic Institutions and Human Rights

OSCE – Organization for Security and Co-operation in Europe

UDHR - Universal Declaration of Human Rights

UN – United Nations

Preface

The assertion of the rule of law and human rights in the activities of state authorities and local self-government of Ukraine makes it necessary to introduce in their practice the generally accepted principles and norms of international law and the provisions of European regional international organizations aimed at improving the domestic practice of the use of the basic constituents of the rule of law, particularly those that are to be provided by local governments - the legality, accessibility, the right to be heard, transparency, the right to appeal, and accountability.

In essence, the first international act, whose goals are based on respect for human rights and the rule of law, was the United Nations Charter of 1945; in Articles 1 and 55, that obligated the United Nations to promote "respect for human rights and fundamental freedoms for all, regardless of race, sex, language, and religion." These goals were further developed by the United Nations General Assembly's Universal Declaration of Human Rights adopted on December 10, 1948. The provisions of the declaration became the basis of numerous international legal instruments and documents of European regional international organizations directly or indirectly related to human rights and the rule of law.

Agreed and recognized by the international and / or European community and established in the relevant acts and other documents of international and European organizations, the principles and norms concerning human rights and the rule of law, which must be observed by any member state of these organizations (or those intending to become their members) adopted as international and European standards. The term "standard" (from the English Standard) means "model" or "typical model" of the activities of States, their organs and bodies of local self-government, officials of these bodies related to preservation of human rights and the rule of law.

The history of the establishment of European standards on human rights and the rule of law originates from the creation in 1949 of an international regional organization - the Council of Europe, whose main priority, in accordance with Article 1 of the Charter, is "protection and further development of human rights and fundamental freedoms." The objectives of the Council of Europe's charter were set out in a signed by a number of States in November 1950 in Rome, the Convention for the Protection of Human Rights and Fundamental Freedoms, which was widely circulated under the name of the "European Convention on Human Rights", to which Ukraine acceded in 1997. The preamble to the Convention states that the governments of the member states of the Council of Europe signing the Convention, "taking into account the Universal Declaration of Human Rights", "considering that the purpose of the Council of Europe is to achieve greater unity between its members and that one of the means to achieve this goal is securing and continuing the enjoyment of human rights and fundamental freedoms", based on "a common heritage of political traditions, ideals, freedom and the rule of law", are determined to take the first steps towards the collective enforcement of rights proclaimed in the General Declaration. In accordance with Article 55 of the Convention, States parties refuse, in the event of a dispute falling within the scope of the Convention, to resolve it by any other international legal means than is provided for by the Convention.

Over the past 50 years of the existence of the Council of Europe, a number of other instruments aimed at protecting human rights and ensuring the rule of law - Conventions, charters, codes, resolutions, recommendations, protocols, etc. - have been adopted. In the guidebook they are systematized in the relevant sections - "General Acts and Documents", "Selected Acts of the Council of Europe", "Documents of the European Commission for Democracy through Law (Venice Commission documents)".

In view of the growing relevance for Ukraine in connection with the signature and entry into force of the Association between Ukraine and the European Union, the charter, principles, regulations, resolutions, conclusions, directives, etc., those are set out in a separate section V of the manual. A significant contribution to the protection of human rights and The rule of law is provided by the OSCE, documents of which are also filed separately (Section VII). International and regional courts have a special place in the international and European standards of the rule

of law. The regional European justice system includes two regional international courts - the European Court of Human Rights, established in accordance with section 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (located in Strasbourg) and the Court of Justice of the European Union (European Court of Justice, located in Luxembourg). Sections IV and VI respectively are devoted to the rulings of these courts that have an indisputable relation to ensuring the rule of law.

Each section of the manual is accompanied by scientific and practical comments of experts aimed at explaining the use of relevant documents in the practical work of the bodies of public administration (local self-government bodies) and their officials, improving the efficiency of their work.

After publication, the guide will be distributed to representatives of local self-government bodies of the partner cities of the project "Local Self-Government and the Rule of Law in Ukraine".

We hope that this publication will be useful for representatives of state authorities and local self-governments, as well as for faculty and students of higher education institutions: future lawyers, students of public administration and political science. Separately, attention should be paid to the importance of materials collected in the Manual for scientific research and their analytical use for design of laws and regulations, expert and standard-setting activities. After all, the vast majority of presented acts and documents are not accessible to the Ukrainian reader because of the lack of systematic perception of the relevant issues and practices of its legal regulation in Europe, as well as because of the lack of those documents translated in Ukrainian.

I. General acts and documents

In this section, attention is focused on the main legal documents that consolidate the rule of law, the principles of freedom and democracy, and regulate the protection of human rights in the territory of most European countries, including members of the Council of Europe.

All of the international charters, conventions, codes, and other acts presented in its original provisions are based on shared values and principles, traditions and ideals for Europe.

In order to be sure of this, it is enough to first draw attention to the preamble to the named documents, which usually contain the most important facts that determine their signing and purpose.

Thus, virtually all European conventions and charter point out the need for further unity between members of the Council of Europe on the basis of common principles and ideals as the main reason for their adoption. Achievement of this goal is possible by ensuring and developing human rights and fundamental freedoms, observance of the rule of law; on the basis of awareness of the importance of protecting democracy, human rights, good governance and social justice; with the common desire for the development of human rights guarantees, the preservation and further implementation of these rights, etc.

The content of the main parts of these documents is directly consolidated and specified by the constituents of the rule of law, human rights, freedoms, guarantees of their provision and protection, which member states of the Council of Europe take on the duty to respect and protect.

In practical terms, the implementation of such a wide range of tasks usually depends not as much on their formal consolidation and recognition, but rather on from both - the immediate realization of law and enforcement activities of the public authorities of the countries, in particular by local governments.

Local government in Europe is recognized as one of the main principles of any democratic regime. One of the reasons is that the right of citizens to participate in the administration of state affairs can most directly be carried out locally. Accordingly, for effective management of local self-government bodies should be given real powers. The European Charter of Local Self-Government, which, among other things, has defined the sphere of competence of local self-government bodies, is aimed at consolidating this status. In accordance with clause 2, Art. 4, the local self-government bodies within the framework of the law have the full right to freely resolve any issue that has not been withdrawn from the scope of their competence and is not entrusted to any other body.

The duty to act within the limits of the law, while having certain discretionary powers, applies not only to bodies of local self-government, but also to bodies of state administration, as well as other bodies, individuals and legal entities with administrative powers. The stated requirement of legality, as one of the fundamental constituents of the rule of law, passes through the red thread through all the basic normative documents of the European Community, starting with the Convention for the Protection of Human Rights and Fundamental Freedoms. In addition to the rule of law, the Convention reflected the following elements of the rule of law, such as the right to be heard, the right to appeal, formal equality and others, which, in particular, are enshrined in Art. 6, “The right to a fair trial”, in Art. 13, “The right to an effective remedy”, in Art. 14, “Prohibition of Discrimination”. In other legal acts, the constituents of the rule of law are only supplemented, split into more concretized elements in accordance with the legal relationship that governs the act.

Thus, in the field of managerial behavior, the requirements of rule of law are most clearly reflected in the International Code of Conduct for Public Officials and the European Code of Good Governance.

This, in particular, relates to the legitimacy of actions of officials: in order for their decisions that affect the rights and interests of people, based on the law and corresponded to it in its content. In addition, these documents require management in the management of equal treatment of representatives of the public; the proportionality of the measures taken to the goal to be achieved; protection of legitimate expectations of persons who apply to the authorities; transparency of the decision-making process. The maximum detail in this document reflects the right of a person to be heard. In particular, this concerns the duty to communicate the reasons for the decision, the possibility of appeal and the decision itself. All these and other actions must be carried out by officials of the authorities impartially, fairly and reasonably.

Immediately in all spheres of legal relations regulating the presented legal acts it is possible to trace how the above-mentioned and other components of the rule of law are embodied. This also applies to the scope of access and protection of information, legal relations aimed at protecting national minorities and their languages, combating various forms of corruption, and so on.

Thus, the purpose of the Council of Europe Convention on Access to Official Documents, in addition to providing access to official documents, is the accountability of public authorities. The Convention obliged the states to guarantee each person equal access to official documents by setting restrictions on such a right solely on the basis of law, which should be proportionate to the purpose of protecting a certain list of public and private rights or interests. The consolidation of the requirement of lawfulness is not typical in the form of a legal act, as its content, which is assessed by the criteria of certainty, the ratio of the purpose and means of its achievement, conformity with human rights, etc., is typical of its current understanding and application in European administrative and judicial practice. The specified Convention reflected another element of the rule of law important for the activities of public authorities, namely the requirement for openness (transparency) of public administration, the achievement of which should be directed towards the disclosure of official documents.

Unlike official documents, open access to which contributes to the accountability and transparency of public administration, personal data is the information access to which should be as limited as possible, in particular with the measures to be taken by public authorities. The need to protect such data is due to the essence of fundamental human rights, citizens' right to privacy in particular. At the same time, the protection of such data is not unconditional, but correlates with the freedom of information exchange. Achieving a balance between these, at first glance, mutually exclusive requirements are possible through applying the principle of proportionality as a component of the rule of law. Such an approach to the protection of personal data is set out in the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data.

The principle of proportionality combined with the requirement of non-discrimination laid the foundation for two more core European instruments - the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities. The above principle permeates measures aimed at achieving a balance of opportunities in the realization of rights and interests for all nationalities living on the territory of countries. Particular attention in these documents is devoted to the implementation of such components of the rule of law as accessibility, transparency, the right to be heard, the right to protection. Special sections in the European Charter for Regional or Minority Languages are dedicated to ensuring access to education in the native language, the conduct of proceedings and the provision of public services. In particular, this concerns the provision of persons who use regional or minority languages to submit oral or written applications, documents drawn up in these languages, receive answers to them, etc. In addition, the availability and transparency of the activities of public authorities on the ground is ensured by the use of regional or minority languages within the framework of regional and local self-government.

The contractual provisions of the Criminal Law Convention on the fight against corruption and the Civil Convention on the fight against corruption are directed at preventing the destruction of good governance, the protection of the rule of law, democracy and human rights. They both list the measures that need to be taken at the nation-

al level to prevent all forms of bribery and other corruption and related crimes, both in the public and private sectors. One of such measures is the obligation to create independent national anti-corruption bodies whose effective activity in the field of combating corruption is an integral part of the implementation of the principle of accountability of public authorities. Another part of this principle can be considered the responsibility of the state to pay for the damage that was committed as a result of corruptive actions of officials while performing their official duties.

The final document of this section is the resolution "The Council of Europe and the rule of law". Understanding of core values of the rule of law by one of the most respected European institutions can be observed in this Act. Despite the lack of a formal definition of this phenomenon, the characteristics of its components do not cause much discussion, and the basic requirements have long been the subject of a high degree of consensus within the Council of Europe. The basis of the common European base for the rule of law, which continues to evolve, is the observance of the Convention for the Protection of Human Rights and Fundamental Freedoms by all the member countries of the Council of Europe and their subjection to the European Court of Human Rights.

The European Court of Human Rights itself was and is the institution that in its practice consistently develops the components of the rule of law and its general understanding, in particular, the institutional foundations and organization of national governments. Thus, introducing the rule of law requirements in order to avoid usurpation of power and offering to individuals the protection from it, especially in their interactions with the state.

Examples of such practices are provided in Section IV.

Universal declaration of human rights

(Adopted and proclaimed by the UN General Assembly Resolution 217 A (III) on 10 December 1948)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Convention for the protection of human rights and fundamental freedoms

dated 4 November 1950
(Extract)

Date of ratification by Ukraine: 17 July 1997
Date of entry into force for Ukraine: 11 September 1997

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1
Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I
Rights and freedoms

Article 2
Right to life

1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a) in defence of any person from unlawful violence;

b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3
Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this article the term “forced or compulsory labour” shall not include:

a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

d) any work or service which forms part of normal civic obligations.

Article 5
Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6
Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7
No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8
Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9
Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10
Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11
Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12
Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13
Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14
Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15
Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16
Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17
Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18
Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

<...>

European charter of local self-government

(Strasbourg, 15 October 1985)
(Extract)

Date of signing: 15 October 1985
Date of signing on behalf of Ukraine: 6 November 1996
Date of ratification: 15 July 1997
Date of entry into force for Ukraine: 1 January 1998

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2
Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3
Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4
Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

Article 5
Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

Article 6
Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7
Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8
Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.

2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.

3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

Article 9
Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.

2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.

8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10
Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 11
Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

<...>

Additional protocol to the European charter of local self-government on the right to participate in the affairs of a local authority

(Utrecht, 16 November 2009)
(Extract)

Preamble

The member States of the Council of Europe, signatories to this Additional Protocol to the European Charter of Local Self-Government (hereinafter referred to as "the Charter", ETS No. 122),

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that the evolution in member States has shown the pre-eminent importance of this principle for local self-government;

Considering that it would be appropriate to supplement the Charter with provisions guaranteeing the right to participate in the affairs of a local authority;

Bearing in mind the Council of Europe Convention on Access to Official Documents, adopted by the Committee of Ministers on 27 November 2008;

Bearing in mind also the Declaration and the Action Plan adopted at the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 16 to 17 May 2005),

Have agreed as follows:

Article 1
Right to participate in the affairs of a local authority

1. The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.

2. The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.

3. The law shall provide means of facilitating the exercise of this right. Without unfairly discriminating against any person or group, the law may provide particular measures for different circumstances or categories of persons. In accordance with the constitutional and/or international obligations of the party, the law may, in particular, provide for measures specifically limited to voters.

4.1. Each Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.

4.2. The law shall also recognise the right of other persons to so participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations.

5.1. Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.

5.2. The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate.

5.3. Any other formalities, conditions or restrictions must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations.

Article 2
Implementing measures for the right to participate

1. The Parties shall take all such measures as are necessary to give effect to the right to participate in the affairs of a local authority.

2. These measures for the exercise of the right to participate shall include:

i) empowering local authorities to enable, promote and facilitate the exercise of the right to participate set out in this Protocol;

ii) securing the establishment of:

a) procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them;

b) procedures for access, in accordance with the Party's constitutional order and international legal obligations, to official documents held by local authorities;

c) measures for meeting the needs of categories of persons who face particular obstacles in participating; and

d) mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services;

iii) encouraging the use of information and communication technologies for the promotion and exercise of the right to participate set out in this Protocol.

3. The procedures, measures and mechanisms may be different for different categories of local authorities, having regard to their size and competences.

4. In the planning and decision-making processes concerning measures to be undertaken to give effect to the right to participate in the affairs of a local authority, local authorities shall be consulted insofar as possible, in due time and in an appropriate way.

Article 3
Authorities to which the Protocol applies

This Protocol applies to all the categories of local authorities existing within the territory of the Party. However, each State may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Protocol or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Protocol by subsequent notification to the Secretary General of the Council of Europe.

<...>

Council of Europe convention on access to official documents

(Tromsø, 18 June 2009)
(Extract)

The member States of the Council of Europe and the other signatories hereto, Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

<…>

Considering the importance in a pluralistic, democratic society of transparency of public authorities;

Considering that exercise of a right to access to official documents:

i) provides a source of information for the public;

ii) helps the public to form an opinion on the state of society and on public authorities;

iii) fosters the integrity, efficiency, effectiveness and accountability of public authorities, so helping affirm their legitimacy;

Considering, therefore, that all official documents are in principle public and can be withheld subject only to the protection of other rights and legitimate interests,

Have agreed as follows:

Section I
Article 1 – General provisions

1. The principles set out hereafter should be understood without prejudice to those domestic laws and regulations and to international treaties which recognise a wider right of access to official documents.

2 For the purposes of this Convention:

a) (i) "public authorities" means:

1) government and administration at national, regional and local level;

2) legislative bodies and judicial authorities insofar as they perform administrative functions according to national law;

3) natural or legal persons insofar as they exercise administrative authority.

(ii) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that the definition of “public authorities” also includes one or more of the following:

1) legislative bodies as regards their other activities;

2) judicial authorities as regards their other activities;

3) natural or legal persons insofar as they perform public functions or operate with public funds, according to national law.

b) “official documents” means all information recorded in any form, drawn up or received and held by public authorities.

Article 2
Right of access to official documents

1) Each Party shall guarantee the right of everyone, without discrimination on any ground, tohave access, on request, to official documents held by public authorities.

2) Each Party shall take the necessary measures in its domestic law to give effect to theprovisions for access to official documents set out in this Convention.

3) These measures shall be taken at the latest at the time of entry into force of this Conventionin respect of that Party.

Article 3
Possible limitations to access to official documents

1) Each Party may limit the right of access to official documents. Limitations shall be set downprecisely in law, be necessary in a democratic society and be proportionate to the aim ofprotecting:

a) national security, defence and international relations;

b) public safety;

c) the prevention, investigation and prosecution of criminal activities;

d) disciplinary investigations;

e) inspection, control and supervision by public authorities;

f) privacy and other legitimate private interests;

g) commercial and other economic interests;

h) the economic, monetary and exchange rate policies of the State;

i) the equality of parties in court proceedings and the effective administration of justice;

j) environment; or

k) the deliberations within or between public authorities concerning the examination of a matter.

Concerned States may, at the time of signature or when depositing their instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that communication with the reigning Family and its Household or the Head of State shall also be included among the possible limitations.

2) Access to information contained in an official document may be refused if its disclosure would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3) The Parties shall consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

Article 4
Requests for access to official documents

1) An applicant for an official document shall not be obliged to give reasons for having access to the official document.

2) Parties may give applicants the right to remain anonymous except when disclosure of identity is essential in order to process the request.

3) Formalities for requests shall not exceed what is essential in order to process the request.

Article 5
Processing of requests for access to official documents

1) The public authority shall help the applicant, as far as reasonably possible, to identify the requested official document.

2) A request for access to an official document shall be dealt with by any public authority holding the document. If the public authority does not hold the requested official document or if it is not authorised to process that request, it shall, wherever possible, refer the application or the applicant to the competent public authority.

3) Requests for access to official documents shall be dealt with on an equal basis.

4) A request for access to an official document shall be dealt with promptly. The decision shall be reached, communicated and executed as soon as possible or within a reasonable time limit which has been specified beforehand.

5) A request for access to an official document may be refused:

i) if, despite the assistance from the public authority, the request remains too vague to allow the official document to be identified; or

ii) if the request is manifestly unreasonable.

6) A public authority refusing access to an official document wholly or in part shall give the reasons for the refusal. The applicant has the right to receive on request a written justification from this public authority for the refusal.

Article 6
Forms of access to official documents

1) When access to an official document is granted, the applicant has the right to choose whether to inspect the original or a copy, or to receive a copy of it in any available form or format of his or her choice unless the preference expressed is unreasonable.

2) If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, or if it poses a manifestly unreasonable burden for the authority to release the remainder of the document, such access may be refused.

3) The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

Article 7
Charges for access to official documents

1) Inspection of official documents on the premises of a public authority shall be free of charge. This does not prevent Parties from laying down charges for services in this respect provided by archives and museums.

2) A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs of reproduction and delivery of the document. Tariffs of charges shall be published.

Article 8
Review procedure

1) An applicant whose request for an official document has been denied, expressly or impliedly, whether in part or in full, shall have access to a review procedure before a court or another independent and impartial body established by law.

2) An applicant shall always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1.

Article 9
Complementary measures

The Parties shall inform the public about its right of access to official documents and how that right may be exercised. They shall also take appropriate measures to:

a) educate public authorities in their duties and obligations with respect to the implementation of this right;

b) provide information on the matters or activities for which they are responsible;

c) manage their documents efficiently so that they are easily accessible; and

d) apply clear and established rules for the preservation and destruction of their documents.

Article 10
Documents made public at the initiative of the public authorities

At its own initiative and where appropriate, a public authority shall take the necessary measures to make public official documents which it holds in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

<...>

Convention for the protection of individuals with regard to automatic processing of personal data

(Strasbourg, 28 January 1981)
(Extract)

Date of signing: 28 January 1981
Date of ratification by Ukraine: 6 July 2010
Date of entry into force for Ukraine: 1 January 2011

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,

Have agreed as follows:

Chapter I
General provisions

Article 1
Object and purpose

The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection").

Article 2
Definitions

For the purposes of this convention:

a. "personal data" means any information relating to an identified or identifiable individual ("data subject");

<...>

Chapter II
Basic principles for data protection

Article 4
Duties of the Parties

1. Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.

2. These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.

Article 5
Quality of data

Personal data undergoing automatic processing shall be:

a. obtained and processed fairly and lawfully;

b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;

c. adequate, relevant and not excessive in relation to the purposes for which they are stored;

d.accurate and, where necessary, kept up to date;

e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

Article 6
Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Article 7
Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

Article 8
Additional safeguards for the data subject

Any person shall be enabled:

a. to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;

b. to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;

c. to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this convention;

d. to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.

Article 9
Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

a. protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

b. protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs b, c and d, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.

Article 10
Sanctions and remedies

Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.

Article 11
Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this convention.

<...>

European charter for regional or minority languages

(Strasbourg, 5 November1992)
(Extract)

Date of signing: 5 November 1992
Date of ratification by Ukraine: 15 May 2003
Date of entry into force for Ukraine: 1 January 2006

Preamble

The member States of the Council of Europe signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, particularly for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the protection of the historical regional or minority languages of Europe, some of which are in danger of eventual extinction, contributes to the maintenance and development of Europe's cultural wealth and traditions;

Considering that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;

<...>

Taking into consideration the specific conditions and historical traditions in the different regions of the European States,

Have agreed as follows:

Part I
General provisions

Article 1
Definitions

For the purposes of this Charter:

a)”regional or minority languages” means languages that are:

i. traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and

ii. different from the official language(s) of that State;

it does not include either dialects of the official language(s) of the State or the languages of migrants;

b) “territory in which the regional or minority language is used” means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

c) “non-territorial languages” means languages used by nationals of the State which differ from the language or languages used by the rest of the State’s population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

Article 2
Undertakings

1 Each Party undertakes to apply the provisions of Part II to all the regional or minority languages spoken within its territory and which comply with the definition in Article 1.

2 In respect of each language specified at the time of ratification, acceptance or approval, in accordance with Article 3, each Party undertakes to apply a minimum of thirty-five paragraphs or sub-paragraphs chosen from among the provisions of Part III of the Charter, including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13.

<…>

Article 4
Existing regimes of protection

1 Nothing in this Charter shall be construed as limiting or derogating from any of the rights guaranteed by the European Convention on Human Rights.

2 The provisions of this Charter shall not affect any more favourable provisions concerning the status of regional or minority languages, or the legal regime of persons belonging to minorities which may exist in a Party or are provided for by relevant bilateral or multilateral international agreements.

<…>

Part II
Objectives and principles pursued in accordance with Article 2, paragraph 1

Article 7
Objectives and principles

1. In respect of regional or minority languages, within the territories in which such languages are used and according to the situation of each language, the Parties shall base their policies, legislation and practice on the following objectives and principles:

a) the recognition of the regional or minority languages as an expression of cultural wealth;

b) the respect of the geographical area of each regional or minority language in order to ensure that existing or new administrative divisions do not constitute an obstacle to the promotion of the regional or minority language in question;

c) the need for resolute action to promote regional or minority languages in order to safeguard them;

d) the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in public and private life;

e) the maintenance and development of links, in the fields covered by this Charter, between groups using a regional or minority language and other groups in the State employing a language used in identical or similar form, as well as the establishment of cultural relations with other groups in the State using different languages;

f) the provision of appropriate forms and means for the teaching and study of regional or minority languages at all appropriate stages;

g) the provision of facilities enabling non-speakers of a regional or minority language living in the area where it is used to learn it if they so desire;

h) the promotion of study and research on regional or minority languages at universities or equivalent institutions;

i) the promotion of appropriate types of transnational exchanges, in the fields covered by this Charter, for regional or minority languages used in identical or similar form in two or more States.

2. The Parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.

3. The Parties undertake to promote, by appropriate measures, mutual understanding between all the linguistic groups of the country and in particular the inclusion of respect, understanding and tolerance in relation to regional or minority languages among the objectives of education and training provided within their countries and encouragement of the mass media to pursue the same objective.

4. In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages.

5. The Parties undertake to apply, mutatis mutandis, the principles listed in paragraphs 1 to 4 above to non-territorial languages. However, as far as these languages are concerned, the nature and scope of the measures to be taken to give effect to this Charter shall be determined in a flexible manner, bearing in mind the needs and wishes, and respecting the traditions and characteristics, of the groups which use the languages concerned.

Part III
Measures to promote the use of regional or minority languages in public life in accordance with the undertakings entered into under Article 2, paragraph 2

Article 8
Education

1. With regard to education, the Parties undertake, within the territory in which such languages are used, according to the situation of each of these languages, and without prejudice to the teaching of the official language(s) of the State:

a) i) to make available pre-school education in the relevant regional or minority languages; or

ii) to make available a substantial part of pre-school education in the relevant regional or minority languages; or

iii) to apply one of the measures provided for under i and ii above at least to those pupils whose families so request and whose number is considered sufficient; or

iv) if the public authorities have no direct competence in the field of pre-school education, to favour and/or encourage the application of the measures referred to under i to iii above;

b) i) to make available primary education in the relevant regional or minority languages; or

ii) to make available a substantial part of primary education in the relevant regional or minority languages; or

iii) to provide, within primary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv) to apply one of the measures provided for under i to iii above at least to those pupils whose families so request and whose number is considered sufficient;

c) i) to make available secondary education in the relevant regional or minority languages; or

ii) to make available a substantial part of secondary education in the relevant regional or minority languages; or

iii) to provide, within secondary education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv) to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

d) i) to make available technical and vocational education in the relevant regional or minority languages; or

ii) to make available a substantial part of technical and vocational education in the relevant regional or minority languages; or

iii) to provide, within technical and vocational education, for the teaching of the relevant regional or minority languages as an integral part of the curriculum; or

iv) to apply one of the measures provided for under i to iii above at least to those pupils who, or where appropriate whose families, so wish in a number considered sufficient;

e) i) to make available university and other higher education in regional or minority languages; or

ii) to provide facilities for the study of these languages as university and higher education subjects; or

iii) if, by reason of the role of the State in relation to higher education institutions, sub-paragraphs i and ii cannot be applied, to encourage and/or allow the provision of university or other forms of higher education in regional or minority languages or of facilities for the study of these languages as university or higher education subjects;

f) i) to arrange for the provision of adult and continuing education courses which are taught mainly or wholly in the regional or minority languages; or

ii) to offer such languages as subjects of adult and continuing education; or

iii) if the public authorities have no direct competence in the field of adult education, to favour and/or encourage the offering of such languages as subjects of adult and continuing education;

g) to make arrangements to ensure the teaching of the history and the culture which is reflected by the regional or minority language;

h) to provide the basic and further training of the teachers required to implement those of paragraphs a to g accepted by the Party;

i) to set up a supervisory body or bodies responsible for monitoring the measures taken and progress achieved in establishing or developing the teaching of regional or minority languages and for drawing up periodic reports of their findings, which will be made public.

2 With regard to education and in respect of territories other than those in which the regional or minority languages are traditionally used, the Parties undertake, if the number of users of a regional or minority language justifies it, to allow, encourage or provide teaching in or of the regional or minority language at all the appropriate stages of education.

<...>

Article 10
Administrative authorities and public services

1. Within the administrative districts of the State in which the number of residents who are users of regional or minority languages justifies the measures specified below and according to the situation of each language, the Parties undertake, as far as this is reasonably possible:

a) i) to ensure that the administrative authorities use the regional or minority languages; or

ii) to ensure that such of their officers as are in contact with the public use the regional or minority languages in their relations with persons applying to them in these languages; or

iii) to ensure that users of regional or minority languages may submit oral or written applications and receive a reply in these languages; or

iv) to ensure that users of regional or minority languages may submit oral or written applications in these languages; or

v) to ensure that users of regional or minority languages may validly submit a document in these languages;

b) to make available widely used administrative texts and forms for the population in the regional or minority languages or in bilingual versions;

c) to allow the administrative authorities to draft documents in a regional or minority language.

2. In respect of the local and regional authorities on whose territory the number of residents who are users of regional or minority languages is such as to justify the measures specified below, the Parties undertake to allow and/or encourage:

a) the use of regional or minority languages within the framework of the regional or local authority;

b) the possibility for users of regional or minority languages to submit oral or written applications in these languages;

c) the publication by regional authorities of their official documents also in the relevant regional or minority languages;

d) the publication by local authorities of their official documents also in the relevant regional or minority languages;

e) the use by regional authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;

f) the use by local authorities of regional or minority languages in debates in their assemblies, without excluding, however, the use of the official language(s) of the State;

g) the use or adoption, if necessary in conjunction with the name in the official language(s), of traditional and correct forms of place-names in regional or minority languages.

3. With regard to public services provided by the administrative authorities or other persons acting on their behalf, the Parties undertake, within the territory in which regional or minority languages are used, in accordance with the situation of each language and as far as this is reasonably possible:

a) to ensure that the regional or minority languages are used in the provision of the service; or

b) to allow users of regional or minority languages to submit a request and receive a reply in these languages; or

c) to allow users of regional or minority languages to submit a request in these languages.

4. With a view to putting into effect those provisions of paragraphs 1, 2 and 3 accepted by them, the Parties undertake to take one or more of the following measures:

a) translation or interpretation as may be required;

b) recruitment and, where necessary, training of the officials and other public service employees required;

c) compliance as far as possible with requests from public service employees having a knowledge of a regional or minority language to be appointed in the territory in which that language is used.

5. The Parties undertake to allow the use or adoption of family names in the regional or minority languages, at the request of those concerned.

<…>

LAW OF UKRAINE
“On ratification of the European Charter for Regional or Minority Languages”

(15 May 2003, № **802-IV**)

Verkhovna Rada of Ukraine **decides:**

1. To ratify the European Charter for Regional or Minority Languages signed on behalf of Ukraine on 2 May 1996 in Strasbourg (hereinafter – the Charter) <...>.

2. The provisions of the Charter apply to the languages of such national minorities of Ukraine: Belarusian, Bulgarian, Gagauzian, Greek, Jewish, Crimean Tatar, Moldovan, German, Polish, Russian, Romanian, Slovak, and Hungarian.

3. Ukraine assumes responsibility in accordance with Parts I, II, IV, V of the Charter, except the paragraph 5 of Article 7 of Part II.

4. In respect of each language that, pursuant to Article 2 of this Law, the provisions of the Charter concern, the following paragraphs and subparagraphs of Articles 8-14 of Part III of the Charter shall apply:

a) subparagraphs «a (iii)», «b (iv)», «c (iv)», «d (iv)», «e (iii)», «f (iii)», «g», «h», «i» of the paragraph 1 and the paragraph 2 of Article 8;

b) subparagraphs «a (iii)», «b (iii)», «c (iii)» of the paragraph 1, subparagraph «c» of the paragraph 2 and the paragraph 3 of Article 9;

c) subparagraphs «a», «c», «d», «e», «f», «g» of the paragraph 2, subparagraph «c» of the paragraph 4 of Article 10;

d) subparagraphs «a (iii)», «b (ii)», «c (ii)», «d», «e (i)», «g» of the paragraph 1, paragraphs 2 and 3 of Article 11;

e) subparagraphs «a», «b», «c», «d», «f», «g» of the paragraph 1 and paragraphs 2 and 3 of Article 12;

f) subparagraphs «b», «c» of the paragraph 1 of Article 13;

g) subparagraphs «a», «b» of Article 14.

5. In applying the provisions of the Charter, measures aimed at the adoption of the Ukrainian language as a state language, its development and functioning in all spheres of public life throughout the territory of Ukraine shall not be considered as preventing or threatening the preservation or development of the languages to which, in accordance with Article 2 of this Law the provisions of the Charter apply.

6. This Law comes into force on the day it is published.

President of Ukraine Leonid Kuchma
Kyiv, 15 May 2003
№ 802-IV

Framework convention for the protection of national minorities

(Strasbourg, 1 February 1995)
(Extract)

Date of signing: 1 February 1995
Date of signing on behalf of Ukraine: 15 September 1995
Date of ratification: 9 December 1997
Date of entry into force for Ukraine: 1 May 1998

The member States of the Council of Europe and the other States, signatories to the present framework Convention,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Wishing to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9 October 1993;

Being resolved to protect within their respective territories the existence of national minorities;

Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

Considering that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

Considering that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

Considering that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

Having regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29 June 1990;

Being resolved to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of States;

Being determined to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies,

Have agreed as follows:

Section I

Article 1

The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.

Article 2

The provisions of this framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.

Article 3

1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.

2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.

Section II

Article 4

1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.

2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.

3. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

2. Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation.

Article 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

<...>

Article 10

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.

2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.

3. The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11

1. The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.

2. The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.

3. In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.

<...>

Criminal law convention on corruption

(Strasbourg, 27 January 1999)
(Extract)

Date of signing: 27 January 1999
Date of ratification by Ukraine: 18 October 2006
Date of entry into force for Ukraine: 1 March 2010

Preamble

The member States of the Council of Europe and the other States signatory hereto,

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

Recognising the value of fostering co-operation with the other States signatories to this Convention;

Convinced of the need to pursue, as a matter of priority, a common criminal policy aimed at the protection of society against corruption, including the adoption of appropriate legislation and preventive measures;

Emphasising that corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

Believing that an effective fight against corruption requires increased, rapid and well-functioning international co-operation in criminal matters;

<...>

Have agreed as follows:

Chapter I
Use of terms

Article 1
Use of terms

For the purposes of this Convention:

a) "public official" shall be understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law;

b) the term "judge" referred to in sub-paragraph a above shall include prosecutors and holders of judicial offices;

c) in the case of proceedings involving a public official of another State, the prosecuting State may apply the definition of public official only insofar as that definition is compatible with its national law;

d) "legal person" shall mean any entity having such status under the applicable national law, except for States or other public bodies in the exercise of State authority and for public international organisations.

Chapter II
Measures to be taken at national level

Article 2
Active bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, offering or giving by any person, directly or indirectly, of any undue advantage to any of its public officials, for himself or herself or for anyone else, for him or her to act or refrain from acting in the exercise of his or her functions.

Article 3
Passive bribery of domestic public officials

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the request or receipt by any of its public officials, directly or indirectly, of any undue advantage, for himself or herself or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions.

Article 4
Bribery of members of domestic public assemblies

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3, when involving any person who is a member of any domestic public assembly exercising legislative or administrative powers.

<...>

Article 7
Active bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally in the course of business activity, the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

Article 8
Passive bribery in the private sector

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, in the course of business activity, the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

<...>

Article 12
Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

Article 13
Money laundering of proceeds from corruption offences

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), Article 6, paragraphs 1 and 2, under the conditions referred to therein, when the predicate offence consists of any of the criminal offences established in accordance with Articles 2 to 12 of this Convention, to the extent that the Party has not made a reservation or a declaration with respect to these offences or does not consider such offences as serious ones for the purpose of their money laundering legislation.

<…>

Article 18
Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of active bribery, trading in influence and money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person; or
- an authority to take decisions on behalf of the legal person; or
- an authority to exercise control within the legal person;

as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to, the criminal offences mentioned in paragraph 1.

<…>

Civil law convention on corruption

(Strasbourg, 4 November 1999)
(Extract)

Date of signing: 4 November 1999
Date of entry into force: 1 January 2006

Preamble

The member States of the Council of Europe, the other States and the European Community, signatories hereto,

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

Conscious of the importance of strengthening international co-operation in the fight against corruption;

Emphasising that corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies;

Recognising the adverse financial consequences of corruption to individuals, companies and States, as well as international institutions;

Convinced of the importance for civil law to contribute to the fight against corruption, in particular by enabling persons who have suffered damage to receive fair compensation;

<...>

Chapter I
Measures to be taken at national level

Article 1
Purpose

Each Party shall provide in its internal law for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

Article 2
Definition of corruption

For the purpose of this Convention, "corruption" means requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.

Article 3
Compensation for damage

1. Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

2. Such compensation may cover material damage, loss of profits and non-pecuniary loss.

Article 4
Liability

1. Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated:

i) the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;

ii) the plaintiff has suffered damage; and

iii) there is a causal link between the act of corruption and the damage.

2. Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.

Article 5
State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party's appropriate authorities.

Article 6
Contributory negligence

Each Party shall provide in its internal law for the compensation to be reduced or disallowed having regard to all the circumstances, if the plaintiff has by his or her own fault contributed to the damage or to its aggravation.

Article 7
Limitation periods

1. Each Party shall provide in its internal law for proceedings for the recovery of damages to be subject to a limitation period of not less than three years from the day the person who has suffered damage became aware or should reasonably have been aware, that damage has occurred or that an act of corruption has taken place, and of the identity of the responsible person. However, such proceedings shall not be commenced after the end of a limitation period of not less than ten years from the date of the act of corruption.

2. The laws of the Parties regulating suspension or interruption of limitation periods shall, if appropriate, apply to the periods prescribed in paragraph 1.

Article 8
Validity of contracts

1. Each Party shall provide in its internal law for any contract or clause of a contract providing for corruption to be null and void.

2. Each Party shall provide in its internal law for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to be able to apply to the court for the contract to be declared void, notwithstanding their right to claim for damages.

Article 9
Protection of employees

Each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities.

Article 10
Accounts and audits

1. Each Party shall, in its internal law, take any necessary measures for the annual accounts of companies to be drawn up clearly and give a true and fair view of the company's financial position.

2. With a view to preventing acts of corruption, each Party shall provide in its internal law for auditors to confirm that the annual accounts present a true and fair view of the company's financial position.

Article 11
Acquisition of evidence

Each Party shall provide in its internal law for effective procedures for the acquisition of evidence in civil proceedings arising from an act of corruption.

Article 12
Interim measures

Each Party shall provide in its internal law for such court orders as are necessary to preserve the rights and interests of the parties during civil proceedings arising from an act of corruption.

<...>

The European Code of Good Administrative Behaviour

(Adoptedby the European Parliament on 6 September 2001)
(Extract)

Article 1
General provision

In their relations with the public,the institutions and their officialsshall respect the principles whichare laid down in this Code of Good Administrative Behaviour, hereafterreferred to as "the Code".

Article 2
Personal scope ofapplication

1. The Code shall apply to all officialsand other servants to whom the StaffRegulations and the Conditions ofemployment of other servants apply, intheir relations with the public. Hereafterthe term "official" refers to both theofficials and the other servants.

2. The institutions and theiradministrations will take the necessarymeasures to ensure that the provisionsset out in this Code also apply to other persons working for them, such as persons employed under private law contracts, experts on secondment from national civil services, and trainees.

3. The term "public" refers to natural and legal persons, whether they reside or have their registered office in a Member State or not.

4. For the purpose of this Code:

a. the term "institution" shall mean an EU institution, body, office, or agency;

b. "Official" shall mean an official or other servant of the European Union.

Article 3
Material scope of application

1. This Code contains the general principles of good administrative behaviour which apply to all relations of the institutions and their administrations with the public, unless they are governed by specific provisions.

2. The principles set out in this Code do not apply to the relations between the institution and its officials. Those relations are governed by the Staff Regulations.

Article 4
Lawfulness

The official shall act according to law and apply the rules and procedures laid down in EU legislation. The official shall in particular take care to ensure that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

Article 5
Absence of discrimination

1. In dealing with requests from the public and in taking decisions, the official shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

2. If any difference in treatment is made, the official shall ensure that it is justified by the objective relevant features of the particular case.

3. The official shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

Article 6
Proportionality

1. When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

2. When taking decisions, the official shall respect the fair balance between the interests of private persons and the general public interest.

Article 7
Absence of abuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

Article 8
Impartiality and independence

1. The official shall be impartial andindependent. The official shall abstainfrom any arbitrary action adverselyaffecting members of the public, as wellas from any preferential treatment onany grounds whatsoever.

2. The conduct of the official shall never be guided by personal, family, or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

Article 9
Objectivity

When taking decisions, the official shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

Article 10
Legitimate expectations, consistency, and advice

1. The official shall be consistent in his or her own administrative behaviour as well as with the administrative action of the institution. The official shall follow the institution's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case. Where such grounds exist, they shall be recorded in writing.

2. The official shall respect the legitimate and reasonable expectations that members of the public have in light of how the institution has acted in the past.

3. The official shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

Article 11
Fairness

The official shall act impartially, fairly, and reasonably

Article 12
Courtesy

1. The official shall be service-minded, correct, courteous, and accessible in relations with the public. When answering correspondence, telephone calls, and e-mails, the official shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.

2. If the official is not responsible for the matter concerned, he or she shall direct the citizen to the appropriate official.

3. If an error occurs which negatively affects the rights or interests of a member of the public, the official shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way and inform the member of the public of any rights of appeal in accordance with Article 19 of the Code.

Article 13
Reply to letters in the language of the citizen

The official shall ensure that every citizen of the Union or any member of the public who writes to the institution in one of the Treaty languages receives an answer in the same language. The same shall apply as far as possible to legal persons such as associations (NGOs) and companies.

Article 14
Acknowledgement ofreceipt and indication of the competent offi cial

1. Every letter or complaint to the institution shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

2. The reply or acknowledgement of receipt shall indicate the name and the telephone number of the official who is dealing with the matter, as well as the service to which he or she belongs.

3. No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

Article 15
Obligation to transfer to the competent service of the institution

1. If a letter or a complaint to the institution is addressed or transmitted to a Directorate General, Directorate, or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the institution.

2. The service which originally received the letter or complaint shall inform the author of this transfer and shall indicate the name and the telephone number of the official to whom the file has been passed.

3. The official shall alert the member of the public or organisation to any errors or omissions in documents and provide an opportunity to rectify them.

Article 16
Right to be heard and to make statements

1. In cases where the rights or interests of individuals are involved, the official shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected.

2. Every member of the public shall have the right, in cases where a decision affecting his or her rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

Article 17
Reasonable time-limit for taking decisions

1. The official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the official has sent to his or her superiors requesting instructions regarding the decisions to be taken.

2. If a request or a complaint to the institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author as soon as possible. In such a case, a definitive decision should be communicated to the author in the shortest possible time.

Article 18
Duty to state the grounds of decisions

1. Every decision of the institution which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

2. The official shall avoid making decisions which are based on brief or vague grounds, or which do not contain an individual reasoning.

3. If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore sent, the official shall subsequently provide the citizen who expressly requests it with an individual reasoning.

Article 19
Indication of appeal possibilities

1. A decision of the institution which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, and the time-limits for exercising them.

2. Decisions shall in particular refer to the possibility of judicial proceedings and complaints to the Ombudsman under the conditions specified in, respectively, Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Article 20
Notifi cation of the decision

1. The official shall ensure that persons whose rights or interests are affected by a decision are informed of that decision in writing, as soon as it is taken.

2. The official shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

<...>

International code of conduct for public officials

(adopted by the UN General Assembly on 23 July 1997)
(Extract)

General principles

1. A public office, as defined by national law, is a position of trust,implying a duty to act in the public interest. Therefore, the ultimateloyalty of public officials shall be to the public interests of their countryas expressed through the democratic institutions of government.

2. Public officials shall ensure that they perform their duties andfunctions efficiently, effectively and with integrity, in accordance with lawsor administrative policies. They shall at all times seek to ensure thatpublic resources for which they are responsible are administered in the mosteffective and efficient manner.

3. Public officials shall be attentive, fair and impartial in theperformance of their functions and, in particular, in their relations with thepublic. They shall at no time afford any undue preferential treatment to anygroup or individual or improperly discriminate against any group orindividual, or otherwise abuse the power and authority vested in them.

Conflict of interest and disqualification

4. Public officials shall not use their official authority for the improperadvancement of their own or their family's personal or financial interest.They shall not engage in any transaction, acquire any position or function orhave any financial, commercial or other comparable interest that isincompatible with their office, functions and duties or the discharge thereof.

5. Public officials, to the extent required by their position, shall, inaccordance with laws or administrative policies, declare business, commercialand financial interests or activities undertaken for financial gain that mayraise a possible conflict of interest. In situations of possible or perceivedconflict of interest between the duties and private interests of publicofficials, they shall comply with the measures established to reduce oreliminate such conflict of interest.

6. Public officials shall at no time improperly use public moneys,property, services or information that is acquired in the performance of, oras a result of, their official duties for activities not related to theirofficial work.

7. Public officials shall comply with measures established by law or byadministrative policies in order that after leaving their official positionsthey will not take improper advantage of their previous office.

Disclosure of assets

8. Public officials shall, in accord with their position and as permittedor required by law and administrative policies, comply with requirements todeclare or to disclose personal assets and liabilities, as well as, ifpossible, those of their spouses and/or dependants.

Acceptance of gifts or other favours

9. Public officials shall not solicit or receive directly or indirectly anygift or other favour that may influence the exercise of their functions, theperformance of their duties or their judgement.

Confidential information

10. Matters of a confidential nature in the possession of public officialsshall be kept confidential unless national legislation, the performance ofduty or the needs of justice strictly require otherwise. Such restrictionsshall also apply after separation from service.

Political activity

11. The political or other activity of public officials outside the scope oftheir office shall, in accordance with laws and administrative policies, notbe such as to impair public confidence in the impartial performance of theirfunctions and duties.

The Council of Europe and the rule of law (CM (2008) 170)

(21 November 2008)
(Extract)

<...>

III. THE KEY COMPONENTS OF THE RULE OF LAW AS UNDERSTOOD BY THE COUNCIL OF EUROPE

29. It is somewhat paradoxical that, although no authoritative definition of the rule of law exists within the Council of Europe, the Organisation works pragmatically on a daily basis to promote and strengthen the rule of law in and among its member states. In fact, there is a strong consensus within the Council of Europe as to the basic requirements that flow from the rule of law principle.

<...>

The relevance of the European Convention on Human Rights

34. As was stated in Section II above, the Convention contains many rule of law-related provisions. But the relevance of the Convention for the rule of law and vice versa does not stop here. In its landmark judgment in the Golder case (21.2.1975, § 34), the Court underlined the relevance of the rule of law for the interpretation of the Convention. Referring to the preamble, the Court stated that "one of the reasons why the signatory Governments decided to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration of Human Rights was their profound belief in the rule of law." Many subsequent judgments have confirmed that the rule of law clearly is a fundamental guiding principle to the application and interpretation of the Convention. The case-law has clarified that the principle inspires the whole Convention and is inherent in all the Articles of the Convention (see, e.g., *Engel and Others*, 8.6.1976, § 69; *Amuur*, 25.6.1996, § 50). Today, there exists such an impressive body of case-law on rule of law-related requirements that it is not exaggerated to state that the Convention and the Court are not only instruments for the protection of human rights but also tools for the protection of the rule of law and the collective enforcement of its requirements.

35. On the basis of that case-law, it is possible to list a number of rule of law-related requirements (components, constitutive elements or sub-principles) that form part of the law of the Convention.

36. These can be grouped under three main headings.

A. The institutional framework and organisation of the state

37. It is in this context that the Court tends to refer to *Etat de droit* ("State based on the rule of law") rather than *prééminence du droit* ("rule of law"), the expression used in the preamble to the Convention.

38. The notion of separation of powers, notably between the political organs of the state (executive, legislature) and the judiciary has assumed a growing importance in the Court's case-law. While the Court has refrained from elaborating a general theory on separation of powers or on checks and balances between the legislature, the executive and the judiciary, it is careful to protect the judicial process from interferences by the legislature or the executive (e.g. *Stafford*, 28.5.2002 § 78; *Beaumartin*, 24.11.1994, § 38; *Öcalan*, 12.5.2005, §§112 and 114; *Kleyn and Others*, 6.3.2003, §§ 193 and 200; *Zielinski and Pradal & Gonzales*, 28.10.1999, § 57; *Stran Greek Refineries and Stratis Andreadis*, 9.12.1994, § 49). Furthermore, it is not compatible with the rule of law if the legislature gives excessive discretion to the executive (*Malone*, 2.8.1984, § 68) or the judiciary (*Kruslin and Huvig*, 24.4.1990, § 36) to take measures which negatively affect human rights.

39. The **role of the judiciary** is essential in a state based on the rule of law. It is the guarantor of justice, a fundamental value in a law-governed state (*De Haes and Gijsels*, 27.1.1997, § 37). In criminal matters its role in the prevention and repression of crime, in particular when committed by State agents, is linked to the notion of the rule of law notably when **procedural obligations under Articles 2 (right to life) and 3 (prohibition of torture) of Convention** are at stake. **Impunity**, de jure or de facto, for violations of these Articles, is incompatible with the principle of the rule of law. In this context, the Court has repeatedly stressed the importance of maintaining public confidence in the (authorities' adherence to) the rule of law and preventing any appearance of the authorities' tolerance of or collusion in unlawful acts (*Hugh Jordan*, 4.5.2001, § 108; *Okkali*, 17.10.2006, § 65). A state based on the rule of law has the duty to employ the necessary measures **to uphold the law on its territory and to ensure the security of all** as well as the enjoyment of human rights (*Lelièvre*, 8.11.2007, § 104). As one element of a state subject to the rule of law, prosecuting authorities must show the necessary diligence in the implementation of criminal law in order to prevent and repress crime and protect the citizens (*Saygili*, 8.1.2008, § 35).

40. Article 6 § 1 of Convention requires that **a tribunal must always be established by law**. This reflects the principle of the rule of law inherent in the whole Convention system. Legislation on the establishment and competence of judicial organs must be enacted by parliament, failing which a tribunal would lack the necessary legitimacy in a democratic society to hear the cases of individuals (*Lavents*, 28.11.2002, § 81; *Jorgic*, 12.7.2007, § 65).

41. More generally as regards the legislature, the Court has systematically described the right to vote and stand for election as a right "central to democracy and the rule of law", thus illustrating the interdependence between these notions (*Hirst*, 6.10.2005, § 58; *Albanese*, 23.3.2006, § 44).

42. The **duty of the state, notably the executive, to respect and apply the law**, including the duty to enforce final domestic judgments, will be further addressed under the principle of legality below. Here, reference should be made to the importance of **administrative courts** which the Court has highlighted as one of the most conspicuous achievements of a state based on the rule of law, in particular because the jurisdiction of those courts to adjudicate on acts of the administrative authorities was not accepted without a struggle (*Kress*, 7.1. 2001, § 69).

B. The principle of legality: principles of lawfulness, legal certainty and equality before the law

43. The principle of legality (sometimes referred to as supremacy of the law) forms a traditional core part of the rule of law concept. The rule of law requires that the state acts on the basis of, and in accordance with, the law. This offers essential legal protection of the individual vis-à-vis the state and its organs and agents. Many Convention provisions reflect this principle through references to the notion of "law", in most cases in the form of a requirement that interference with human rights must be lawful.

Principle of lawfulness

44. The notion of law systematically used by the Court is a material or substantive one. It covers not only statute law but also unwritten law (case-law) and regulations. The Court assesses whether domestic law as a whole has been complied with in the context of interferences with Convention rights. In the context of deprivation of liberty (Article 5), the Court stresses the importance of the lawfulness of the detention, both procedurally and substantively, requiring scrupulous adherence to the rule of law (*Winterwerp*, 24.10.1979, § 39). Non-compliance with domestic law leads to a violation of Article 5 (*Bozano*, 18.12.1986, § 58; *Wassink*, 27.9.1990, § 27). In some cases, even where the law may have been formally respected, the Court has found a breach of the requirements of lawfulness on the ground that the authorities have attempted to circumvent the applicable legislation (*Karagöz*, 8.11.2005, § 59; *John*, 10.5.2007, § 33).

45. The state is not only obliged to respect and apply, in a foreseeable and consistent manner, the laws it has enacted, but also, as a corollary of this duty, to ensure the legal and practical conditions for their implementation (*Broniowski*, 22.6.2004, § 184).

46. The notion of "law" in the Convention does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law. In particular, the **law must be sufficiently accessible and foreseeable** (*Sunday Times (No. 1)*, 26.4.1979, § 49). These requirements have been developed in a rich case-law. Foreseeability means that the law must be foreseeable as to its effects, that is formulated with **sufficient precision** to enable the individual to regulate his conduct. In this context, a law which confers a discretion to a state authority must indicate the scope of that discretion. **It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity, to give the individual adequate protection against arbitrariness**. (*Malone*, 2.8.1984, § 68).

47. The **principle of legality takes on a special importance in criminal matters**. Article 7 of Convention enshrines two principles essential to the rule of law: a criminal conviction must be based on a norm which existed at the time of the act or omission (***nullum crimen sine lege***), and no heavier penalty may be imposed than the one applicable at the time the offence was committed (***nulla poena sine lege***). Neither is it permissible to apply new, more severe legislation to an ongoing situation that arose before the legislation came into force (*Achour*, 10.11.2004, § 37). In addition, the authority applying the criminal law may not interpret it extensively, for example by analogy, to the accused's detriment. The offence must be clearly defined in law (here, too, requirements of accessibility and foreseeability apply) (*Coëme*, 22.6.2000, § 145). This is also true in respect of the penalty imposed (*Kafkaris*, 12.2.2008, § 145). These principles all serve to offer essential safeguards against arbitrary prosecution, conviction and punishment (*Kokkinakis*, 25.5.1993, § 52).

Principle of legal certainty

48. This principle is one of the basic elements of the rule of law (*Beian*, 6.12.2007, § 39). It can be linked to some of the principles and requirements set out above (such as lawfulness and foreseeability). The state has a duty to respect and apply, **in a foreseeable and consistent manner**, the laws it has enacted (*Broniowski*, 22.6.2004, § 184).

Legal certainty requires respect for the **principle of *res judicata***. Final judgments by domestic courts should not be called into question; systems which allow for the quashing of final judgments for an indefinite period of time are incompatible with the principle of legal certainty (*Brumarescu*, 28.10.1999, § 61; *Riabykh*, 24.7.2003, §§ 54 and 57).

49. The rule of law, in particular the principles of legality and legal certainty, also requires that **final court judgments be enforced**. In private disputes, enforcement of final judgments may require the assistance of the police in order to avoid any risk of "private justice" contrary to the rule of law (*Matheus*, 31.3.2005, § 70). The **administration of the state's obligation to execute final domestic judgments** is an essential feature of a state founded on the rule of law and the principle of legal certainty (*Taskin and Others*, 30.3.2005, § 136). Violations of this obligation are sanctioned under different Convention provisions.

50. Likewise, authorities are obliged to **respect final decisions ordering the release of a person from detention**. A practice of detaining a person without the basis of a concrete legal provision or judicial decision is itself contrary to the principle of legal certainty (*Baranowski*, 28.3.2000, § 56; *Svipsta*, 9.3.2006, § 86).

51. The existence of **conflicting decisions within a supreme court** is contrary to the principle of legal certainty. It is therefore required that the courts, especially the highest courts, establish **mechanisms to avoid conflicts and ensure the coherence** of their case-law. The principle of legal certainty is essential to the public's confidence in the judicial system and the rule of law (*Beian*, 6.12.2007, § 39).

52. The principle of legal certainty may also justify certain limitations of rights, notably in the form of **time-limits for lodging appeals or the use of statutory limitations**. However, the Convention may still be violated in case of particularly strict interpretations or rigid application of time-limits regardless of individual circumstances (*Miragall Escolano*, 25.1.2000, § 33; *Phinikaridou*, 20.12.2007, § 51).

Principle of equality before the law

53. The principle that all are equal before the law is reflected in various ways in the Convention. Article 1 requires states to secure Convention rights to "everyone" within their jurisdiction, and most Convention rights are similarly framed: "Everyone has the right …". In addition, Article 14 prohibits any discrimination in the enjoyment of Convention rights, and Article 1 of Protocol No. 12 prohibits discrimination generally, including as regards the enjoyment of any right set forth by law and any other discrimination by a public authority. Equality before the law and non-discrimination are human rights principles as much as they are rule of law principles, and the Court's case-law tends to apply the prohibition of discrimination without there being a special need to refer to it as a rule of law principle, although there is some recognition that equality in rights and duties of all human beings before the law is an aspect of the rule of law.

C. Due process: judicial review, access to courts and remedies, fair trial

54. The principle of the rule of law implies that an interference by the executive authorities with an individual's rights should be subject to an effective control which should normally be assured by the judiciary, at least in the last resort, judicial control offering the best guarantees of independence, impartiality and a proper procedure (*Klass and Others*, 6.9.1978, § 55); This **principle of judicial control of the executive** was reaffirmed in more recent cases (*Dumitru Popescu (No. 2)*, 26.4.2007, § 76; *Sissanis*, 25.1.2007, § 71). As regards deprivation of liberty, the requirements of Article 5 §§ 3 and 4 of Convention, with their emphasis on promptitude and judicial control, assume a particular importance in the context of secret detentions and disappearances. What is at stake is both the protection of the physical liberty of individuals as well as their personal security in a context which, in the absence of safeguards, could result in a subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection (*Kurt*, 25.5.1998, § 123).

55. The due process aspect of the rule of law entails certain **positive obligations of the state in the form of procedural requirements and safeguards** (such as the right to be heard and have one's views considered, e.g. for a pregnant woman concerning the therapeutic termination of her pregnancy: *Tysiac*, 20.3.2007, §§ 112 and 117).

56. **The right of access to a court** was established on the basis of the rule of law principle. In the *Golder judgment* (21.2.1975, § 35), the Court rejected an interpretation of Article 6 § 1 which would allow states to abolish their courts, take away their jurisdiction to decide certain classes of civil actions and entrust it to organs dependent of the government. Individuals must have a clear, practical opportunity to challenge an act that interferes with their rights (*Bellet*, 4.12.1995, § 36). This right may imply an obligation to provide for legal aid in civil disputes (*Airey*, 9.10.1979, § 26) or to exempt actions for damages from high and inflexible court fees (*Stankov*, 12.7.2007, § 59). The right of access to court may be subject to certain limitations, but these, in turn, are themselves subject to certain requirements.

57. The **right to an effective remedy** (Article 13 of Convention) for any arguable claim about violation of Convention rights is also closely linked to the rule of law. Referring to that principle, the Court has established that, in expulsion cases, Article 13 may require a remedy with an automatic suspensive effect especially where there is a serious risk of torture or ill-treatment in case of deportation (*Conka*, 5.2.2002, § 83; *Gebremedhin*, 26.4.2007, § 66).

58. The **right to a fair trial** enshrined in Article 6 of Convention reflects the fundamental principle of the rule of law (*Sunday Times (No. 1)*, 26.4.1979, § 55) and occupies a prominent place in a democratic society (*Kostovski*, 20.11.1989, § 44). Unsurprisingly, the notion of the rule of law is used in the interpretation and application of the different guarantees of Article 6, such as the presumption of innocence (*Salabiaku*, 7.10.1988, § 28), the rights of the defence (*Leempoel*, 9.11.2006, § 75) and the right to a fair trial within a reasonable time (*Sürmeli*, 8.6.2006, § 104). In the latter judgment, attention was drawn to the important danger that exists for the rule of law within national legal orders when **excessive delays in the administration of justice** occur in respect of which litigants have no domestic remedy. **Article 6 also applies to the execution of a judicial decision**: where authorities fail to execute such a decision, the fair trial guarantees enjoyed by a litigant during the proceedings are rendered devoid of purpose (*Hornsby*, 19.3.1997, § 40; *Immobiliare Saffi*, 28.7.1999, § 63). This again illustrates the relevance of enforcement of the law as a rule of law principle (see under legal certainty above).

Conclusion

59. All these rule of law requirements under the Convention pursue an important objective: to avoid arbitrariness and offer individuals protection from arbitrariness, especially in the relations between the individual and the state. In addition, there are some indications that the rule of law may on occasion take on a broader meaning in the Court's case-law, for example when the Court refers to the state's duty to uphold the law on its territory (see para. 39 above). In this broader sense, the rule of law means that not only the state and its agents but all individuals are subject to the law ("no one is above the law"). This explains why the state's duty to ensure the security of all persons as well as everyone's enjoyment of human rights (see para. 39 above) also extends to countering threats posed by other individuals.

<...>

II. Specific acts of the Council of Europe

The section related to the acts of the Council of Europe in the area of guaranteeing and implementation of the rule of law standards should be highlighted as highly relevant and systematic. In general, it lays the foundations and priorities for the development of national legislation in line with the international obligations of Ukraine as a member of the Council of Europe. Such standards are particularly important for the implementation of the rule of law and its components in the practice of public administration bodies, since this very aspect of the rule of law has been developed in practice by the institutions of the Council of Europe quite well.

The acts presented in this section contain a number of comprehensive, general, and in some cases, rather specific, provisions regarding the specifics and functioning of public authorities, primarily in the area of providing administrative services and meeting other public needs of citizens. In view of this, it is possible to map out several content blocks among the acts presented here according to the system of elements (principles) of the rule of law in public administration.

Regarding the principle of **legality** as a component of the rule of law, the issue of proper regulation of the status of the public administration bodies themself, which should be based on commonly accepted values and standards, is important. To highlight these principles for the users of this guide, it provides several documents demonstrating the value priorities of the development of the relevant field within the competence of the Council of Europe.

The Resolution No. 3 "On the Council of Europe's Action to Strengthen Rule of Law" presented here, demonstrates general approaches to setting the rule of law priorities. It is important to note that this document unambiguously states the need to combine efforts in this direction at the international level (for example, through the recommendation to develop cooperation in the United Nations, the OSCE / ODIHR and other international bodies) and on the local one - inside of the each Member State's legal system.

At the same time, the extracts from the Utrecht Declaration "Good local and regional governance in turbulent times…" will help to understand the current globalization challenges of the effective functioning of public administration bodies. Important here is the emphasis on the very legal competence and the ability of regional self-government bodies within the constitution and the law to regulate and manage a substantial proportion of public affairs, under their own responsibility, in the interests of the local population and in accordance with the principle of subsidiarity. The provisions of the Utrecht Declaration clearly show the systemic linkage of the work of the authorities even beyond the boundaries of specific states. That is, the transboundary aspect of cooperation is emphasized not only between states, but even between their local and regional public authorities. Local authorities in Ukraine, while aware of the relevant trends, should also strive to organize their work on the relevant principles.

In doing so, the provisions of the Utrecht Declaration presented here can be extrapolated to the local level of domestic cooperation. Actually, the formulated principles of international cooperation can become a good basis for the development of regulatory framework (local acts) and administrative practice on cooperation between different administrative-territorial units within Ukraine. This becomes especially relevant in the conditions of decentralization and the formation of united territorial communities, and most importantly, under the conditions of impossible formal association, but a real need for systematic cooperation.

From this point of view, the provisions of the Recommendation of the Committee of Ministers of the Council of Europe No. REC (2004) 12 concerning the process of reforming the boundaries and / or the structure of local and regional authorities may become particularly useful. This document clearly states that it has established indi-

cators for the creation and modification of local and regional authorities, with particular emphasis on the need for consultations between such authorities. Any reform process should be based on an effective, transparent and representative institutional dialogue. In doing so, public access to information must be ensured, and the results of the dialogue should be made available to the general public as soon as possible.

Particular focus deserves attention to the legal status of persons directly involved in the implementation of public authority. Thus, the extracts from the Recommendation of the Committee of Ministers No. R (2000) 6 to the Member States on the status of public servants in Europe and the Recommendation of the Committee of Ministers No. R (2000) 10 to member states on the codes of conduct of civil servants can clearly distinguish the standard that the legal structure and general principles relating to the status of public servants should be defined by law or collective agreements, and their implementation should be made at the discretion of the government and / or other competent authorities or be resolved through formalized collective agreements. At the same time, special attention in these documents is paid to the ethics of public servants. These standards are largely in line with Ukrainian national anti-corruption legislation, but many of them will allow one side to understand the logic of certain Ukrainian laws and, on the other, to look at the practice of their daily work from a slightly different angle.

The most useful for local governments will be extracts from Recommendation No. 60 (1999) on the political integrity of local and regional elected representatives. This document defines a number of requirements for the local election process itself and for the general framework of the functioning of elected persons. The peculiarities of the implementation of the representative mandate during the main activity, and in relations with local authorities, the public, mass media, etc. are sufficiently detailed.

Regarding the actual exercise of powers by public authorities and local self-government, among other acts Recommendation of the Committee of Ministers No. R (80) 2 on the exercise of discretionary power by the authorities should be noted. Understanding the true nature of the discretionary power of public servants is usually either absent or perceived rather limited (for example, solely through the prism of the adoption of individual legal acts). The provided extracts from this Recommendation can be a good basis for the development of a qualitatively different perception of the nature of their authority in general and discretionary ones, in particular by public officials and servicemen.

The following basic standards are also provided here as the need for discretionary powers to pursue exclusively the purpose for which such powers were conferred; the requirement to maintain an appropriate balance between the negative influence that a decision of the body may have on the rights, freedoms and interests of individuals and the purpose pursued by it; the need for any general administrative instructions to be applied consistently, taking into account, at the same time, the particular circumstances of each case, and so on. The careful elaboration of these and other standards regarding the application of the principle of legality will help public servants not only understand the nature and nature of their individual powers, but will also provide a basis for a practical reference to the relevant international legal obligations of Ukraine, which must stipulate its national and local legislation.

The principle of **accessibility** within this section is presented fairly widely and practically in each act submitted here. After all, the question of the actual availability of consumers to public services contains a fairly large range of elements (informational, organizational, legal, etc.). It is worth emphasizing here at only certain features that may be useful for employees of the public administration. Indeed, in the system of standards of the Council of Europe, procedures for the provision of public services are allocated a separate important place. And in this relatively large array of administrative regulations, the local and regional aspects are particularly highlighted.

In particular, the Committee of Ministers Recommendation No. R (97) 7 on local public services and their users' rights establishes a whole system of requirements for the level of quality and efficiency of the functioning of public administration in this area. This document states that the member states of the Council of Europe should prioritize the modernization of governance and provision of local public services, while respecting the principles of local self-government, user rights and rules for the functioning of a market economy. As one of the most effective tools for such modernization, it is possible to conduct exercises and introduce innovations in these areas,

as well as exchange information between local authorities at the national and international levels in cooperation with local authorities, their associations and educational institutions.

The above-mentioned Recommendations clearly stipulate that it is the local authorities who must guarantee the continuity of basic services to the population, of course, within their economic and budgetary constraints. Local authorities must adhere to the general principles of public service: equality, neutrality, non-discrimination and integrity, and they have a duty to ensure public interest and a reasonable balance between resources and expenditures.

From this perspective, it is important to recommend that the local authorities constantly improve the quality of their services, in line with the changing needs of society, the requirements of effective financial management and technological development. Accordingly, local authorities are often at the forefront of technical innovation and social experimentation. They should promote the development and increase the satisfaction of consumers, they should adapt to changing needs of the population and introduce the use of new technologies, offer opportunities for experimental activities, interesting in their diversity, flexibility. Such a positive and successful experience can be the basis or benchmark for the development of certain tools or mechanisms at the national (federal level).

It seems appropriate to draw attention to the fact that among the various subjects of power authorities, local self-government bodies have the appropriate freedom of discretion, which gives them the opportunity to maximize the level of implementation of such recommendations of practical implementation of innovation and progressive ideas.

A slightly different, regional focus on public services is made in the Committee of Ministers Recommendation No. CM / REC (2007) 4 on local and regional public services, which focuses more on decentralization processes. The proximity of local and regional public services to the population is a fundamental need, and local and regional public authorities play a critical role in providing these services. In order to ensure that these services are tailored to the needs and expectations of citizens, local and regional authorities should receive a high level of decentralization and capacity for independent activities in providing these services.

At the same time, local and regional authorities should try to improve the availability of their services, for example, by improving the location mapping to optimize reachability of administrative service points and offices; reducing the time needed to access the service (simplified procedures, working hours that are relevant to the work schedules of residents, organization of work that improves user productivity and helps to avoid long queues, effective public transport services), etc.

In this section, individual documents relate to the specific groups of public service users. Recommendation No. R (87) 16 of the Committee of Ministers on administrative procedures concerning a large number of persons provides for the need to take into account also the cross-border elements of the functioning of public administration bodies. If there is a likelihood that an administrative act (decision, action or inaction) violates the rights, freedoms and interests of the territory of a neighboring state, the affected individuals of that state should have access to the appropriate administrative procedure for the decision-making process in the absence of discrimination.

Resolution No. 1 that sets the role of local and regional authorities in providing local social services states that the provision of social services should be based on the needs and expectations of communities, and public authorities should give priority to the interests of people when deciding on the best way of providing services for which they bear responsibility. This document specifies the principle of availability in part of the requirement to provide a higher possible level of proximity of services. At the same time, local and regional authorities should, where appropriate and in line with national policies, play an important role in providing social services directly or in cooperation with other organizations. Within the framework of their powers, local authorities should have an adequate level of discretion in the provision of their services.

Resolution (77) 31 on the protection of a person in connection with the actions of the authorities, among other requirements and guarantees of the protection of human rights in the field of public administration separately allocates the **right to be heard**. It is noted that in case of any administrative action that may adversely affect the rights, freedoms and interests of a person, such person may provide facts and evidence and, where appropriate, witnesses that will be taken into account by the administrative authority.

While introducing international standards regarding the provision of public services and overall functioning of public administration in this publication, the requirements for proper and efficient management, as well as the interests of third parties and the core interests of the public, must be taken into account. Therefore, legal and organizational mechanisms guaranteeing realization of the right to be heard as a section of the rule of law that by itself contains a number of additional elements - sub-principles or attributes - are sufficiently important.

Such elements are demonstrated in sufficient detail and quite systematically by the Recommendation Rec (2001) 19 "On Citizen Participation in Local Public Life" of the Committee of Ministers of the Council of Europe. This document stipulates the obligation of the Council of Europe's member states to take measures of guaranteeing citizens the right to access to clear, comprehensive information on the various issues affecting their local communities and the right to speak about the most important decisions that affect their future. National Governments should pay more attention to the links between public authorities and citizens, and encourage local leaders to address citizen participation and strictly observe their demands and expectations in order to secure an adequate response to the needs citizens express.

Certainly, such international obligations cannot be fulfilled solely through centralized mechanisms and procedures. Proactive attitude of local self-government bodies in this subject is very important and in some cases is critical, because they are the primary institution that can form positive incentives for citizens to participate in public affairs. Therefore, the aforementioned Recommendation Rec (2001) 19 among other things declares the need to encourage local residents to participate in the formation and implementation of projects that directly affect their environment either directly or through the association of neighbors. For example: development and maintenance of green areas and playgrounds, crime prevention, setting favorable conditions for public assistance / self-assistance activities (daycare services for children, elderly, etc.).

The issue of the need to take into account special conditions or special needs should be solved by public administration bodies through not least the involvement of representatives of affected individuals or other interested actors who can help to make a more balanced and well-founded decision. A good example of an international standard for this is the Committee of Ministers' Recommendation No. REC (2004) 13 on youth participation in local and regional public life, which stipulates that development of all sectoral policies should involve young people. The member states of the Council of Europe are obliged to introduce different forms of participation, particularly consultations and events of cooperation with the youth and its representatives. Moreover, local and regional authorities should create conditions for the development of urban environmental policy based on more integrated, less fragmentary conditions that promote social interaction and the development of high-quality public spaces specifically with/ in communication with representatives of youth organizations.

In the conditions of modern digital technologies and the ever-increasing share of electronic communications in various spheres of human life, international standards of the implementation of the **principle of transparency** in the activities of public administration bodies are particularly relevant.

The tendencies towards the maximum level of publicity, openness, transparency and, accordingly, transparency are generally acceptable today. Such approaches and standards are reflected in most of the legal documents related to relevant issues in this section, and generally in the field of public administration. For example, the Committee of Ministers Recommendation No. R (81) 19 on access to information that is at the disposal of public authorities clearly and unambiguously states that, in each particular case or in certain areas of public administration, every effort should be made to ensure the highest possible level of access to information.

Against this background, it seems advisable to emphasize the opposite - the criteria for limiting excessive publicity and transparency. Because restrictions naturally exist and can be established by public authorities, in particular, and by the state as a whole. However, such an imposition should be reasonable and not excessive, so that the measure of discretion applied does not distort the principle of transparency, turning it into a principle of secrecy.

According to the already mentioned Recommendation of the Committee of Ministers No. R (81) 19, the presumption of openness of information is subject only to the constraints necessary in a democratic society for the protection of legitimate public interest (national security, citizen safety, public order, economic welfare of the country, prevention of crime or prevention of disclosure of information gathered on the basis of confidentiality), as well as for the protection of privacy and other legitimate public interests. However, due regard should be paid to the particular interest of a person in the information that the public authorities have in relation to this person.

A more specific framework for the possible restriction of the right to access information is determined by the Committee of Ministers Recommendation No. R (2002) 2 "On Access to Official Documents". Restrictions must be clearly defined by law, be necessary in a democratic society and proportionate to protect: national security, defense and international relations; public safety; prevention, investigation and prosecution of criminal activity; privacy and other personal interests; commercial and other economic interests - both private and public; equality of parties in court proceedings and others.

In addition, stringent standards set specific procedural restrictions on the handling of information. For example, the Committee of Ministers Recommendation No. CM / REC (2010) 13 on the protection of individuals with regard to the automated processing of personal data in the context of the use of such data (profiling) clearly stipulates that Member States should facilitate the development and implementation of procedures and systems respectively to protect privacy and personal data at the planning stage, in particular through the use of enhanced privacy protection technologies. Personal data used in the context of profiling should be kept in a form that allows identification of data subjects only during the period necessary for the purposes for which they are collected and processed.

Quite a large number of specific issues are regulated by separate acts. Thus, the Committee of Ministers Recommendation No. R (97) 5 on the protection of medical data states that medical data may be collected and processed in the following cases: if provided for by law (for public health purposes, or to avoid real danger or to prevent a particular criminal offense ; or for purposes of important public interest) or if permitted by law (for the purposes of prevention, diagnosis or therapeutic purposes, taking into account the data subject or his/ her relative in the genetic line, or to protect the vital interests of the subject or a third party, or for a specific contractual obligations, or for the formulation, execution or defense of legal requirements).

Thus, despite the massive tendency towards the comprehensive application of modern communication technologies including those in the field of public administration, the issues of guaranteeing privacy and security remain important.

A number of acts proposed for review are dedicated to the implementation of the **right to appeal**. They provide for the implementation of international standards not only for administrative appeals, but also for judicial ones.

In line with the Committee of Ministers Recommendation No. R (97) 7 on local public services and their users' right that have been already mentioned above, the complaints procedure should be open so that citizens can get easily acquainted with them and used them, and organized in such a way so that the process of complaints processing occurred quickly. Unfortunately, in modern Ukrainian realities the tools for challenging decisions, actions or inactivity of the subjects of power authorities had not yet organized to be a usual, convenient and simple instrument of external control over the activities of public administration.

The recommendation mentioned here explicitly states that citizens' complaints indicate where public services are not working properly, so that the public sector management should consider them as an opportunity to improve the organization of service and user relationships. It is very important to note that the processing of complaints

must have a dual purpose: to find a quick solution to the problems raised in the complaint, and if the complaint was duly supported by facts, eliminating the causes of the problems. So far, such perception of the Ukrainian public authorities regarding the instruments of appeal is not there yet.

This section also provides more detailed extracts from acts regulating the basic requirements for the process of challenging administrative acts in the broad sense of their substance. For example, the Committee of Ministers Recommendation No. REC (2004) 20 on judicial oversight of administrative actions, the Committee of Ministers Recommendation No. R (2003) 16 on the implementation of administrative and judicial decisions in the field of administrative law and the Committee of Ministers Recommendation No. REC (91) 1 on administrative sanctions determine not only the grounds of appeal and procedural aspects, but also raise questions about the effectiveness and efficiency of any appeal. It is for this that the appeals procedure is considered through the prism of the execution of decisions already made in specific cases.

Institutes of extrajudicial settlement of disputes are interesting and relatively new, non-entrenched Ukrainian law-enforcement practices. The Council of Europe's standards provide for the use of such methods of resolving legal conflicts in the public administration filed.

The Recommendation of the Committee of Ministers No. (89) 8 concerning provisional measures in the field of judicial protection in administrative matters provides, inter alia that settling out-of-court disputes (also different from ordinary administrative appeals), for example through negotiations, may be applied only in cases expressly provided for by law. According to the law, civil servants participating in a negotiated settlement should be given sufficient authorities to make a compromise solution.

By international standards **the principle of accountability** is a keynote that passes through all administrative procedures, decisions and actions. Its elements imply subjects' responsible and effective application of their respective authorities. The multifaceted nature of this principle determines not only its content in relation to specific standards of conduct, but rather even a set of criteria for assessing such administrative behavior.

The Committee of Ministers Recommendation No. CM / REC (2007) 7 On good governance can, to some extent, be quintessentially called 'The rules of good administrative practice'. It is this document that recommends to member countries' Governments to promote good governance within the framework of the rule of law and democracy principles; to promote good governance through the organization and operation of public authorities, which would ensure efficiency, efficiency and value for money; to guarantee the formulation of objectives and the definition of performance indicators for the regular monitoring and measurement of the achievement of these goals by the government and its civil servants; carry out appropriate internal and external monitoring of the work of the government and its staff of civil servants activities, etc.

The Addendum to the abovementioned Recommendation of the Committee of Ministers No. CM / REC (2007) 7 contains the Code of Good Governance, which is composed of principles and rules to be applied by public authorities in dealing with citizens in order to achieve good governance. Without going into its detailed description here, one should only note that this Code establishes a system of principles for the functioning of public administration bodies on the one hand, and provides for very specific requirements regarding the form of administrative decisions, their disclosure, etc. on the other hand. Thus, it is this document among most of the acts of the Council of Europe that can become the key that enables the employees of state authorities and local self-government to perceive their powers more comprehensively, as it is provided by law and international standards for their implementation.

A similar approach to the wording of the list and the essence of the principles of public administration is also presented in the Council of Europe Strategy on Innovation and Good Governance at the Local Level No. mcl-15 (2007) 8. According to the Strategy, proper governance is a requirement at all levels of government. It is extremely important at the local level, because local authorities are closer to citizens and provide them with important services; at this level they can feel ownership of public events.

Given the importance of the field and the role of the local authorities, this section also presents extracts from several acts that directly impose requirements for the proper control of local government. For example, the Committee of Ministers Recommendation No. REC (98) 12 on controlling actions by local authorities specifies details of the scope of administrative oversight, guidance on the development of alternative administrative oversight mechanisms, and guidance on avoiding the risk of informal oversight. These standards are intended to help those responsible in the Council of Europe's member states to focus on the most effective mechanisms for monitoring and increasing the level of accountability of local authorities.

At the same time, an extract from the Committee of Ministers Recommendation No. R (84) 15 on public-law liability provides for the obligation of a member state of the Council of Europe to provide compensation for possible damage to a person who suffered from an action of a public authority that might behave the way that does not comply with requirements of the law.

Thus, the Council of Europe standards set out in this section enable public service providers to outline their work more clearly through the prism of the six core elements of public administration in the field of rule of law.

Resolution № 3 on Council of Europe action to promote the rule of law

(Tromsø, Norway, 18 -19 June 2009)

THE MINISTERS participating in the 29th Council of Europe Conference of Ministers of Justice (Tromsø, Norway, 18-19 June 2009),

1. Reaffirming the importance of the rule of law as a basis of genuine democracy;

2. Recalling that it is the core objective of the Council of Europe to preserve, strengthen and promotethe rule of law, human rights and democracy;

3. Referring to the three Declarations of the Heads of State and Government of the member states ofthe Council of Europe made on the occasions of the Council of Europe Summits of Vienna (1993),Strasbourg (1997) and Warsaw (2005) expressing their attachment and commitment to the rule oflaw;

<…>

6. Recognising the outstanding and essential contribution of the European Convention on HumanRights, the European Court of Human Rights and the Committee of Ministers, as supervisor of theexecution of the Court's judgments, to developing and upholding common European rule of lawstandards and principles in all member states;

7. Noting that the rule of law should be ensured in international relations as well as within states;

8. Recognising also the role of the other Council of Europe mechanisms in the human rights and legalfields in monitoring and reinforcing the rule of law in the member states;

9. Convinced of the need to propose concrete steps in order to enhance the Council of Europe'scapacity to actively promote the rule of law in all member states through existing as well as newstandards and their effective implementation, as well as to develop needs assessment based cooperationprogrammes;

10. Recognising that the variety of rule of law-related activities of the Council of Europe, both in natureand topic, call for closer coordination between its different sectors as well as the use of synergieswith other international organisations;

11. Stressing the importance of assessing, on a more comprehensive and regular basis, the state of therule of law in the member states in order to adopt or develop Council of Europe standards and/orassist member states in addressing specific issues through targeted technical cooperation;

12. Underlining the importance of the Memorandum of Understanding between the Council of Europeand the European Union of 11 May 2007, which called for closer cooperation, in particular regardingthe promotion and protection of the rule of law with a view to establishing common standards andpromoting a Europe without dividing lines;

13. Convinced of the need to effectively implement legal standards of the Council of Europe and tofurther strengthen the Council of Europe's potential as the only pan-European standard-settingorganisation:

<...>

19. RECOMMEND that the Council of Europe pursues its work of promoting the rule of law worldwide bydeveloping co-operation with the United Nations, the OSCE/ODIHR and other internationalinstitutions working in this field and by increasing the global reach of relevant Council of Europeconventions, such as:

- the Convention for the Protection of Individuals with regard to Automatic Processing of PersonalData (CETS No. 108, 1981) and its Additional Protocol regarding supervisory authorities andtransborder data flows (CETS No. 181, 2001);
- the Convention on Cybercrime (CETS No. 185, 2001) and its Additional Protocol concerning thecriminalisation of acts of a racist and xenophobic nature committed through computer systems(CETS No. 189, 2003);
- the Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), and
- the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, 2007).

<...>

The Utrecht declaration on good local and regional governance in turbulent times: the challenge of change

(adopted at the Council of Europe Conference of European Ministers Responsible for Local and Regional Government, 17 November 2009)
(Extract)

We, the European Ministers responsible for Local and Regional Government, meeting in Utrecht on 16 and 17 November 2009 for the 16th Session of our Conference,

As a further step in our co-operation, have come together to:

1. decide steps and measures to enhance the work of the Council of Europe in the field of local and regional democracy;

2. address the impact of the economic downturn on local government and the role of central government in removing obstacles to transfrontier co-operation;

3. have an occasion to sign two new Council of Europe instruments, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority and Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs), as well as to adopt a reference framework for regional democracy, and

4. adopt the Utrecht Agenda for the work of the Council of Europe in support of our common objective of delivering good local and regional governance to all citizens.

As a result of our 16th session we adopt the following specific declarations:

<…>

Declare and agree as follows:

Crossborder and interterritorial co-operation between territorial communities or authorities plays a fundamental role in promoting dialogue, mutual understanding as well as social, economic and human development between neighbouring territories of our respective States, thus creating stability and prosperity for our nations. We, ministers for local and regional government in our respective States, have a crucial responsibility in ensuring that our countries adopt and pursue policies that uphold this goal. At this Conference, we have exchanged on our respective policies and experience and have realised how these policies are beneficial to our mutual relationships and our borderlands in particular.

We agree to pursue and develop further at domestic level policies and actions that enable local and regional authorities to co-operate across the borders in their respective fields of responsibility.

We will seek, at both domestic and European level, to ensure that legislative and regulatory provisions and policies do not impinge on crossborder co-operation between territorial communities or authorities and will favour or develop the appropriate mechanisms and procedures for raising the awareness of this both at home and within the European institutions concerned.

<…>

GUIDELINES FOR POLICY RESPONSES BY CENTRAL GOVERNMENT TO THE IMPACT OF THE ECONOMIC CRISIS ON LOCAL GOVERNMENT

I. General

1. Any policy response by central government to the impact of economic downturn on local government must be fully compatible with its obligations under the European Charter of Local Self-Government (CETS 122), which recognises that questions as to the financial resources for local authorities are to be determined within a Party's national economic policy.

2. The two recommendations of the Committee of Ministers in the field of local finance: Rec(2004)1 on financial and budgetary management at local and regional levels and Rec(2005)1 on the financial resources of local and regional authorities, offer a powerful and coherent set of guidelines aimed at ensuring a sound local finance system, many of which are ever the more useful in the context of the economic downturn.

3. The economic crisis has generated a widespread recognition of the need for radical improvements in governance and in the management of public expenditure. Whilst the means to be deployed will differ over time and vary from place to place, there will be a constant need for increasing efficiency across the whole of the public sector, and hence for greater collaboration between all the stakeholders, central government, local and regional authorities as well as their associations. The aim should be to remove duplication and to drive down costs arising from a lack of co-ordination, integration and of flexibility in the delivery of public services, not only to meet the demands of the current fiscal situation, but also to be better placed to address longer term social and economic change.

4. Exchanging and sharing information and experience at local, regional, national and international level, as well as the identification of good practices this enables, will be key to achieving success at the earliest possible time.

II. Possible policy responses identified so far

The survey of member States carried out in preparation of the 16th Session of the Council of Europe Conference of Ministers responsible for local and regional government has identified five main possible policy responses, which are reviewed below. It is to be stressed that the feasibility and desirability of these options vary from country to country and thus are to be seen a range of policy options and not a prescriptive set of measures.

The five main options identified so far are:

1.Reform of intergovernmental financial relations

2.Improving accountability and efficiency

3.Improved targeting of social benefits

4.Innovative re-design of public services

5.Enhancing local flexibility and discretion

<...>

Improving accountability and efficiency

Cost control

Most effort so far this year has gone into cuts in administrative overheads. These may well be justified, but this is only one area for achieving efficiency savings. Furthermore, some of these tend to be short-term freezes which do not affect long-term efficiency. Governments and local authorities should strive for more fundamental examination of the practical ways in which services are run, and work to re-design service delivery, making use, as appropriate, of both public and private sector partners. This may be assisted by several value-for-money and benchmarking techniques which have been developed in individual countries, as also by the Council of Europe and the Open Society Institute. Budgetary information should be readily understandable by the public and open to public scrutiny.

A drive to increase efficiency can be associated with implementation of the Council's current ambitious Strategy for Innovation and Good Governance at Local Level. Municipalities should be encouraged to seek award of its European Label of Governance Excellence (ELOGE) for reaching a certain level of quality in their overall governance[1].

Performance audit

Both national and local governments should endeavour to train and employ sufficient personnel to apply performance audit, both externally and internally, to all local authorities and their service institutions, and to stimulate public interest in their findings.

Removing incentives to expensive service provision

National and local governments should reform those administrative and financial arrangements which encourage services like health and social care to be provided in an unnecessarily expensive way. Funding norms, for example, should be based on numbers of elderly people, rather than those in residential care.

Reviewing unsustainable norms

Responsibilities delegated to local governments should not be regulated by national governments (and sectoral ministries in particular) in ways that debar local initiatives to make services more efficient. Such regulations often apply to the most expensive services like education and health care, prescribing types and levels of input rather than outcome. Signatories of the European Charter should ensure that national ministries do not micro-manage services entrusted to local government whether technically delegated or not.

Delegating institutional management

Similarly, local governments should so far as possible delegate budgets and their managements to their service institutions, so that their directors are encouraged to maximise efficiency in the use of their resources. In doing so, they should take full account of exogenous variations in cost such as population density and social background in allocating resources between institutions. Audit and other forms of accountability should also match degrees of financial delegation. Political steering capacities and political accountability of local government bodies should be maintained.

1. Based in particular on a benchmark/measuring tool specifically tailored to the needs of local authorities, the label will be launched following a road test to start in late 2009.

Territorial re-organisation and cooperation

National and local governments could consider territorial reorganisations which can reduce expenditure on administrative overheads, increase economies of scale, particularly in highly fragmented systems of local government and which may open the way to achieving a re-design of service delivery, both driving down costs and improving service quality. Such re-organisations may well include the types of amalgamation recently undertaken in Denmark, Latvia and Turkey and ongoing in Finland, or the kind of re-organisations implemented this year in certain areas of the United Kingdom. Savings along with quality improvements may be achieved, as in the case of Austria, France and Hungary by encouraging, including through appropriate incentives, greater co-operation between local authorities, both in operating services and undertaking administrative tasks.

<…>

Innovative re-design of public services

Given both the immediate effects of the fiscal crisis and the longer term ageing of European populations, governments could consider redesigning local public services to increase partnership across the public and private (commercial and not for profit) sectors, including with non-governmental organisations and offer more practical support to care for the aged and infirm provided by families and neighbours. Such innovative re-design might be part of a territorial re-organisation or an inter-municipal co-operation programme.

Enhancing local flexibility and discretion

The downturn has demonstrated the dependence of local fiscal fortunes on differences in national policy. But this should not be exacerbated by a deliberate or instinctive re-centralisation of authority. The kind of efficiency gains and re-design of services outlined above are more likely to be achieved through more local flexibility and discretion, not less. It will be important for governments to create the circumstances where such flexibility and discretion can flourish, including removing administrative and legal barriers and ensuring that the tasks legally required of local authorities remain commensurate with the available resources.

COUNCIL OF EUROPE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

(Except)

Introduction

Strengthening local and regional democracy and securing respect for human rights are among the Council of Europe's main aims because a properly functioning democracy provides one of the foundations for peace and stability in Europe.

Through their diversity, local and regional authorities also reflect the fact that the key principles of democracy and public participation in the management of living environments are flourishing.

The work of the European Committee on Local and Regional Democracy (CDLR) and the Congress of Local and Regional Authorities of the Council of Europe demonstrates the importance of providing member states (regardless of their internal structure) with a "reference framework for regional democracy" to help them with their institutional development.
<…>

REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

This section brings together the relevant parts of the reference texts under headings which reflect the main issues of regional democracy.

Generally speaking, the texts brought together are wholly complementary. However, on certain issues, divergencies exist between them. Where this is the case, it reflects the differing views of those having adopted the respective reference texts.

1. Regional architecture

Regional structure
Helsinki principles A1.1 and A1.3

Regional authorities are territorial authorities between the central government and local authorities. This does not necessarily imply a hierarchical relationship between regional and local authorities.

Where regional authorities exist, the principle of regional self-government shall be recognized in domestic legislation and/or by the constitution, as appropriate.

b. Competences
Helsinki principles A1.2, B1.1, B1.2, B1.3 and B1.4

Regional self-government denotes the legal competence and the ability of regional authorities, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interests of the regional population and in accordance with the principle of subsidiarity.

Regional competences shall be defined by the constitution, the statutes of the region or by national law. Regional authorities shall, within the limits of the law and/or the constitution, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. Regulation or limitations of regional competences shall be based on the constitution and/or law.

Regional authorities shall have decision-making and administrative powers in the areas covered by their own competences. These powers shall permit the adoption and implementation of policies specific to the region. Decision-making powers may include legislative powers.

For specific purposes and within the limits of the law, competences may be conferred upon regional authorities by other public authorities.

When powers are delegated to regional authorities, they shall be allowed discretion to adapt the exercise thereof to regional conditions, within the framework set out by the constitution and/or the law.

Congress Recommendation 240 (2008) – Articles 29.1, 29.2, 29.3, 29.4, 29.5 and 29.6

Regional authorities shall be responsible for promoting regional culture and defending and enhancing the region's cultural heritage, including regional languages.

Regional economic development shall constitute an important aspect of regional responsibilities, to be carried out in partnership with economic operators in the region.

Regional authorities shall help to adapt education and training facilities to employment development requirements in the region.

Social welfare and public health shall be among the areas of activity of regional authorities, which shall also be responsible for promoting social cohesion in the region.

Balanced development of the territory shall constitute a major objective of any action by regional authorities affecting the territorial organisation of the region.

Regional authorities shall be responsible for protecting and enhancing natural resources and biodiversity and shall ensure the sustainable development of the region, with due regard for local, national, European and international policies in this respect.

c. Relations with other tiers of government
Helsinki principles B2.1 and B2.2

The relationship between regional authorities and other sub-national territorial authorities shall be governed by the principles of regional self-government set out in this document and local self-government set out in the European Charter of Local Self-Government and the principle of subsidiarity.

Regional authorities and other sub-national territorial authorities may, within the limits of the law, define their mutual relationship and they may co-operate with each other.

Congress Recommendation 240 (2008) – Article 8.3

Regional authorities shall co-operate with local authorities in the pursuit of objectives of general interest and to meet citizens' needs.

European Charter of Local Self-Government – Article 4.6

Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decisionmaking processes for all matters which concern them directly.

d. Links with central authorities
Involvement in decision-making
Helsinki principles B3.1, B3.2 and B3.3

Regional authorities shall have the right as described in paragraphs 3.2 and 3.3 below to be involved in state decision-making affecting their competences and essential interests or the scope of regional self-government.

This involvement shall be ensured through representation in decision making bodies and/or through consultation and discussion between the state and regional authorities concerned. Where appropriate, participation may also be ensured through consultation and discussion between state authorities and representative bodies of regional authorities.

In so far as the constitution and/or the law enable it, regional authorities and/or their representative bodies shall be represented or consulted, through appropriate bodies and/or procedures, with regard to international negotiations of the state and the implementation of treaties in which their competences or the scope of regional self-government are at stake.

Supervision and substitution
Helsinki principles B4.1 and B4.2

Any supervision of regional authorities by central state authorities shall normally only aim at ensuring their compliance with the law. However, the supervision of delegated powers may also include an appraisal of expediency.

Administrative supervision of regional authorities may be exercised only according to such procedures and in such cases as are provided for by constitutional or legislative provisions. Such supervision shall be exercised *ex post facto* and any measures taken must be proportionate to the importance of the interests which it is intended to protect.

Congress Recommendation 240 (2008) – Articles 44.1 and 44.2

National or federal authorities' power of temporary substitution to act in lieu of regional authority organs may be exercised only in exceptional cases and under the procedures provided for by the constitution or by law. This power shall be confined to specific cases where regional authorities have seriously failed to exercise the competences vested in them and shall be utilised in accordance with the principle of proportionality in the light of the interests it is designed to protect.

The decision-making power resulting from a substitution measure shall be entrusted to staff acting solely in the interests of the regional authority concerned, except in the case of delegated responsibilities.

Loyalty, territorial integrity and cohesion
Congress Recommendation 240 (2008) – Articles 9.1, 9.2, 9.3 and 10

The relationship between regional authorities and central government shall be based on the principle of mutual loyalty and equal dignity and shall entail respect for the unity, sovereignty and territorial integrity of the state.

Regional self-government necessarily entails compliance with the rule of law and the respect of the territorial organisation of every state whether in relations between central government and regional authorities, relations between regional authorities and other territorial authorities or relations between regional authorities and citizens.

Regional authorities shall take all appropriate measures to ensure fulfilment of the obligations arising from the Constitution or the law.

The exercise of regional self-government shall contribute to the central government's economic and social cohesion objectives and to central government activities aimed at achieving comparable living conditions and balanced development throughout the national territory, in a spirit of solidarity between regional authorities.

e. Protection of regional self-government
Helsinki principles B5.1, B5.2 and B5.3

Regional authorities may be provided for by the constitution or established by law. The existence of regions, once established, is guaranteed by the constitution and/or by law and may be revoked only by the same due process of amendment of the Constitution and/or law that established them.

Regional authorities shall have the right of recourse to a judicial remedy in order to secure the free exercise of their powers and respect for the principles of regional self-government enshrined in domestic law.

Regional boundaries shall not be altered without prior consultation of the region(s) concerned. Prior consultation may include a referendum.

2. Regional bodies and internal organisation (regional democracy)

Self-organisation
Helsinki principles B8

Where a constitution and/or the law provide the right for regions to decide their internal organisation, including their statutes and their institutions, it will define this right as widely as possible.

Regional bodies
Helsinki principles B9.1

Regional authorities shall have a representative assembly. Executive functions, where they are not exercised directly by the representative body, shall be entrusted to a person or a body answerable to it in accordance with the conditions and procedures laid down by the law. Where the executive body is directly elected by the population, it needs not necessarily be answerable to the representative assembly but should give it account of its acts.

Congress Recommendation 240 (2008) – Article 14.1

The right of regional self-government shall be exercised by assemblies elected through direct, free and secret suffrage. This provision shall in no way affect recourse to citizens' assemblies, referendums or any other form of direct citizen participation, where it is permitted by law.

Helsinki principles B9.2

Regional assemblies shall be directly elected through free and secret ballot based on universal suffrage, or indirectly elected by and composed of popularly elected representatives of constituent local self-government authorities.

Conditions of office
Helsinki principles B9.3 and B9.4

The conditions of office of elected regional representatives shall provide for the free exercise of their functions. They shall allow for appropriate financial allowance and/or for appropriate financial compensation for expenses

incurred in the exercise of the office in question as well as, where appropriate, full or partial compensation for loss of earnings or remuneration for work done and corresponding social welfare protection. Members of the assembly shall have the right to express themselves freely during the meeting of this assembly. Any functions and activities which are deemed incompatible with the representative's office shall be determined by law.

Where sanctions against regional elected representatives are possible, they must be provided for by the law, be proportionate to the importance of the interest they are intended to protect and be subject to judicial review. Suspension and dismissal may only be foreseen in exceptional cases.

Regional administration
Helsinki principles B10.1, B10.2 and B10.3

Regional authorities shall have their own assets, their own administration and their own staff.

Regional authorities shall freely determine the internal structures of their administrative system and their bodies, within the framework defined by law.

The conditions of service of regional authorities' staff shall comply with general principles of public service and be such as to permit the recruitment of high quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Good governance
Congress Recommendation 240 (2008) – Articles 4, 6.1 and 6.2

Regional authorities shall encourage the exercise of citizens' right to participate in the management of public affairs and shall aim to bring the administration closer to the public.

The exercise of regional self-government shall comply with the principles of informed decision-making and evaluation of decisions made, as well as pursue aims of flexibility, openness, transparency, participation and public accountability.

The performance of public tasks at regional level shall comply with the principles of good administration and good quality of public services.

3. Financing

Resources
Helsinki principles B11.1, B11.2, B11.3 and B11.4

Regional authorities shall have at their disposal foreseeable resources commensurate with their competences and responsibilities allowing them to implement these competences effectively.

Regional authorities shall be able to dispose freely of their resources, for the implementation of their competences.

In the implementation of their own competences, regional authorities shall be able to rely in particular on resources of their own at which they shall be able to dispose freely. These resources may include regional taxes, other revenues decided by regional authorities, fixed shares of state taxes, non-earmarked funding from the state and constituent territorial authorities, in accordance with the law.

The financial systems on which resources available to regional authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.

Financial equalisation and transfers
Helsinki principles B12.1, B12.2 and B12.3

The protection of financially weaker regional authorities shall be ensured through financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures should not have the effect of restricting the financial resources of regional authorities to the extent of hindering their freedom of administration.

Financial transfers to regional authorities shall be governed by predetermined rules based on objective criteria related to regional competences. As far as possible, grants to regional authorities shall not be earmarked for the financing of specific projects.

Financial transfers to regional authorities shall not limit the basic freedom of regional authorities to exercise policy discretion in the implementation of their competences.

Congress Recommendation 240 (2008) – Articles 16.4 and 16.5

Financial transfers to regional authorities shall be governed by rules established by law and based on objective criteria relating to regional competences.

Any transfer of competence to regional authorities shall be accompanied by a transfer of corresponding financial resources.

Borrowing
Helsinki principles B12.4

For the purpose of borrowing for capital investment, regional authorities shall have access to the capital market within the limits of the law.

4. National and international relations

Helsinki principles B6, B7.1 and B7.2

Regional authorities shall be entitled to form associations and to undertake activities of interregional co-operation in matters within their competences and within the framework of the law. Regional authorities may also be members of international organisations of regional authorities.

In so far as national and/or European law allows, regional authorities shall have the right to be involved in or to be represented through bodies established for this purpose in the activities of the European institutions.

Regional authorities may co-operate with territorial authorities of other countries within the framework of their competences and in accordance with the law, the international obligations and the foreign policy of the state.

<…>

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)
(Extract)

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;

<…>

Recommends the governments of member states:

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

<…>

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.

<...>

Recommendation № 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)
(Extract)

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.

<…>

Recommendation № R (81) 19 of the Committee of Ministers on the access to information held by public authorities

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

(Extract)

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.

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.

<…>

Recommendation № R (84) 15 of the Committee of Ministers relating to public liability

(Adopted by the Committee of Ministers on 18 September 1984 at the 375th meeting of the Ministers' Deputies)

(Exract)

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 a greater unity between its members;

Considering that public authorities intervene in an increasing number of fields, that their activities may affect the rights, liberties and interests of persons and may, sometimes, cause damage;

Considering that, since public authorities are serving the community, the latter should ensure reparation for such damage when it would be inappropriate for the persons concerned to bear it;

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 and the principles concerning the exercise of discretionary powers by administrative authorities set out in Recommendation No. R (80) 2;

Considering that it is desirable to protect persons in the field of public liability,

Recommends the governments of member states:

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

b. to examine the advisability of setting up in their internal order, where necessary, appropriate machinery for preventing obligations of public authorities in the field of public liability from being unsatisfied through lack of funds.

Appendix to Recommendation No. R (84) 15
Scope and definitions

1.This recommendation applies to public liability, that is to say the obligation of public authorities to make good the damage caused by their acts, either by compensation or by any other appropriate means (hereinafter referred to as "reparation").

2. The term "public authority" means:

a. any entity of public law of any kind or at any level (including state; region; province; municipality; independent public entity); and

b. any private person

when exercising prerogatives of official authority.

3. The term "act" means any action or omission which is of such a nature as to affect directly the rights, liberties or interests of persons.

4. The acts covered by this recommendation are the following: a. normative acts in the exercise of regulatory authority; b. administrative acts which are not regulatory; c. physical acts.

5. Amongst the acts covered by paragraph 4 are included those acts carried out in the administration of justice which are not performed in the exercise of a judicial function.

6. The term "victim" means the injured person or any other person entitled to claim reparation.

Principles

I

Reparation should be ensured for damage caused by an act due to a failure of a public authority to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule.

II

1. Even if the conditions stated in Principle I are not met, reparation should be ensured if it would be manifestly unjust to allow the injured person alone to bear the damage, having regard to the following circumstances: the act is in the general interest, only one person or a limited number of persons have suffered the damage and the act was exceptional or the damage was an exceptional result of the act.

2. The application of this principle may be limited to certain categories of acts only.

III

If the victim has, by his own fault or by his failure to use legal remedies, contributed to the damage, the reparation of the damage may be reduced accordingly or disallowed.

The same should apply if a person, for whom the victim is responsible under national law, has contributed to the damage.

IV

The right to bring an action against a public authority should not be subject to the obligation to act first against its agent.

If there is an administrative conciliation system prior to judicial proceedings, recourse to such system should not jeopardise access to judicial proceedings.

V

Reparation under Principle I should be made in full, it being understood that the determination of the heads of damage, of the nature and of the form of reparation falls within the competence of national law.

Reparation under Principle II may be made only in part, on the basis of equitable principles.

VI

Decisions granting reparation should be implemented as quickly as possible. This should be ensured by appropriate budgetary or other measures.

If, under domestic law, a system for a special implementation procedure is provided for, it should be easily accessible and expeditious.

VII

Rules concerning time limits relating to public liability actions and their starting points should not jeopardise the effective exercise of the right of action.

VIII

The nationality of the victim should not give rise to any discrimination in the field of public liability.

Final provisions

This recommendation should not be interpreted as:

a. limiting the possibility for a member state to apply the principles above to categories of acts other than those covered by the recommendation or to adopt provisions granting a wider measure of protection to victims;

b. affecting any special system of liability laid down by international treaties;

c. affecting special national systems of liability in the fields of postal and telecommunications services and of transportation as well as special systems of liability which are internal to the armed forces, provided that adequate reparation is granted to victims having regard to all the circumstances;

d. affecting special national systems of liability which apply equally to public authorities and private persons.

<…>

Recommendation № R (87) 16 of the Committee of Ministers on administrative procedures affecting a large number of persons

(Adopted by the Committee of Ministers on 17 September 1987 at the 410th meeting of the Ministers' Deputies)

(Extract)

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 a greater unity between its members;

Considering that, in an increasing number of fields, administrative authorities are called upon to take decisions which affect in varying ways a large number of persons, especially in the fields of major installations, industrial plant and spatial planning;

Considering that it is desirable that common principles be laid down in respect of such decisions in all member states so as to ensure compatibility between the protection of a large number of persons and the requirements of efficient administration;

Considering, in addition, that some of these administrative decisions may also affect persons residing or having interests in the territories of neighbouring states;

<…>

Recommends the governments of member states to be guided in their law and administrative practice as well as in their mutual relations by the principles set out in the appendix to this recommendation;

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

Appendix to Recommendation No. R (87) 16
Scope and definitions

The present recommendation applies to the protection of the rights, liberties and interests of persons in relation to non-normative administrative decisions (administrative acts) which concern a large number of persons, more specifically:

a. a large number of persons to whom the administrative act is addressed, hereafter referred to as persons of the first category;

b. a large number of persons whose individual rights, liberties or interests are liable to be affected by the administrative act even though it is not addressed to them, hereafter referred to as persons of the second category;

c. a large number of persons who, according to national law, have the right to claim a specific collective interest that is liable to be affected by the administrative act, hereafter referred to as persons of the third category.

Persons of the three categories are hereafter referred to as persons concerned.

Section I below sets out the principles applicable to the making of the above-mentioned administrative acts and to the control thereof.

Section II states additional principles designed to protect the persons concerned when an administrative act is liable to have effects in the territory of a neighbouring state.

In the implementation of these principles, due regard should be had to the requirements of sound, efficient administration as well as to major public interests and the interests of third parties, in particular with respect to the protection of personal data and of industrial or commercial secrecy. When the above requirements or interests make it necessary, one or more of these principles may be derogated from or excluded in specific areas of public administration or in duly justified circumstances.

The aims of this recommendation can be achieved:

- either through a single set of rules covering the whole subject,
- or through rules or practices specific to particular categories of decisions or particular fields.

Section I

Administrative procedure and control

The administrative act which concerns a large number of persons should be taken on completion of a participation procedure conforming to the principles set forth below.

I

When a competent authority proposes to take such administrative act, the persons concerned should be informed in such manner as may be appropriate and be provided with such factors as will enable them to judge its possible effects on their rights, liberties and interests.

II

Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the competent authority may decide that at all or some stages of the procedure:

a. persons of the second category with common interests shall nominate one or more common representatives;

b. persons of the third category shall be represented by associations or organisations.

III

At their request, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Principle II, persons of the other categories should have access in such manner as may be appropriate to all the available factors relevant to the taking of the act.

IV

Having regard to the object and effects of the proposed administrative act, the interests at stake, the status or number of the persons concerned or the need to ensure efficient administration, the competent authority should decide that the participation procedure continue under one or more of the following forms:

a. written observations;

b. private or public hearing;

c. representation in an advisory body of the competent authority.

Where the procedure chosen is that of representation of the persons concerned in an advisory body, persons of the first category and, subject to such representation arrangements as may be imposed on them in conformity with Principle II, persons of the second category should also have the right to put forward facts and arguments and, in appropriate cases, present evidence.

V

The competent authority should take into account facts, arguments and evidence submitted by the persons concerned during the participation procedure.

VI

The administrative act should be notified to the public.

Without prejudice to any other way of communication, a public notification should specify, to the extent that it does not itself contain the information, how the persons concerned may gain access to the following:

- the main conclusions emerging from the procedure;
- the reasons on which the administrative act is based;
- information on normal remedies against the administrative act and the time-limit within which they must be utilised.

Persons of the first category should be personally informed of the administrative act and of the reasons on which it is based. The reasons may be included in the act itself or be communicated to these persons in writing, at their request, within a reasonable time. An indication of the normal remedies against the act, as well as of the timelimit for their utilisation, should also be given to the said persons.

VII

The administrative act should be subject to control by a court or other independent body. Such control does not exclude the possibility of a preliminary control by an administrative authority. When the control procedure involves a large number of individuals, the court or other control body may, in accordance with fundamental principles and having due regard to the rights and interests of the parties, take various steps to rationalise the procedure, such as requiring participants with common interests to choose one or more common representatives, hearing and deciding test appeals and making notification by public announcement.

<…>

Recommendation № R (91) 10 of the Committee of Ministers on the communication to third parties of personal data held by public bodies

(adopted by the Committee of Ministers on 9 September 1991 at the 461st meeting of the Ministers' Deputies)
(Extract)

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;

Noting that automatic data processing has enabled public bodies to store on electronic files the data, including personal data, which they collect for the purposes of discharging their functions;

<…>

Recommends that the governments of the member states:

i. take account of the principles contained in the appendix to this recommendation whenever personal data or personal data files collected and stored by public bodies may be made accessible to third parties;

ii. have due regard to the principles contained in the appendix to this recommendation in their law and practice regarding the automation and communication to third parties by electronic means of personal data or personal data files;

iii. ensure wide circulation of the principles contained in the appendix to this recommendation among public bodies;

iv. bring the principles contained in the appendix to this recommendation to the attention of authorities set up under data protection legislation or legislation on access to public-sector information.

Appendix to Recommendation No. R (91) 10

1. Scope and definitions

1.1. The principles contained in this recommendation apply to the automatic processing of personal data which are collected by public bodies and which may be communicated to third parties.

1.2. Member states may extend the scope of this recommendation so as to include data relating to groups, companies, associations, etc., regardless of whether or not they possess legal personality, as well as to personal data in non-automated form. For the purposes of this recommendation:

1.3. the expression “personal data” refers to any information relating to an identified or identifiable individual (data subject). An individual shall not be regarded as “identifiable” if the identification requires an unreasonable amount of time, cost and manpower;

– the expression “public bodies” refers to any administration, institution, establishment or other body which exercises public service or public interest functions as a consequence of it being invested with public powers.

Domestic law may broaden the scope of the expression “public bodies”.

<…>

Domestic law may broaden the scope of the expression “third parties”.

2. Respect for privacy and data protection principles

2.1. The communication, in particular by electronic means, of personal data or personal data files by public bodies to third parties should be accompanied by safeguards and guarantees designed to ensure that the privacy of the data subject is not unduly prejudiced

In particular, the communication of personal data or personal data files to third parties should not take place unless:

a. a specific law so provides; or

b. the public has access thereto under legal provisions governing access to public-sector information; or

c. the communication is in conformity with domestic legislation on data protection; or

d. the data subject has given his free and informed consent.

2.2. Unless domestic law provides appropriate safeguards and guarantees for the data subject, personal data or personal data files may not be communicated to third parties for purposes incompatible with those for which the data were collected.

2.3. Domestic legislation on data protection should apply to the processing by a third party of personal data communicated to him by public bodies.

3. Sensitive data

3.1. Personal data falling within any of the categories referred to in Article 6 of Convention No. 108 should not be stored in a file or in part of a file generally accessible to third parties.

Any exception to this principle should be strictly provided for by law and accompanied by the appropriate safeguards and guarantees for the data subject.

3.2. The provisions of Principle 3.1 are without prejudice to the possibility of storing in files accessible to third parties categories of data which in other circumstances would be regarded as sensitive but which concern those data subjects in public life who perform functions which belong to the public domain and as a result their data are accessible to third parties.

4. Generally accessible data

4.1. The purposes for which the data will be collected and processed in files accessible to third parties as well as the public interest justifying their being made accessible should be indicated in accordance with domestic law and practice.

4.2. Before or at the time of the collection, the data subject should be informed in accordance with domestic law and practice of the compulsory or optional nature of the collection, of the legal bases and the purposes of the collection and processing of personal data as well as the public interest justifying their being made accessible.

4.3. Public bodies should be able to avoid the communication to third parties of personal data which are stored in a file accessible to the public and which concern data subjects whose security and privacy are particularly threatened.

5. Access to and communication of personal data by electronic means

5.1. The automated processing of personal data contained in files accessible to third parties should be carried out in accordance with domestic law.

Domestic law should lay down the conditions governing communication of and access to the data and, in particular, provide the conditions governing the automatic communication and on-line consultation of such data.

5.2. At the time of automatic communication, technical means designed to limit the scope of electronic interrogations or searches should be introduced with a view to preventing unauthorised downloading or consultation of personal data or files containing such data.

6. Processing by third parties of personal data originating in files accessible to third parties

6.1. Where the data subject is legally obliged to provide his data for storage in files accessible to third parties, the processing of personal data by third parties should either be subject to obtaining the express and informed consent of the data subject or be in accordance with statutory requirements.

Where the consent requirement applies, the data subject should be able to withdraw his consent at any time.

6.2. Where the storage of the personal data in a file accessible to third parties is not obligatory, the data subject should be informed before or at the time of the collection of his right:

a. not to have his data stored in a file accessible to third parties; or

b. to have his data stored in such a file and communicated without however their being processed by third parties; or

c. to object to his data continuing to be processed by third parties; or

d. to have his data deleted at any time.

6.3. If a third party creates files containing personal data obtained from files accessible to third parties, such files should be subject to the requirements of domestic legislation on data protection, including the rights of the data subject.

In particular, the data subject should be able to know of the existence of the new file, of its purpose and of his right to have his data erased from the file in question.

7. File interconnection/matching

Unless permitted by domestic law providing appropriate safeguards, the interconnection - in particular by means of connecting, merging or downloading - of personal data files consisting of personal data originating from files accessible to third parties with a view to producing new files, as well as the matching or interconnection of files or personal data held by third parties with one or more files held by public bodies so as to enrich the existing files or data, should be prohibited.

<...>

Recommendation № R (2000) 6 of the Committee of Ministers on the status of public officials in Europe

(Adopted by the Committee of Ministers on 24 February 2000 at the 699th meeting of the Ministers' Deputies)

(Extract)

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 a greater unity between its members;

Considering that public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to properly carry out the tasks which are assigned to them;

Considering that the establishment and consolidation of democratic institutions require a public administration that complies with the rule of law, is neutral and is loyal to the democratic institutions and is respectful of the people it serves;

Considering that public officials are the key element of the public administration and that they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks appropriately;

Considering that it is essential to promote the participation of public officials in decisionmaking processes concerning the organisation, structure and principles governing the exercise of public functions;

Considering that public officials have specific duties and obligations due to the fact that they serve the state but that above all they are citizens and in so far as possible should have the same rights as other citizens;

Given the general trend in European countries to reform civil service systems to increase their efficiency, productivity and standards of service to the public and, in this connection;

<...>

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

Appendix to Recommendation No. R (2000) 6

For the purposes of this Recommendation, public officials are any members of staff, whether statutory or contractual, employed by state authorities or departments whose salary is paid out of the state budget, excluding elected representatives and certain categories of staff in so far as they come under special regulations.

<...>

1. Legal framework of public officials and implementation

The legal framework and general principles concerning the status of public officials should be established by law or collective agreements and their implementation should be left to the government and/or other competent authorities or settled through collective agreements.

2. Authority responsible for public officials

The management policies relating to public officials should, in general, be the responsibility of the government. In all cases, in order for the civil service to be efficient, it is essential to avoid possible conflict of competence between the various authorities responsible for public officials.

3. Categories and levels of public officials

Where appropriate, the categories and levels of public officials should be defined in the light of the function performed, to which a certain level of responsibility is attached.

4. Conditions and requirements for recruitment

Recruitment of public officials should be defined by equality of access to public posts and selection based on merit, fair and open competition and an absence of discrimination. Some preconditions may exist for accessing public posts. In addition, general requirements and specific requirements may exist for recruitment. In so far as they constitute exceptions to these principles, they should be admitted only if lawfully justified.

5. Recruitment procedures

In respect of the principles referred to above, recruitment systems and procedures should be open and transparent, and their rules should be clear. They should allow the best candidate to be appointed to meet the specific needs of the department or organisation concerned.

States should provide for the legal protection of applicants to public positions including, inter alia, ensuring the due confidentiality of sensitive information provided in the context of the selection procedure and a legal remedy for the candidates against the decision of the competent authority.

6. Transfers of public officials

In so far as possible, public officials should not be transferred without their consent unless it is required in the public interest and, in particular, of a good public administration. In all cases, the transfer should not constitute a disguised sanction. Public officials should have a legal remedy against the possible unlawfulness of such a measure.

7. Promotions

Promotions implying a higher level of responsibility should be based on merit.

8. Rights

Public officials should, in principle, enjoy the same rights as all citizens. However, the exercise of these rights may be regulated by law or through collective agreement in order to make it compatible with their public duties. Their rights, particularly political and trade union rights, should only be lawfully restricted in so far as it is necessary for the proper exercise of their public functions.

9. Non discrimination

There should be no unfair discrimination on the basis of, inter alia, age, disability, gender, marital status, sexual orientation, race, colour, ethnic or national origin, community background, political or philosophical opinion and religious beliefs, especially concerning the access to public posts and promotion.

10. Participation of public officials

Public administrations should promote participation or consultation of staff in decisionmaking processes concerning the organisation, structure and principles governing the exercise of public functions.

11. Social protection

States should ensure the social protection of public officials, including pensions, by means of the general social security and pension scheme or by means of specific schemes.

12. Remuneration

Public officials should have an adequate remuneration commensurate with their responsibilities and function. Remuneration should be regarded as a means of achieving desired organisational goals and should be sufficient so as to ensure that public officials are not put at risk of corruption or engaging in activities incompatible with the performance of public duties.

13. Duties

Having due regard to the rights of all citizens, inherent obligations are imposed on public officials in the exercise of their public functions. They include, inter alia, respect for the rule of law, loyalty to the democratic institutions, discretion, neutrality, impartiality, hierarchical subordination and respect for the public and accountability.

In addition, in order to ensure that officials devote themselves fully to their public functions and avoid conflicts of interest and corruption, public officials may be subject to certain restrictions regarding second jobs or the carrying out of, or participation in, certain activities.

14. Disciplinary responsibility of public officials

Public officials are responsible for discharging the tasks entrusted to them.

Failure by public officials to fulfil their duties, whether intentionally or through negligence on their part, may lead to the institution of disciplinary proceedings. In this case, the disciplinary proceedings must be adversarial and the officials concerned should be entitled to be assisted by a representative of their choice. Disciplinary action must be lawfully established. Public officials should have a legal remedy against disciplinary action.

15. Training

Ongoing training is an essential element for an efficient system of public administration. It is the task of the government to offer public officials relevant training in the frame of an appropriate training policy for them. Public officials should therefore have the right and the duty to undergo relevant training without discrimination. Furthermore, training may be a condition of promotion.

16. Termination of public officials' employment

Termination should only occur in the cases and for the reasons provided for by law. A legal remedy should be available in all cases to protect public officials against misuse of authority.

17. Protection of public officials

A legal remedy before a court or other independent institution should be available to public officials for the protection of their rights in relation to their employer.

The state should provide for the protection of public officials who, because of the lawful performance of their public duties, are the subject of abusive claims or other illegal acts by third parties.

<...>

Recommendation № R (2000) 10 of the Committee of Ministers on codes of conduct for public officials

(Adopted by the Committee of Ministers at its 106th Session on 11 May 2000)

(Extract)

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 a greater unity between its members;

Considering that public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them;

Considering that public officials are the key element of a public administration, that they have specific duties and obligations, and that they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks effectively;

Convinced that corruption represents a serious threat to the rule of law, democracy, human rights, equity and social justice, that it hinders economic development and endangers the stability of democratic institutions and the moral foundations of society;

<...>

Convinced that raising public awareness and promoting ethical values are valuable as means to prevent corruption,

Recommends that the governments of member states promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this Recommendation; and

Instructs the Group of States against Corruption (GRECO) to monitor the implementation of this Recommendation.

Appendix to Recommendation No. R (2000) 10

MODEL CODE OF CONDUCT FOR PUBLIC OFFICIALS

Interpretation and application

Article 1

1. This Code applies to all public officials.

2. For the purpose of this Code "public official" means a person employed by a public authority.

3. The provisions of this Code may also be applied to persons employed by private organisations performing public services.

4. The provisions of this Code do not apply to publicly elected representatives, members of the government and holders of judicial office.

Article 2

1. On the coming into effect of this Code, the public administration has a duty to inform public officials about its provisions.

2. This Code shall form part of the provisions governing the employment of public officials from the moment they certify that they have been informed about it.

3. Every public official has the duty to take all necessary action to comply with the provisions of this Code.

Article 3.
Object of the Code

The purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials.

General principles

Article 4

1. The public official should carry out his or her duties in accordance with the law, and with those lawful instructions and ethical standards which relate to his or her functions.

2. The public official should act in a politically neutral manner and should not attempt to frustrate the lawful policies, decisions or actions of the public authorities.

Article 5

1. The public official has the duty to serve loyally the lawfully constituted national, local or regional authority.

2. The public official is expected to be honest, impartial and efficient and to perform his or her duties to the best of his or her ability with skill, fairness and understanding, having regard only for the public interest and the relevant circumstances of the case.

3. The public official should be courteous both in his or her relations with the citizens he or she serves, as well as in his or her relations with his or her superiors, colleagues and subordinate staff.

Article 6

In the performance of his or her duties, the public official should not act arbitrarily to the detriment of any person, group or body and should have due regard for the rights, duties and proper interests of all others.

Article 7

In decision making the public official should act lawfully and exercise his or her discretionary powers impartially, taking into account only relevant matters.

Article 8

1. The public official should not allow his or her private interest to conflict with his or her public position. It is his or her responsibility to avoid such conflicts of interest, whether real, potential or apparent.

2. The public official should never take undue advantage of his or her position for his or her private interest.

Article 9

The public official has a duty alwaysto conduct himself or herself in a way that the public's confidence and trust in the integrity, impartiality and effectiveness of the public service are preserved and enhanced.

Article 10

The public official is accountable to his or her immediate hierarchical superior unless otherwise prescribed by law.

Article 11

Having due regard for the right of access to official information, the public official has a duty to treat appropriately, with all necessary confidentiality, all information and documents acquired by him or her in the course of, or as a result of, his or her employment.

<…>

Article 13.

Conflict of interest

1. Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.

2. The public official's private interest includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.

3. Since the public official is usually the only person who knows whether he or she is in that situation, the public official has a personal responsibility to:

- be alert to any actual or potential conflict of interest;
- take steps to avoid such conflict;
- disclose to his or her supervisor any such conflict as soon as he or she becomes aware of it;
- comply with any final decision to withdraw from the situation or to divest himself or herself of the advantage causing the conflict.

4. Whenever required to do so, the public official should declare whether or not he or she has a conflict of interest.

5. Any conflict of interest declared by a candidate to the public service or to a new post in the public service should be resolved before appointment.

Article 14.
Declaration of interests

The public official who occupies a position in which his or her personal or private interests are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interests.

Article 15.
Incompatible outside interests

1. The public official should not engage in any activity or transaction or acquire any position or function, whether paid or unpaid, that is incompatible with or detracts from the proper performance of his or her duties as a public official. Where it is not clear whether an activity is compatible, he or she should seek advice from his or her superior.

2. Subject to the provisions of the law, the public official should be required to notify and seek the approval of his or her public service employer to carry out certain activities, whether paid or unpaid, or to accept certain positions or functions outside his or her public service employment.

3. The public official should comply with any lawful requirement to declare membership of, or association with, organisations that could detract from his or her position or proper performance of his or her duties as a public official.

Article 16.
Political or public activity

1. Subject to respect for fundamental and constitutional rights, the public official should take care that none of his or her political activities or involvement on political or public debates impairs the confidence of the public and his or her employers in his or her ability to perform his or her duties impartially and loyally.

2. In the exercise of his or her duties, the public official should not allow himself or herself to be used for partisan political purposes.

3. The public official should comply with any restrictions on political activity lawfully imposed on certain categories of public officials by reason of their position or the nature of their duties.

Article 17.
Protection of the public official's privacy

All necessary steps should be taken to ensure that the public official's privacy is appropriately respected; accordingly, declarations provided for in this Code are to be kept confidential unless otherwise provided for by law.

Article 18.
Gifts

1. The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relationswhich may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts.

2. Where the public official is in doubt whether he or she can accept a gift or hospitality, he or she should seek the advice of his or her superior.

Article 19.
Reaction to improper offers

If the public official is offered an undue advantage he or she should take the following steps to protect himself or herself:

- refuse the undue advantage; there is no need to accept it for use as evidence;
- try to identify the person who made the offer;
- avoid lengthy contacts, but knowing the reason for the offer could be useful in evidence;
- if the gift cannot be refused or returned to the sender, it should be preserved,

but handled as little as possible;

- obtain witnesses if possible, such as colleagues working nearby;
- prepare as soon as possible a written record of the attempt, preferably in an official notebook;
- report the attempt as soon as possible to his or her supervisor or directly to the appropriate law enforcement authority;
- continue to work normally, particularly on the matter in relation to which the undue advantage was offered.

Article 20.
Susceptibility to influence by others

The public official should not allow himself or herself to be put, or appear to be put, in a position of obligation to return a favour to any person or body. Nor should his or her conduct in his or her official capacity or in his or her private life make him or her susceptible to the improper influence of others.

<...>

Article 26.
Leaving the public service

1. The public official should not take improper advantage of his or her public office to obtain the opportunity of employment outside the public service.

2. The public official should not allow the prospect of other employment to create for him or her an actual, potential or apparent conflict of interest. He or she should immediately disclose to his or her supervisor any concrete offer of employment that could create a conflict of interest. He or she should also disclose to his or her superior his or her acceptance of any offer of employment.

3. In accordance with the law, for an appropriate period of time, the former public official should not act for any person or body in respect of any matter on which he or she acted for, or advised, the public service and which would result in a particular benefit to that person or body.

4. The former public official should not use or disclose confidential information acquired by him or her as a public official unless lawfully authorised to do so.

5. The public official should comply with any lawful rules that apply to him or her regarding the acceptance of appointments on leaving the public service.

<...>

Recommendation № Rec (2002) 2 of the Committee of Ministers on access to official documents

(Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies)

(Extract)

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 for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

<...>

Considering the importance in a pluralistic, democratic society of transparency of public administration and of the ready availability of information on issues of public interest;

Considering that wide access to official documents, on a basis of equality and in accordance with clear rules:

- allows the public to have an adequate view of, and to form a critical opinion on, the state of the society in which they live and on the authorities that govern them, whilst encouraging informed participation by the public in matters of common interest;
- fosters the efficiency and effectiveness of administrations and helps maintain their integrity by avoiding the risk of corruption;
- contributes to affirming the legitimacy of administrations as public services and to strengthening the public's confidence in public authorities;

Considering therefore that the utmost endeavour should be made by member states to ensure availability to the public of information contained in official documents, subject to the protection of other rights and legitimate interests;

Stressing that the principles set out hereafter constitute a minimum standard, and that they should be understood without prejudice to those domestic laws and regulations which already recognise a wider right of access to official documents;

Considering that, whereas this instrument concentrates on requests by individuals for access to official documents, public authorities should commit themselves to conducting an active communication policy, with the aim of making available to the public any information which is deemed useful in a transparent democratic society,

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

I. Definitions

For the purposes of this recommendation:

1. “public authorities” shall mean:

   i. government and administration at national, regional or local level;

   ii. natural or legal persons insofar as they perform public functions or exercise administrative authority and as provided for by national law.

2. “official documents” shall mean all information recorded in any form, drawn up or received and held by public authorities and linked to any public or administrative function, with the exception of documents under preparation.

II. Scope

1. This recommendation concerns only official documents held by public authorities. However, member states should examine, in the light of their domestic law and practice, to what extent the principles of this recommendation could be applied to information held by legislative bodies and judicial authorities.

2. This recommendation does not affect the right of access or the limitations to access provided for in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

III. General principle on access to official documents

Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin.

IV. Possible limitations to access to official documents

1. Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

   i. national security, defence and international relations;

   ii. public safety;

   iii. the prevention, investigation and prosecution of criminal activities;

   iv. privacy and other legitimate private interests;

   v. commercial and other economic interests, be they private or public;

vi. the equality of parties concerning court proceedings;

vii. nature;

viii. inspection, control and supervision by public authorities;

ix. the economic, monetary and exchange rate policies of the state;

x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

3. Member states should consider setting time limits beyond which the limitations mentioned in paragraph 1 would no longer apply.

V. Requests for access to official documents

1. An applicant for an official document should not be obliged to give reasons for having access to the official document.

2. Formalities for requests should be kept to a minimum.

VI. Processing of requests for access to official documents

1. A request for access to an official document should be dealt with by any public authority holding the document.

2. Requests for access to official documents should be dealt with on an equal basis.

3. A request for access to an official document should be dealt with promptly. The decision should be reached, communicated and executed within any time limit which may have been specified beforehand.

4. If the public authority does not hold the requested official document it should, wherever possible, refer the applicant to the competent public authority.

5. The public authority should help the applicant, as far as possible, to identify the requested official document, but the public authority is not under a duty to comply with the request if it is a document which cannot be identified.

6. A request for access to an official document may be refused if the request is manifestly unreasonable.

7. A public authority refusing access to an official document wholly or in part should give the reasons for the refusal.

VII. Forms of access to official documents

1. When access to an official document is granted, the public authority should allow inspection of the original or provide a copy of it, taking into account, as far as possible, the preference expressed by the applicant.

2. If a limitation applies to some of the information in an official document, the public authority should nevertheless grant access to the remainder of the information it contains. Any omissions should be clearly indicated. However, if the partial version of the document is misleading or meaningless, such access may be refused.

3. The public authority may give access to an official document by referring the applicant to easily accessible alternative sources.

VIII. Charges for access to official documents

1. Consultation of original official documents on the premises should, in principle, be free of charge.

2. A fee may be charged to the applicant for a copy of the official document, which should be reasonable and not exceed the actual costs incurred by the public authority.

IX. Review procedure

1. An applicant whose request for an official document has been refused, whether in part or in full, or dismissed, or has not been dealt with within the time limit mentioned in Principle VI.3 should have access to a review procedure before a court of law or another independent and impartial body established by law.

2. An applicant should always have access to an expeditious and inexpensive review procedure, involving either reconsideration by a public authority or review in accordance with paragraph 1 above.

X. Complementary measures

1. Member states should take the necessary measures to:

i. inform the public about its rights of access to official documents and how that right may be exercised;

ii. ensure that public officials are trained in their duties and obligations with respect to the implementation of this right;

iii. ensure that applicants can exercise their right.

2. To this end, public authorities should in particular:

i. manage their documents efficiently so that they are easily accessible;

ii. apply clear and established rules for the preservation and destruction of their documents;

iii. as far as possible, make available information on the matters or activities for which they are responsible, for example by drawing up lists or registers of the documents they hold.

XI. Information made public at the initiative of the public authorities

A public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.

<…>

Recommendation № R (97) 7 of the Committee of Ministers on local public services and the rights of their users

(Adopted by the Committee of Ministers on 1 April 1997 at the 587th meeting of the Ministers' Deputies)

(Extract)

The Committee of Ministers, having regard to Article 15.b of the Statute of the Council of Europe

<…>

Considering that member states should make modernising the management and operating methods of local public services a priority, while respecting the principles of local self-government, users' rights and the rules of a market economy

Recommends that the governments of member states:

- take into account the Guidelines for local public services in Europe, attached to this recommendation, in framing their policies and legislations, so as to encourage local authorities to develop their public services in order to meet the needs of the community more effectively and to respect users' rights more fully;
- provide or facilitate the provision of relevant information on the different management methods of local public services and on how to improve relations with users, in co-operation with local authorities, their associations and training organisations;
- promote or facilitate, by all appropriate means, studies and innovation in these areas, as well as exchanges of information between local authorities at national and international level, in co-operation with local authorities, their associations and training organisations;
- translate the recommendation and the guidelines into their official language(s) and circulate the texts among local authorities.

Appendix to Recommendation No. R (97) 7

GUIDELINES FOR LOCAL PUBLIC SERVICES IN EUROPE

I. Local public services and public interest

Public services are one of the most concrete expressions of the self-government of local authorities and a powerful means for them to serve the public interest.

1. Local public services contribute to the exercise of the powers of local authorities which are responsible for them, in the framework of the relevant national or regional legislation

The creation and management of local public services follows from the principle of self-government and contributes to the implementation of local authorities' powers. Local authorities, in the framework of the relevant national or regional legislation, are responsible for their services and organise them in such a way as to respond efficiently to the needs of the population living in their territory and to keep pace with trends in social demand and in general policy priorities, the requirements of sound economic management and technological change.

Local authorities' freedom to choose between different legal or financial organisational models for services is greater or lesser, depending on the interests that the state intends to protect (equality, protection of public finances, transparency in delegating services to the private sector, and so forth).

Local public services nevertheless adhere to certain principles particularly necessary in present-day circumstances, which are already widely recognised in the Council of Europe's member states.

2. Local public services should ensure the principle of equality for users in a complete and practical way and they should respect the principles of non-discrimination and neutrality.

Local services should observe the general principles of public services: equality, neutrality, non-discrimination and continuity, and they are charged with looking after the public interest and ensuring a rational balance between resources and expenditure. In order to do this, they should resort to all forms of intermunicipal co-operation which might allow them to improve their performance.

Their goal is to ensure genuine and complete equality among users, and this may require differential treatment (rates, assistance, conditions of access, etc.) in appropriate cases, in order to take account of de facto differences in the situation of users or candidates for the use of a service

They respect the principles of neutrality and non-discrimination in respect of users, freedom of opinion and the whole range of public freedoms which they are under a duty to guarantee and promote.

3. Local public services should guarantee the continuity of essential services for the population within the limits of economic and budgetary constraints

In keeping with the principle of continuity, they should guarantee the provision of essential services without interruption to the population, within the limits of economic and budgetary constraints.

Permanence and continuity are inherent in many local public services: the supply of drinking water, gas and electricity, fire-fighting, household refuse collection, the provision of district heating systems, education, etc. These principles must be reconciled with the rights of the staff of the service, including those staff employed by a contractor providing a service on behalf of a local authority. It is therefore necessary to regulate the situation of the whole of the public services at national/regional level by means of legislation or agreements between employees and employers.

According priority to the protection of the great majority of the population's interests may lead to the drawing up of a list of the services where a total stoppage, even a temporary one, is unacceptable. In such cases prior notice should be given of unavoidable stoppage of work and/or a minimum service should be provided.

National and regional regulations should be complemented where appropriate by local agreements setting out the arrangements for avoiding the total closure of these services on special occasions, such as holidays, and extended or long weekends, with a view to avoiding the total closure of such services for periods of time which are incompatible with the interests they are meant to protect.

The principle of continuity and the principle of equality coincide when it is necessary to maintain certain public services even in places where the low density of population makes them unprofitable, particularly in rural areas. In those cases, the closing down of a public service should be the result of a decision supported by stated reasons which demonstrate that alternative solutions, such as the regrouping of services, multiple service access desks or use of modern technologies, are not viable.

Local public services should contribute to social cohesion, either by providing solidarity services established by law, thus contributing to the implementation of social aid policies covering the national community as a whole; or by using their own powers to supplement and build upon these policies, according to the needs and resources existing at the local level.

Their concern is to strengthen local community cohesion so as to avoid rips in the social fabric and to maintain solidarity between local communities, thanks to the quality of the services they deliver to the population, and in particular to the disadvantaged categories. They aim at maintaining a harmonious community life by fostering economic progress, without which there can be no sustainable social progress.

4. Local public services should contribute to sustainable development and to a balanced and rational distribution of available resources throughout the territory of the local authority.

Local public services should keep in mind the interdependence between urban and rural communities, between agricultural and industrial areas, on the one hand, and undeveloped areas which deserve to be protected, on the other. They should reconcile economic requirements with those of environmental protection, with the help, where appropriate, of the regions, the state and of international organisations.

They are distinct economic entities within the meaning of modern economic doctrine, which includes them among the institutional sectors which produce goods and services whose value is taken into account in the national product. They are, however, dependent on multiple and different economic logic.

Some are purely public services, enjoying a legal or de facto monopoly (security, police, land-use control, building and maintenance of roads, etc.) mainly financed by taxes or state grants.

Others are in the nature of commercial services, financed principally, or sometimes exclusively, by users' charges and fees. These latter services can, depending on the case, constitute a monopoly (supply of water, gas, electricity, cable television, etc.) or, on the contrary, be subject to different forms of competition, sometimes indirect (education, local transport, health care, swimming pools and sports facilities, etc.).

Both types of local public services should choose, in each case, the management methods and the means of financing which best take into account all the interests concerned, including those of the local authorities, and which offer the best cost-benefit ratio. For these purposes they should take into account the direct and consequential effects of the service's activity, including those bearing upon social solidarity, environmental protection and the proper use of land.

Their system of financing should be one which is the most suited to their particular functions, the requirements of economic rationality and social demands. Depending on the circumstances, which vary with the type of service and the location, a number of financing systems are possible. They include a system of prices ensuring at least a balanced budget, financing by general taxes or by a special earmarked tax (to apply the "polluter pays" principle for example) and subsidies from other authorities or from the state or a combination of these methods - a solution which is often chosen.

5. Local authorities should continuously improve the quality of their services to respond to changing social demands, the requirements of sound financial management and technological developments.

Local public services contribute to the modernisation of public administration. They are often in the forefront of technical innovation or social experimentation.

They should adapt to the changing needs of the population and adopt new technologies when they promote progress and help to improve user satisfaction.

They contribute to development trends by frequently offering opportunities for experimental activities favoured by their diversity, flexibility and the decision-making capacity of their managers. Thus, it is often at local level that the first experiments in new methods of public management are carried out. They can even show the way forward for larger national services. An example of this is the promotion of quality management through the granting of certificates to local public services which keep guaranteed standards.

Their managers should be mindful of the lessons to be drawn from the experiences of other authorities, including those abroad. They are thus encouraged to participate in exchanges of information at national and international level in order to improve the practices of local public management.

They should employ techniques which lend themselves to change and improvement: sewage and waste treatment, transport, and so forth. They thus naturally serve as a testing or adjusting (setting) ground and it is within these types of service that new technology will gradually spread as local authorities renew their infrastructure.

Local authorities participate in numerous pilot projects for the launching of new techniques, even in fields where they do not have a dominant interest. They play a leading role in the demonstration of energy conservation and pollution control policies.

However, innovation is not just a matter of technology. It may just as easily be expressed in new social practices in the fields of welfare, health, security, prevention of drug addiction, training, citizen participation in public decision making, cultural or sports activities, etc. There have been many examples of local authorities which have impressed upon their services a dynamic of change and a will to adapt.

There are cases, however, when local public services cannot satisfy all the different demands. Citizens' aspirations and demographic changes often come into conflict with the pressure to save costs.

While not all authorities can move forward at the same pace, it is essential that the spirit of enterprise be given free play wherever possible and that successful projects can then be disseminated. By giving some sense of security to those who draw upon its results, experimentation is one of the great factors of change in public administration.

II. More freedom for users

By the very nature of the services they provide to users, many local public services contribute effectively to the reinforcement of freedom, which is a common goal of democratic societies. They contribute again to this objective by organising in the best possible way their relations with users.

From the obligation to provide publicity to the right to information

6. Local public services should organize communication with users ensuring all interested parties appropriate information about their rights and the services which they may obtain, as well as about the applicable rules.

In our modem communication societies, where information plays a role of growing importance, the information supplied to users of local public services should serve various purposes, namely to offer all interested parties adequate details of their rights and of the services of which they can make use, and be a means of enhancing the quality of the service by intensifying the relations between it and the society it serves.

That publicity be given to acts and deliberations of local, regional or national public authorities is one of the fundamental principles upon which European legal systems are based and is usually a precondition for the enforceability of administrative decisions.

However, the methods by which publicity is normally achieved are not always satisfactory, from the viewpoint of both the smooth running of the services and users' rights. A particular effort ought to be made to prevent the language used from being too specialised and hence incomprehensible to part of the population, as well as in respect of the methods chosen and the accessibility of this basic information.

But it seems desirable to go beyond this by asking public services to define and carry out a genuine information policy, going hand in hand with users' rights to information.

The obligation to provide general and comprehensive information applies not only to rules of law, but to the full range of information concerning the organisation and operation of services (nature of services, prices, quality, times). This information has to be made generally available by various means, depending on the nature of the service and the characteristics of the population group concerned.

Public authorities should therefore ensure that information is made available in an effective manner. Although justified on grounds of equity, such information is also essential to the smooth running of public services, which requires all concerned - staff and users alike - to be fully aware of the applicable rules.

The duty to provide information is in fact a corollary of the principle of equality of treatment. The increasing complexity of the rules makes them more and more difficult for an ever-growing number of people to understand. Discrimination resulting from the inability of a large number of people to acquire an appropriate knowledge of what is available from public services will continue unless the latter constantly strives to provide users with appropriate information, in form and in substance.

Information and communications sciences, as well as the experience acquired by local authorities over a good many years, have now made it possible to select the most appropriate media for a particular situation: billposting, specialised reception service, local press, municipal newsletter, radio, television, information systems, telephone, and so forth.

Each service selects the techniques it uses according to its particular nature and its target audience.

Before all important projects, such as the introduction or closure of a public service or facility, users should receive detailed preliminary information. They should then be given an opportunity to state their point of view to the public authorities responsible.

7. Local authorities should organise their public services in order to allow users, whenever it is appropriate, to choose between various services or even various suppliers.

Offering users a choice

Local public services often enjoy a monopoly, and it is this, more than their public status, that probably explains certain difficulties they meet in their relations with users. When the offer of public services is diversified, users have the means to indicate their preferences. This is an incentive for giving greater consideration to their needs and may result in economic or social progress.

In consequence, it is advisable for local authorities to organise their public services of a commercial or industrial nature giving users the choice between various services, or even between different suppliers, whenever the nature of the service in question makes this possible and appropriate. The law should avoid laying down exclusive rules, except in a limited number of cases which are clearly justified.

8. Local public services should subscribe to the development of users' rights and protection in the framework of the relevant legislation.

In the exercise of their mandates, local elected representatives must ensure an adequate level of protection.

In addition, in the case of services of a commercial or industrial nature (water, transport, waste, energy, among others), the "most advantageous provision principle" could be adopted by local authorities, meaning that, in similar situations and circumstances, users of public services should enjoy guarantees no weaker than those given to the customers of private companies. The user of a public service should be able to rely on consumer legislation as a whole, except in cases where the specific needs of public services, the characteristics of a certain service or an explicit provision of the law exclude such a possibility.

III. More consideration for users

Developments in public law have led to ever greater official recognition of citizens' personality and rights. These developments must continue, for the benefit of the users of public services - not always the same group as that covered by the more general term "citizens" - who must enjoy similar consideration, since they are the ultimate raison d'être of each service

Administrative simplification

9. In general, the establishment of uniform and clear rules, valid for all local public services, as well as the use of administrative and legal language which is comprehensible for users, should be encouraged.

The increasing complexity of the management of modern societies is a constant which has to be both accepted and overcome. In this sense, it would seem sensible to comply with a few very modest rules of conduct

Administrative and legal language, despite the need for accuracy, should be conceived as a means of facilitating relations within society. It should therefore be adapted to modern culture, with a view to being comprehensible to the greatest possible number.

As far as possible, emphasis should be placed on making rules clear, consistent and applicable to the entire range of local public services, so that all users are able to understand, comply with and rely on them.

10. Relations between local public services and their users should be organised in such a way as to minimise inconvenience and cost borne by users.

Local public services should be careful to avoid superfluous, useless or excessively costly procedures and should require of users or local residents only what is strictly necessary for the exercise of their functions

Relations with users, within the limits of the resources available, should be so organised that the inconvenience and cost arising from them, particularly in terms of waiting or travelling time, are minimised. This may be achieved through good organisation of communications: telephone, information systems, fax, videoconference, etc.

Motivating and training the staff of public services

11. The staff of local public services should be specially trained in their tasks and made aware of the rights of the users.

For users, the public service is first and foremost comprised of staff with whom they have direct contacts and who provide or refuse the services they request. It is therefore essential that the staff of these services be trained in these tasks and be fully aware of their assignments and the rights of the users for whom they are providing a service. In particular, staff should be provided with increased personal responsibility.

The organisation of office space, the choice of opening hours, the identification of staff, the personalisation of contacts, including written contacts, are all part of the means implemented within public services to achieve these aims.

Dealing with users' complaints

12. Complaints procedures should be straightforward, easy for citizens to become acquainted with and use, and organised so as to allow prompt processing.

Users' complaints show where public services are not functioning properly, and should be regarded by managers as presenting opportunities to improve service organisation and customer relations.

The processing of complaints is a normal function in any enterprise, and it must be conceived and organised accordingly. The processing of complaints should have the double objective of finding a rapid solution to the problems raised and where the complaint is well founded, remedying the causes of problems.

Procedures for making complaints and processing procedures should be brought to the general attention of users.

The practical conditions in which complaints are dealt with inevitably vary widely, depending on the size of the service, the nature of its activities, its attachment to a small or large community or to an industrial grouping (water, gas, transport, electricity), etc.

There could be a specialised service, generally placed under the immediate responsibility of an elected representative, an organ representing users, or an elected commission. In any such case, its staff must be particularly well trained and concerned to ensure its efficiency.

Following the experience of several European countries, the appointment of an ombudsman (or a mediator) is to be encouraged, wherever this is justified by the importance of the services provided and where it fits within the local legal tradition. A number of local authorities have already appointed a member of their elected council, or another person, to carry out such functions either in respect of all of their public services or in respect of those which by their nature give rise to problems in their relations with users.

IV. Modern and better managed local public services

Where local public services are concerned, citizens have available to them many channels of local democracy through which they can voice their demands and make their criticisms known: elections to local councils and authorities, the right to petition and to complain, attendance at the meetings of deliberative assemblies, participation in referendums, in some cases popular initiatives, and so on.

Users, adopting the same kind of attitude as they do to private companies, are also keener to be able to influence the providers of public services; an extension of supervisory and evaluation mechanisms may satisfy this expectation.

Improving users' means of exercising influence

13. Users of local public services should be recognised and served as such.

Users' prime concern is for the quality of the service received and its possible costefficiency. They wish their opinions to be heard and taken into consideration as users, not only as voters or citizens. Similarly, they want to be able to have a direct influence on the provider of public services in order to obtain better services, as in the private sector.

From the information given to them, the alternatives they are offered and the evaluation procedures followed, users should be able to influence, through the course of action they adopt, the provision and distribution of public services to a greater degree than they could through the agency of delegates or through the proliferation of institutions and procedures established specifically for that purpose.

Users' participation in management of local public services

14. In the framework of the relevant legislation, local authorities should encourage the participation of users or their representatives in the management of local public services by means which are in conformity with the nature of the service and the circumstances.

The participation of users in the management of local public services is not an alternative to representative democracy but a means of bringing citizens closer to the local authority.

The suitability of users' involvement in public service management must be carefully weighed; their participation should be encouraged when their interests can be better taken into account, without, however, fostering corporatism or excessively complicating management mechanisms.

Formal participation in the decision-making process can be usefully introduced, especially in what are clearly "community" services, such as social, cultural and educational services, for example, through: ad hoc joint committees, representatives of residents on council committees or on the boards of directors, annual meetings between representatives of services and their users, with an agenda drawn up by mutual consent, etc.

15. Local authorities should foster voluntary services, patronage and other initiatives which, in conjunction with or in addition to their public services, may contribute to satisfying the collective needs of the population.

In several countries, citizens grouped together in associations or mutual benefit societies take the direct control of certain community functions, such as crèches, canteens, school bus services, libraries, etc. At the same time, voluntary activities and patronage are finding new applications: the environment, services for the elderly, health, helping children with difficulties at school.

Local authorities must not regard such initiatives as competition to be curbed, but should instead help them to flourish. In fact they very often represent a significant resource in kind, which cannot be found in the local budget, and constitute a remarkable demonstration of community spirit and solidarity.

Far from trying to discourage individuals or groups who tend to intervene in these fields so as to supplement or enhance their activities, the authorities should refer to the principle of subsidiarity and consider that local residents are naturally qualified to deal directly with matters affecting them.

Supervision and evaluation

16. Each major local public service should be subject to a periodic evaluation concerning its efficiency and quality, and the results made public.

Users do not have the means to monitor each and every local service. The latter are, after all, subject to specialised or general supervision exercised by many bodies: the local council, national authorities, courts or inspectorates. Political and administrative supervision should concentrate on target-setting and result-evaluation, whilst leaving sufficient freedom of action and responsibility for managers of local public services. This supervision should be aimed not only at preventing or penalising irregularities, but also at improving the quality of the service provided, by stressing the coherence between the objectives defined and the results obtained.

By virtue of their technical competence, these bodies have to be regarded as offering guarantees and giving valuable help to users in the face of the inadequacies of public services. The findings of their investigations should be communicated to the political assembly responsible for the service concerned and could be the subject of appropriate information to users.

All important services should be subject to a periodic evaluation of user satisfaction, measured in terms of a few simple indicators (number of subscribers or subscription cancellations, rates of usage, prices, receipts, number of disputed claims, etc). The findings could be discussed in a public forum.

17. Local public services should be endowed with an accounting system which allows for adequate cost assessment, ensures transparency and the proper balancing of finances, and reinforces the responsibility of managers.

Local public services should be endowed with an accounting system which facilitates the evaluation of costs, ensures transparency of finances and supports the responsibility of managers and the interests of correctly informed citizens and users.

The manager of a local public service should know precisely his/her costs and resources to use them in the best way and thus increase its economic performance. A rational economic approach will allow an increase in the real performance of the service to the benefit of the public interest.

<…>

Recommendation № Rec (2003) 16 of the Committee of Ministers on the execution of administrative and judicial decisions in the field of administrative law

(Adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies)

(Extract)

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

<…>

Recommends that the governments of member states ensure the effective execution of administrative and judicial decisions in the field of administrative law by following, in their legislation and their practice, the principles of good practice contained in the appendix to this recommendation.

Appendix to Recommendation Rec(2003)16

I. Execution of administrative decisions regarding private persons

Scope of application: the principles contained in this part apply to 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, either physically or legally.

1. Implementation

a. Member states should provide an appropriate legal framework to ensure that private persons comply with administrative decisions that have been brought to their knowledge in accordance with the law, notwithstanding the protection by judicial authorities of their rights and interests.

b. Where it is not provided for by law that the introduction of an appeal against a decision entails automatic suspension, private persons should be able to request an administrative or judicial authority to suspend the implementation of the contested decision in order to ensure the protection of their rights and interests.

c. This possibility should be exercised within reasonable time limits in order to avoid unnecessarily blocking the action of the administrative authorities and to ensure legal certainty.

d. In deciding on the request for suspension, the public interest and the rights and interests of third persons should be taken into account by the administrative authority and, unless it is excluded by law, by the judicial authority.

2. Enforcement

a. The use of enforcement by administrative authorities should be subject to the following guarantees:

i. enforcement is to be expressly provided for by law;

ii. private persons against whom the decision is to be enforced are to be given the possibility to comply with the administrative decision within reasonable time except in urgent duly justified cases;

iii. the use of and the justification for enforcement are to be brought to the attention of the private persons against whom the decision is to be enforced;

iv. the enforcement measures used including any accompanying monetary sanctions are to respect the principle of proportionality.

b. In urgent cases, the extent of the enforcement procedure should be proportionate to the urgency of the case.

c. Private persons should be able to lodge an appeal before a judicial authority against the enforcement procedure in order to ensure the protection of their rights and interests.

d. If the administrative authority does not use an enforcement procedure, those whose rights and interests are protected by the non-implemented decision should be able to apply to a judicial authority.

II. Execution of judicial decisions regarding administrative authorities

1. General provisions

a. Member states should ensure that administrative authorities implement judicial decisions within a reasonable period of time. In order to give full effect to these decisions, they should take all necessary measures in accordance with the law.

b. In cases of non-implementation by an administrative authority of a judicial decision, an appropriate procedure should be provided to seek execution of that decision, in particular through an injunction or a coercive fine.

c. Member states should ensure that administrative authorities will be held liable where they refuse or neglect to implement judicial decisions. Public officials in charge of the implementation of judicial decisions may also be held individually liable in disciplinary, civil or criminal proceedings if they fail to implement them.

2. Execution of judicial decisions entailing an obligation to pay a sum of money

a. Member states should ensure that where administrative authorities are obliged to pay a sum of money, they comply with this obligation within a reasonable period of time.

b. Interest payable by an administrative authority, due to non-implementation of judicial decisions entailing an obligation to pay a sum of money, should be no less than interest payable by a private person to an administrative authority in a similar situation.

c. It should be ensured that the administrative authority has appropriate provision to avoid a situation whereby a lack of funds would prevent it meeting its obligation to pay a sum of money.

d. In the case of non-implementation by administrative authorities of judicial decisions entailing an obligation to pay a sum of money, member states should also consider opening up the possibility to seize the property of the administrative authorities within the limits prescribed by law.

<…>

Recommendation № Rec (2004) 20 of the Committee of Ministers on judicial review of administrative acts

(Adopted by the Committee of Ministers on 15 December 2004 at the 909th meeting of the Ministers' Deputies)

(Extract)

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

<…>

Recommends that the governments of member states apply, in their national legal system and in practice, the principles set out below:

A. Definitions

For the purposes of this Recommendation,

1. By "administrative acts" are meant:

a. legal acts – both individual and normative – and physical acts of the administration taken in the exercise of public authority which may affect the rights or interests of natural or legal persons;

b. situations of refusal to act or an omission to do so in cases where the administrative authority is under an obligation to implement a procedure following a request.

2. By "judicial review" is meant the examination and determination by a tribunal of the lawfulness of an administrative act and the adoption of appropriate measures, with the exception of review by a constitutional court.

B. Principles

1. The scope of judicial review

a. All administrative acts should be subject to judicial review. Such review may be direct or by way of exception.

b. The tribunal should be able to review any violation of the law, including lack of competence, procedural impropriety and abuse of power.

2. Access to judicial review

a. Judicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be opened to associations or other persons and bodies empowered to protect collective or community interests.

b. Natural and legal persons may be required to exhaust remedies provided by national law before having recourse to judicial review. The length of the procedure for seeking such remedies should not be excessive.

c. Natural and legal persons should be allowed a reasonable period of time in which to commence judicial review proceedings.

d. The cost of access to judicial review should not be such as to discourage applications. Legal aid should be available to persons lacking the necessary financial resources where the interests of justice require it.

3. An independent and impartial tribunal

a. Judicial review should be conducted by a tribunal established by law whose independence and impartiality are guaranteed in accordance with the terms of Recommendation No. R (94) 12.

b. The tribunal may be an administrative tribunal or part of the ordinary court system.

<…>

Recommendation № CM/Rec (2007) 7 of the Committee of Ministers on good administration

(Adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies)

(Extract)

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

<…>

Considering that the requirements of a right to good administration may be reinforced by a general legal instrument; that these requirements stem from the fundamental principles of the rule of law, such as those of lawfulness, equality, impartiality, proportionality, legal certainty, taking action within a reasonable time limit, participation, respect for privacy and transparency; and that they provide for procedures to protect the rights and interests of private persons, inform them and enable them to participate in the adoption of administrative decisions,

Recommends that the governments of member states:

- promote good administration within the framework of the principles of the rule of law and democracy;
- promote good administration through the organisation and functioning of public authorities ensuring efficiency, effectiveness and value for money.
- These principles require that member states:
- ensure that objectives are set and performance indicators are devised in order to monitor and measure, on a regular basis, the achievement of these objectives by the administration and its public officials;
- compel public authorities to regularly check, within the remit of the law, whether their services are provided at an appropriate cost and whether they shall be replaced or withdrawn;
- compel the administration to seek the best means to obtain the best results;
- conduct appropriate internal and external monitoring of the administration and the action of its public officials;
- promote the right to good administration in the interests of all, by adopting, as appropriate, the standards set out in the model code appended to this recommendation, assuring their effective implementation by the officials of member states and doing whatever may be permissible within the constitutional and legal structure of the state to ensure that regional and local governments adopt the same standards.

APPENDIX TO RECOMMENDATION CM/REC(2007)7 OF THE COMMITTEE OF MINISTERS ON GOOD ADMINISTRATION

CODE OF GOOD ADMINISTRATION

Article 1.
Scope

1. This code lays down principles and rules which should be applied by public authorities in their relations with private persons, in order to achieve good administration.

2. For the purposes of this code, "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.

3. For the purposes of this code, "private persons" shall be taken to mean individuals and legal persons under private law who are the subject of activities by public authorities.

Section I
Principles of good administration

Article 2.
Principle of lawfulness

1. Public authorities shall act in accordance with the law. They shall not take arbitrary measures, even when exercising their discretion.

2. They shall comply with domestic law, international law and the general principles of law governing their organisation, functioning and activities.

3. They shall act in accordance with rules defining their powers and procedures laid down in their governing rules.

4.They shall exercise their powers only if the established facts and the applicable law entitle them to do so and solely for the purpose for which they have been conferred.

Article 3.
Principle of equality

1. Public authorities shall act in accordance with the principle of equality.

2. They shall treat private persons who are in the same situation in the same way. They shall not discriminate between private persons on grounds such as sex, ethnic origin, religious belief or other conviction. Any difference in treatment shall be objectively justified.

Article 4.
Principle of impartiality

1. Public authorities shall act in accordance with the principle of impartiality.

2. They shall act objectively, having regard to relevant matters only.

3. They shall not act in a biased manner.

4.They shall ensure that their public officials carry out their duties in an impartial manner, irrespective of their personal beliefs and interests.

Article 5.
Principle of proportionality

1. Public authorities shall act in accordance with the principle of proportionality.

2. They shall impose measures affecting the rights or interests of private persons only where necessary and to the extent required to achieve the aim pursued.

3.When exercising their discretion, they shall maintain a proper balance between any adverse effects which their decision has on the rights or interests of private persons and the purpose they pursue. Any measures taken by them shall not be excessive.

Article 6.
Principle of legal certainty

1.Public authorities shall act in accordance with the principle of legal certainty.

2.They may not take any retroactive measures except in legally justified circumstances.

3.They shall not interfere with vested rights and final legal situations except where it is imperatively necessary in the public interest.

4.It may be necessary in certain cases, in particular where new obligations are imposed, to provide for transitional provisions or to allow a reasonable time for the entry into force of these obligations.

Article 7.
Principle of taking action within a reasonable time limit

Public authorities shall act and perform their duties within a reasonable time.

Article 8.
Principle of participation

Unless action needs to be taken urgently, public authorities shall provide private persons with the opportunity through appropriate means to participate in the preparation and implementation of administrative decisions which affect their rights or interests.

Article 9.
Principle of respect for privacy

1.Public authorities shall have respect for privacy, particularly when processing personal data.

2. When public authorities are authorised to process personal data or files, particularly by electronic means, they shall take all necessary measures to guarantee privacy.

3.The rules relating to personal data protection, notably as regards the right to have access to personal data and secure the rectification or removal of any data that is inaccurate or shall not have been recorded, shall apply to personal data processed by public authorities.

Article 10.
Principle of transparency

1.Public authorities shall act in accordance with the principle of transparency.

2.They shall ensure that private persons are informed, by appropriate means, of their actions and decisions which may include the publication of official documents.

3.They shall respect the rights of access to official documents according to the rules relating to personal data protection.

4.The principle of transparency does not prejudice secrets protected by law.

Section II
Rules governing administrative decisions

Article 11.
Definitions

1.For the purposes of this code, “administrative decisions” shall mean regulatory or non-regulatory decisions taken by public authorities when exercising the prerogatives of public power.

2.Regulatory decisions consist of generally applicable rules.

3.Non-regulatory decisions may be individual or otherwise. Individual decisions are those addressed solely to one or more individuals.

Article 12.
Initiation of administrative decisions

Administrative decisions can be taken by public authorities either on their own initiative or upon request from private persons.

Article 13.
Requests from private persons

1. Private persons have the right to request public authorities to take individual decisions which lie within their competence.

2. Decisions in response to requests to public authorities shall be taken within a reasonable time which can be defined by law. Remedies for cases where no such decision has been taken should be foreseen.

3.When such a request is made to an authority lacking the relevant competence, the recipient shall forward it to the competent authority where possible and advise the applicant that it has done so.

4.All requests for individual decisions made to public authorities shall be acknowledged with an indication of the expected time within which the decision will be taken, and of the legal remedies that exist if the decision is not taken. An acknowledgement in writing may be dispensed with where public authorities respond promptly with a decision.

Article 14.
Right of private persons to be heard with regard to individual decisions

If a public authority intends to take an individual decision that will directly and adversely affect the rights of private persons, and provided that an opportunity to express their views has not been given, such persons shall, unless this is manifestly unnecessary, have an opportunity to express their views within a reasonable time and in the manner provided for by national law, and if necessary with the assistance of a person of their choice.

Article 15.
Right of private persons to be involved in certain non-regulatory decisions

1.If a public authority proposes to take a non-regulatory decision that may affect an indeterminate number of people, it shall set out procedures allowing for their participation in the decision-making process, such as written observations, hearings, representation in an advisory body of the competent authority, consultations and public enquiries.

2. Those concerned in these procedures shall be clearly informed of the proposals in question and given the opportunity to express their views fully. The proceedings shall take place within a reasonable time.

Article 16.
Contribution of private persons to costs for administrative decisions

Costs, if payable by private persons to public authorities in respect of administrative decisions, shall be fair and reasonable.

Article 17.
Form of administrative decisions

1.Administrative decisions shall be phrased in a simple, clear and understandable manner.

2.Appropriate reasons shall be given for any individual decision taken, stating the legal and factual grounds on which the decision was taken, at least in cases where they affect individual rights.

Article 18.
Publication of administrative decisions

1.Administrative decisions shall be published in order to allow those concerned by these decisions to have an exact and comprehensive knowledge of them. Publication may be through personal notification or it may be general in nature.

2. Those concerned by individual decisions shall be personally notified except in exceptional circumstances where only general publication methods are possible. In all cases, appeal procedures including time limits shall be indicated.

Article 19.
Entry into force of administrative decisions

1. Administrative decisions shall not take effect retroactively with regard to a date prior to their adoption or publication, except in legally justified circumstances.

2. Except in urgent cases, administrative decisions shall not be operative until they have been appropriately published.

Article 20.
Execution of administrative decisions

1. Public authorities shall be responsible for the execution of administrative decisions falling within their competence.

2. An appropriate system of administrative or criminal penalties shall, in principle, be established to ensure that private persons comply with the decisions of the public authorities.

3.Public authorities shall allow private persons a reasonable time to perform the obligations imposed on them, except in urgent cases where they shall duly state the reasons for this.

4.Enforced execution by public authorities shall be expressly prescribed by law. Private persons subject to the execution of a decision are informed of the procedure and of the reasons for it. Enforced execution measures shall be proportionate.

Article 21.
Changes to individual administrative decisions

Public authorities can amend or withdraw individual administrative decisions in the public interest if necessary, but, in doing so, they should have regard to the rights and interests of private persons.

Section III
Appeals

Article 22.
Appeals against administrative decisions

1.Private persons shall be entitled to seek, directly or by way of exception, a judicial review of an administrative decision which directly affects their rights and interests.

2.Administrative appeals, prior to a judicial review, shall, in principle, be possible. They may, in certain cases, be compulsory. They may concern an appeal on merits or an appeal on the legality of an administrative decision.

3.Private persons shall not suffer any prejudice from public authorities for appealing against an administrative decision.

Article 23.
Compensation

1.Public authorities shall provide a remedy to private persons who suffer damages through unlawful administrative decisions or negligence on the part of the administration or its officials.

2. Before bringing actions for compensation against public authorities in the courts, private persons may first be required to submit their case to the authorities concerned.

3.Court orders against public authorities to provide compensation for damages suffered shall be executed within a reasonable time.

4.It shall be possible, where appropriate, for public authorities or private persons adversely affected to issue legal proceedings against public officials in their personal capacity.

<…>

Recommendation № CM/REC (2007) 4 of the Committee of Ministers on local and regional public services

(Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers' Deputies)

(Extract)

The Committee of Ministers, having regard to Article 15.b of the Statute of the Council of Europe,

<…>

Recommends that the governments of member states:

I. As concerns the role and the importance of local and regional public services

1. base all their national policies, programmes or legislative reforms concerning or affecting local and regional public services on the following principles:

a. local and regional public services are one of the expressions of local and regional authorities' selfgovernment and a powerful means at their disposal in the service of the public interest. They contribute to the exercise of the powers of local and regional authorities, which bear responsibility for them;

b. local and regional public services contribute to social cohesion by providing solidarity services and implementing the assistance policies adopted at national, regional or local level. It is their concern to tighten the links between residents, to prevent damage to the social fabric and to maintain solidarity in local and regional communities;

c. local and regional public services contribute to sustainable development and to the equitable and rational distribution of the resources available within the area covered by the local or regional authority. They reconcile the demands of rural areas and urban areas, as well as the demands of the economy and those of environmental protection;

II. As concerns the decentralisation of public services

2. base their national policies, legislative initiatives and reforms concerning the level of administration responsible for delivering public services on Article 4, paragraph 3, of the European Charter of Local Self-Government and on the following principles:

a. the proximity to the population of local and regional public services is a fundamental necessity, and local and regional authorities have a vital role to play in the provision of these services. In order to ensure that services are adapted to citizens' needs and expectations, local and regional authorities should benefit from a high degree of decentralisation and a capacity for independent action in the provision of these services;

b. decentralisation in the field of public services must comply with the principles of consistency and unity of application of public policies for the benefit of all citizens, co-ordination and territorial solidarity;

c. the degree of decentralisation which is desirable depends on factors such as:

- territorial structure, size of local and regional authorities;
- nature, importance and territorial dimension of the service;
- local and regional authorities' effective capacity to perform the corresponding task;
- quality, effectiveness, efficiency and economy in the delivery of services;
- complementarity in the action of the public authorities;
- the importance of a particular public service for the life and needs of a community and its users;

3. give local and regional authorities, when measures taken at national level create obligations for them, every assistance by adopting the requisite measures, including financial measures to enable the provision of quality services;

4. encourage and create, as necessary, machinery for consultation, co-operation and co-management between the levels concerned, including, where appropriate, with the voluntary and private sectors, in order to establish synergies and avoid duplication;

III. As concerns service users' role in defining, regulating and managing local and regional public services

5. ensure that all national policies relating to local and regional public services, and all choices as to the best way of supplying such services, have consumer and taxpayer satisfaction as their essential goal and are founded on a needs analysis carried out, in particular at local and regional level, on the basis of information about community expectations and the best possible cost/quality ratio;

6. where necessary, help local and regional authorities when defining and delivering local and regional services to adopt a comprehensive and integrated approach which takes into consideration the person – his or her needs – as a whole in order to offer, as far as possible, made-to-measure personalised services;

7. create the conditions and provide assistance so that machinery can be put in place that enables the competent authorities and service providers to adapt their range of services and adjust to the rapid change in citizens' expectations and in objective conditions;

8. guarantee, within the limit of financial and budgetary constraints, continuity in the provision of certain local and regional public services which are considered to be essential for the population;

9. with reference to specific needs and in consultation with local and regional authorities, adopt minimum standards for the protection of the users of the essential services, and create the necessary machinery for monitoring compliance with them; where applicable, these standards should be in conformity with the provisions of the international and European instruments to which the state has subscribed;

IV. As concerns the legal framework governing local and regional public services

10. establish a clear definition of the responsibility of the various tiers of government and a balanced distribution of roles between these tiers in the field of local and regional services; such distribution of roles, understood by and acceptable to the stakeholders concerned, shall make it possible to avoid a power vacuum and the duplication of powers;

11. adapt the legal framework concerning local and regional public services in order to ensure that it is sufficiently flexible to allow diversification in the way of supplying them and in the choice of supplier – whether this is in the public or private, commercial or non-commercial sector;

V. As concerns performance management of local and regional public services

12. with due regard to the initiatives, powers and decision-making authority of local and regional authorities, stimulate and help them to set up effective performance management systems and to exchange their experience in these fields with authorities from other states on a regular basis;

13. ensure that the aim of any national initiative concerning performance management is to improve the services and not to penalise some authorities for their lower performance or to introduce new forms of control;

14. facilitate procurement of relevant information and make available information about the different choices concerning local and regional public service management methods, their management results and possible ways of improving relations with users, in co-operation with local and regional authorities, their associations and their training bodies;

15. encourage or facilitate, by all appropriate means, innovation in these matters, as well as exchanges of information among authorities at both national and international level, in co-operation with local and regional authorities, their associations and their training bodies;

VI. As concerns the action to be taken on this recommendation

16. draw inspiration from the guidelines appended to this recommendation for taking the appropriate political, legislative and financial measures to support and encourage local and regional authorities in their efforts to set up and adapt public services so as better to cater to public interest and fully respect users' rights and needs;

17. translate into their official language(s) and disseminate to local and regional authorities or their associations the present recommendation, inviting them to take note in particular of the guidelines addressed to them, which appear in Part II of the appendix.

<…>

APPENDIX TO RECOMMENDATION CM/REC(2007)4 GUIDELINES ON LOCAL AND REGIONAL PUBLIC SERVICES

PART I

Guidelines addressed to central authorities

These guidelines are addressed to central authorities, in so far as they are responsible for defining the legal framework of and for monitoring the activity of local or regional authorities.

In certain federal states, these powers are held by federate bodies. Where this is the case, these guidelines are addressed to them. The central authorities are invited to draw their attention to these guidelines.

Making users the central concern

1. The definition and regulation of services at national level should be based on the requirements of the public and the need to improve services constantly.

2. Making the public aware of public, local, regional or national authorities' acts and deliberations should normally be a condition for the enforceability of administrative decisions.

3. The obligation to disseminate general and full information should relate not only to the rules of law, but also to all facts relating to the organisation and operation of the service (nature of services, price, quality, times), which should be made available to all by differentiated means, taking into account the type of service and the characteristics of the population concerned.

Performance management

i. Implementation of a performance evaluation system

4. An understanding between the central and the local and regional authorities should be reached on a joint methodology and a series of common definitions, while ensuring that the methods of analysis are sufficiently flexible to take account of the considerable differences between the services, the authorities and their context.

5. A national policy on performance evaluation for local and regional public services should include the following:

a. an information production system promoting the use of separate accounting for each local or regional public service;

b. standardised indicators for every significant local or regional public service or category of service, which local and regional authorities could use in order to ascertain the performance of their services.

6. Central authorities should endeavour to ensure that the local and regional public service evaluation system is implemented in a sufficiently widespread fashion, through the spontaneous agreement of local and regional authorities and a mixture of incentives and binding measures. Spontaneous agreement is preferable and easier to obtain if the local and regional authorities are involved in defining the methodology they are asked to apply, and if this methodology makes it possible for them to engage in the process in stages, choosing their starting point.

7. The application of the system should be constant over time and regular, accurate and full information should be given about the findings of the evaluation.

8. Performance evaluation should not be used for political ends: reporting, in the light of political interests of a particular moment, only on the good or poor results of local and regional authorities would be a misleading use of information.

ii. Setting up of a national information policy

9. Central authorities should implement a national information policy which should pursue a dual objective: to enable citizens in general and users in particular to have access to essential information about local and regional public services (objectives, financial resources, results, etc.) on the one hand; and on the other, to promote exchanges of experience among local and regional authorities which have adopted an evaluation system.

10. Central authorities should collect and ensure the publication each year of the available information about services provided by local and regional authorities, in a form comprehensible to the general public. A certain amount of publicity should also be given to innovative experiments and to the most significant results.

iii. Taking stimulation measures

11. Central authorities, in co-operation with the associations of local and regional authorities, should hold national seminars for local and regional elected representatives and their authorities, or even real (or actual) training courses on performance management.

12. Central authorities could link the level of central government financial support for certain expenditure on local and regional public services to a performance evaluation system.

iv. Setting up of specific support structures

13. Central authorities should offer each authority who so wishes assistance in developing the management of its services, and should endeavour to palliate the technical and financial difficulties experienced by local and regional authorities in the use of evaluation systems.

14. If the need arises, central authorities should help those authorities wishing to introduce a performance evaluation system to organise an analysis of the needs in terms of resources, staff, estimated costs and know-how. Such "audits" could be entrusted to specialised central government officials, to specialist firms, or could be carried out with their assistance by the authorities concerned.

15. In order to help authorities who lack the necessary resources to collect and process information, the central authorities could, in agreement with the authorities concerned, set up an information collection system or provide financial support for initiatives taken for this purpose by local and regional authorities.

Delegation of public services to the private sector

16. Where necessary for the protection of citizens, and particularly for important services, the basic provisions concerning the conditions which private operators must meet when they supply local or regional services, and the monitoring conducted by public authorities in order to guarantee compliance with these conditions, should be laid down in legislation.

17. Central authorities should prepare handbooks, manuals and model contracts to help those local and regional authorities who decide to delegate public services, and provide a technical advisory service for those authorities who require it.

18. In association with local and regional authorities and their associations, central authorities should define, if necessary, at national level, an efficient system for the evaluation and comparison of the performance of private providers (see 20.) of public services.

Co-operation

19. Central authorities should make full use of the various forms of international co-operation available in order to exchange experience and identify good practice, particularly in those areas where there is usually less experience, such as needs and risk assessment and evaluation of service performance and impact.

20. The legislative framework for participation by the private sector, commercial and non-commercial, in the provision of local and regional public services should facilitate partnerships and modern forms of public contracts, and should make possible developments in information technologies.

PART II
Guidelines for local and regional authorities

The following guidelines are founded on the analysis made by the Council of Europe Steering Committee on Local and Regional Democracy (CDLR) of best practices among European local and regional authorities as regards the definition, regulation, management and financing of public services at local and regional level.

They have no legal value: local and regional authorities are invited to use these as guidance in their efforts to improve the services which they offer directly or indirectly to the population.

Making users the central concern

i. Services appropriate to the needs

21. Local and regional authorities should organise those services for which they are responsible in such a way as to efficiently meet the needs of the population living on their territory, taking into account the need to constantly improve the quality of their public services in order to keep pace with changing social demands, general political priorities, the requirements of proper economic management, and technological changes.

22. Equality among users should be one of the aims of local and regional public services, and this may necessitate the application to users of differential treatment (pricing, assistance, access conditions, etc.) so as to take into account their specific situations.

23. The national and regional provisions which ensure the continuity of essential services should be judiciously supplemented by local and regional agreements introducing arrangements for special occasions, such as holiday periods or long weekends.

24. In order to ensure that the principles of equality and continuity are introduced, local and regional authorities should ensure that certain public services remain available to residents, specifically where low population density makes them financially unprofitable; any withdrawal of a public service in such areas should be the subject of a duly reasoned decision, including proof, for example, that alternative solutions, such as the grouping of services, the provision of multipurpose services or the use of modern technologies, are not viable.

25. Local and regional authorities should endeavour to make their services more accessible through:

a)improved geographical proximity, implying the optimisation of the use of administrative outstations and offices;

b. a reduction in the time taken to access the service, through, for instance:

- simplified procedures;
- opening hours compatible with residents' timetables;
- a work organisation enabling a better throughput of users and avoid long queues;
- efficient public transport services;

c. reduced access costs, particularly for the most disadvantaged categories of users;

d. proper provision for special cases (disabled, destitute or illiterate people).

26. Where services of a more commercial nature are concerned (water, transport, energy, etc.), the "principle of the most favourable provision" could be adopted by the local and regional authorities; in accordance with this principle, where the situation and circumstances are similar, the guarantees enjoyed by public service users should not be less than those accorded to the customers of private firms.

ii. Information and publicity

27. Local and regional public services should organise their communication with users in such a way as to ensure that all interested persons are sufficiently aware of their rights and the services which are available to them, as well as the applicable rules. To this end, public services should draw up and implement a true information policy, in accordance with users' recognised right to information.

28. In order to prevent the complexity of the rules and the language used from making comprehension difficult and thereby giving rise to discrimination, the public services should constantly endeavour to make available information which is appropriate in both its form and its content.

29. Local and regional authorities should carefully examine ways of disseminating and accessing basic information, and select the most relevant media for a specific situation: display of notices, specialist reception service, local press, municipal bulletin, radio, television, Internet and other information technologies, telephone, etc.

30. In respect of all major projects and of the setting up, substantial alteration and withdrawal of services or facilities, users should receive detailed information in advance. They should be given the opportunity to express their view on this operation to the public authority who has decided to carry it out.

iii. Simplifying administrative procedures

31. Services should be designed and organised, and their administration specialised, in the light of citizens' needs, rather than administrative needs. There should be no partitioning of an artificial nature, or lacking transparency for the user, reception should be rationalised, multi-service counters and mobile offices should be introduced, etc.

32. Administrative and legal language, although naturally requiring rigour, should be viewed as a way of facilitating social relations. It should therefore be adapted to modern culture, so as to make it comprehensible to the greatest possible number of users.

33. As far as possible, precedence should be given to the setting of uniform standards, which are clear and valid for all local and regional public services, standards which all users are able to understand, respect and rely on.

34. Local and regional public services should avoid redundant, futile or excessively costly procedures, and require of users only what is strictly necessary to the performance of their tasks.

35. The staff of public services who come into contact with users should have received training for this task and should be strongly aware of both their duties and the rights of the users in whose service they are working. The physical organisation of the premises, greater responsibility and identification of the staff and personalisation of relations, including written ones, are all means of attaining these objectives.

iv. Dealing with users' complaints

36. The way in which customer complaints are dealt with should be a routine operation in any business and should be designed and organised accordingly. It should meet the dual need to find rapid solutions to the problems raised and, where a complaint is justified to remedy the underlying causes.

37. Users should easily be able to find out about and make use of complaints procedures, which should be simple. These should be widely drawn to their attention and organised in a way enabling speedy processing.

38. The practical conditions for dealing with complaints should be appropriate to the specific status of the service. It may be a specialised service, usually under the immediate responsibility of an elected representative, a body which has user representation, or a committee of elected representatives. In every case, it should have specially trained staff concerned about its effectiveness.

39. In cases where it is justified by the size or importance of the services, local and regional authorities could appoint an ombudsman, a member of their council or a specially appointed official, either for all their public services or for certain specific services.

v. Participation of users in the management of local and regional public services

40. Citizens should have many channels available for expressing their requests and voicing their criticism of local and regional public services: election of local and regional assemblies and executives, right of petition and complaint, attendance at meetings of deliberating assemblies, participation in referendums and, possibly, in popular initiatives, etc.

41. The information provided, available alternatives and the evaluation and monitoring procedures put into practice, should enable users through their own behaviour (choice of provider, replies to user satisfaction enquiries and questionnaires, etc.), to influence the production and distribution of public services far more than through delegates or through the proliferation of institutions and procedures set up for this purpose.

42. The opportunity of involving users in the management of public services should be examined; their participation should be encouraged where their interests can be best taken into account, but without fostering corporatism or excessively slowing down the management machinery. It is most of all in clearly collective services such as social, cultural or educational services that formal participation in the decisionmaking process could be usefully introduced, for instance in the form of ad hoc joint committees, representation of citizens on municipal committees or boards, an annual meeting of representatives of users and the services concerned based on a jointly agreed agenda.

43. Local and regional authorities should encourage the voluntary sector, sponsorship and private initiatives, which can, in conjunction with or supplementing, their public services, help to meet residents' collective needs: kindergartens, school meals, school transport, libraries, environment, assistance for the elderly, health, assistance for children in difficulty at school, etc.

44. Local and regional authorities should endeavour to involve NGOs and the other non-profit-making private-sector players in the definition of policies and services, to make use of their energy in the management and follow-up of activities, to make use of the information that they hold and make available to them some of the information held by the authorities, to participate in the financing of their activities, etc.

Provision of services

i. Management of services

45. Local and regional authorities should ensure that there is efficient and sound results-oriented management requiring a regular review of services on the basis of the following principles:

- a questioning of why, how and by whom a service is provided;
- a comparison with others' performance through a range of relevant indicators, taking into account both service users' and potential providers' opinions;
- consultation of local and regional taxpayers, the users of the service, partners and the broader business community in order to set new performance targets;
- fair and open competition wherever possible, as a means of ensuring that services are both efficient and effective.

46. Local and regional public services should adopt that form of management and method of financing which ensure the best synthesis of all the legitimate interests and offer the best cost-benefit ratio. In this context, they should take account of both direct effects and the side-effects of the service's activity, inter alia in terms of social solidarity, protection of the environment and efficient use of space.

47. Policies on the recruitment, training and careers of public service staff should make it possible to provide competent and motivated members of staff.

48. Even the smallest local and regional authorities should gradually acquire information technology (IT) equipment (hardware and software), train their staff and define their IT project in order to ensure proper management of information (collection, processing, sharing with other authorities and services), to provide relevant online services (information and advice, taking of certain steps such as filling in forms, paying taxes, etc.) and to encourage citizens to play their part in the selection, management and evaluation of services.

49. Local and regional authorities should make use of the most modern information techniques in order to target more accurately the services they offer and create databases containing statistical information about actual and potential users, supply and demand for each type of service, results, costs, full evaluations in terms of user satisfaction, service/price analysis, interesting experiments carried out, etc.

ii. Financing

50. Local and regional authorities should strike a fair balance between the participation of beneficiaries in the financing of services and their financing through taxation, that is, between the principle of individual responsibility (and that of instilling a sense of responsibility) and the principle of solidarity.

51. As far as possible, local and regional authorities should levy contributions on all who benefit directly or indirectly from the positive externalities generated by local and regional public services (accessibility, real estate capital gains, contribution to economic development), rather than just direct users.

52. The choice about the extent to which costs are to be covered by taxation should be made in full knowledge of the facts, on the basis of accurate and complete information; this choice should be the subject of a political decision before the event and should in no circumstances be a result of operation.

iii. Modernisation and innovation

53. Local and regional public services should play a part in the modernisation of public administration and offer frequent scope for trials in this field. They should adapt to the population's changing needs and adopt new techniques when these foster progress and enable user satisfaction levels to be improved.

54. Managers of public services should be attentive to the lessons that they can learn from the experience acquired by other authorities, including those in other countries. They should be encouraged to take part in the pooling of information, at regional, national or international level, in order to perfect the practice of local and regional public administration.

55. Local and regional authorities should organise and take part in pilot operations to introduce new techniques, even in areas where they do not have a leading role to play. They should, in particular, perform a prominent and exemplary role where energy-saving and anti-pollution policies are concerned.

56. Pursuit of innovation in the field of local and regional public services should not have a purely technical focus. Innovation is equally possible in new social practices, in the field of welfare or health, safety, drug prevention, training, citizen participation in public decisions, cultural or sports activities, etc.

Performance management

i. Principles of evaluating performance

57. Local and regional authorities should introduce a system of performance evaluation carried out regularly and publicly. In order to make such evaluation possible, it is necessary to set up appropriate information systems concerning existing services and the needs of the population, and to ensure that relevant information is exchanged among the various authorities involved.

58. Performance evaluation should become a criterion to be followed when decisions are to be taken about policy options, particularly in relation to the local and regional public service management system, as it is a means:

– of improving local and regional public services, consistent with requirements, their results, their impact and their value for money;

– of increasing the effectiveness of the monitoring of the use of public resources by local and regional elected bodies;

– of providing users with appropriate information about services;

– of guaranteeing greater transparency for public activity;

– of increasing citizens' participation in decisions relating to the organisation of the services and the actual activities they have to carry out.

59. Local and regional authorities should assess the performance of their services by means of performance indicators. The ultimate aim should be user satisfaction, and therefore improvement of the service (in terms of effectiveness, efficiency and economy).

60. Political and administrative monitoring should concentrate on the setting of targets and the evaluation of results, while leaving local and regional public service managers adequate freedom of action and responsibility. The purpose of this monitoring should be not only to prevent or penalise irregularities, but also to improve service quality by placing the emphasis on consistency between the targets set and the results obtained.

61. Local and regional authorities should frame their own information policies, in order to make known the objectives of the public services for which they are responsible, and periodically to provide their public with appropriate information about the services rendered and the results achieved in light of the targets set. The aim of this policy should be not only to ensure that public activity is transparent, but also to create communication channels enabling the public to make known its opinion of the management of the services received.

ii. Implementation of the evaluation system

62. Local and regional authorities should endeavour to plan – possibly following guidelines set at national level – the phased implementation of a system for evaluating the performance of their services. For this, they could rely on the already numerous experiments carried out in other countries.

63. Each major service should be periodically evaluated to establish the degree of user satisfaction, as measured by several straightforward indicators (number of subscribers or cancelled subscriptions, levels of use, pricing, income received, numbers of official complaints, specific surveys, etc). This assessment should be public, and could also be the object of a public examination.

64. When evaluating their services, local and regional authorities should include positive or negative spillover effects (influences outside the provider-user system) produced by the services concerned.

65. Local and regional authorities should obtain the skills required to evaluate performance, either directly (specialised staff) or indirectly (use of independent management auditors) and ensure that the persons responsible for evaluation are not open to influence from service providers.

66. A first step towards implementation of an evaluation system should be the introduction of separate accounting for each service. This would facilitate evaluation of costs, guarantee transparency and the appropriateness of financing and strengthen the responsibility of managers, drawing on the model of similar private services.

67. Networks should be set up to promote consultation, adopt common indicators, standardise the measurement of performance of certain services and make it comparable. An important role could be taken on in this context by the national associations of local and regional authorities.

68. Where specific structures are set up by central government to process statistics, or other data, relating to local and regional public services, local and regional authorities should play an active part in the information collection system, and should make available to the management centres set up at national or regional level, all the information and indicators at their disposal.

69. In the absence of central government action to process statistics, it would be appropriate for local and regional authorities to study methods of co-operation between themselves in order to exchange information and experience using a common method of analysis.

iii. Improving the management of local and regional public services

70. Local and regional authorities should ensure that "control panels" and benchmarking systems are introduced for regular use by decision makers and by the staff concerned, in order to detect in good time the changes and the results of the various policies, but also to make possible a comparison with the results achieved by other similar services. The "control panels" and benchmarking systems should preferably be public and accessible to all citizens, for example on the Internet.

71. Local and regional authorities should ensure that services are improved and/or redefined in the light of the results of performance evaluation procedures.

72. The criteria used in performance evaluation should be quantifiable, accurate, and reliable, even where the situation is changing, and should be known in advance without giving rise to adaptation with undesirable effects.

Delegation of public services to the private sector

i. Decisions to delegate

73. When local and regional authorities decide to delegate a public service they should bear in mind only the interest of the community and use as their basis clear and reliable data, particularly in light of the relationship between quality and price for users and for taxpayers. Where a public service is delegated, the delegating authority should retain political and legal responsibility.

74. Local and regional authorities should not delegate those responsibilities which imply a significant use of public authority. Delegation of a service should not jeopardise citizens' fundamental rights and freedoms, statutory guarantees and other requirements of good governance (including the citizens' right to be heard in matters concerning them, the need to justify decisions and the right of remedy).

75. The criteria on which any decision to delegate a public service was based, the operator selected and the results of the various evaluations should be widely publicised.

ii. Contractual clauses

76. Local and regional authorities should define clearly in the specifications the management objectives, in quantitative and qualitative terms, and should ensure, in the concession/delegation contract, that risks and responsibilities are clearly shared out, that the financing structure is clear and that there are strict information and evaluation procedures.

77. If the type of service so requires, local and regional authorities should ensure that the public interest and the most disadvantaged persons are protected through the introduction of public service obligation clauses in the concession contract. They should compensate for these public service obligations not on the basis of effective costs, but more of "output" (volume of services, number of users, etc.), or in the form of a fixed sum to be established in advance.

78. Local and regional authorities should define the period of service delegation contracts taking account of the operator's need to develop its policies and recoup its investment, but also the need to encourage the operator to improve its performance in order to obtain renewal of the contract; generally speaking, a period of between five and ten years should meet both requirements.

79. Local and regional authorities should ensure that private operators are made responsible, by involving them, through contractual clauses and the financing structure, in the various types of risk: relating to investment, industrial (on costs) and commercial (on income).

iii. Financing of delegated services

80. Local and regional authorities should not use transfers of public funds to the operator in order to offset the results of poor management, but solely in order:

a. to share the costs between direct and indirect beneficiaries;

b. to act in the interest of disadvantaged persons;

c. to encourage the least harmful services for the environment;

d. to ensure sustainable development and make the community more attractive both as a place to live in and for firms.

81. Having set the portion of costs to be covered by public resources, local and regional authorities should finance this portion mainly through public service obligation compensation (compensation for providing a service to remote areas, for reduced rates, etc).

82. Local and regional authorities should avoid subsidising the operator and allow it to obtain a substantial part of its income from fees paid by users. In order to improve the access of the most disadvantaged persons, it is appropriate to give precedence, in addition to the remuneration of public service obligations, to the granting of subsidies directly to users (cost exemption or reductions, vouchers, etc.) ,depending on their number and composition. Any possible subsidy to cover a deficit should not be granted except in specific cases (for example, when there is a strong will to promote the use of a service deemed essential to urban or rural development), and should be set before the start of the financial year on the basis of standard costs, not effective expenditure.

83. Local and regional authorities should clearly identify the implicit subsidies (premises made available, reduction in tax, etc.), consolidate these in any management analysis, and grant them subsequent to a clear decision made in full knowledge of the facts.

<…>

Recommendation № Rec (2001) 19 of the Committee of Ministers on the participation of citizens in local public life

(Adopted by the Committee of Ministers on 6 December 2001 at the 776th meeting of the Ministers' Deputies)

(Extract)

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

<...>

Recommends that the governments of member states:

1. frame a policy, involving local and-- where applicable- regional authorities, designed to promote citizens' participation in local public life, drawing on the principles of the European Charter of Local Self-Government adopted as an international treaty on 15 October 1985 and ratified to date by a large majority of Council of Europe member states, as well as on the principles contained in Appendix I to this Recommendation;

2. adopt, within the context of the policy thus defined and taking into account the measures listed in Appendix II to this recommendation, the measures within their power, in particular with a view to improving the legal framework for participation and ensuring that national legislation and regulations enable local and regional authorities to employ a wide range of participation instruments in conformity with paragraph 1 of Recommendation No. R (2000) 14 of the Committee of Ministers to member states on local taxation, financial equalisation and grants to local authorities;

3. invite, in an appropriate way, local and regional authorities:

- to subscribe to the principles contained in Appendix I to this recommendation and to undertake the effective implementation of the policy of promoting citizens' participation in local public life;
- to improve local regulations and practical arrangements concerning citizens' participation in local public life, and to take any other measures within their power to promote citizens' participation, with due regard for the measures listed in Appendix II to this recommendation;

4. ensure that this recommendation is translated into the official language or languages of their respective countries and, in ways they consider appropriate. is published and brought to the attention of local and regional authorities;

APPENDIX I

Basic principles of a local democratic participation policy

1. Guarantee the right of citizens to have access to clear, comprehensive information about the various matters of concern to their local community and to have a say in major decisions affecting its future.

2. Seek tor new ways to enhance civic-mindedness and to promote a culture of democratic participation shared by communities and local authorities.

3. Develop the awareness of belonging to a community and encourage citizens to accept their responsibility to contribute to the life of their communities.

4. Accord major importance to communication between public authorities and citizens and encourage local leaders to give emphasis to citizens' participation and careful consideration to their demands and expectations, so as to provide an appropriate response to the needs which they express.

5. Adopt a comprehensive approach to the issue of citizens' participation, having regard both to the machinery of representative democracy and to the forms of direct participation in the decision-making process and the management of local affairs.

6. Avoid overly rigid solutions and allow for experimentation, giving priority to empowerment rather than to laying down rules; consequently, provide for a wide range of participation instruments, and the possibility of combining them and adapting the way they are used according to the circumstances.

7. Start from an in-depth assessment of the situation as regards local participation, establish appropriate benchmarks and introduce a monitoring system for tracking any changes therein, in order to identify the causes of any positive or negative trends in citizen participation, and in order to gauge the impact of the mechanisms adopted.

8. Enable the exchange of information between and within countries on best practices in citizen participation, support local authorities' mutual learning about the effectiveness of the various participation methods and ensure that the public is fully informed about the whole range of opportunities available.

9. Pay particular attention to those categories of citizens who have greater difficulty becoming actively involved or who, de facto, remain on the sidelines of local public life.

10. Recognise the importance of a fair representation of women in local politics.

11. Recognise the potential that children and young people represent for the sustainable development of local communities and emphasise the role they can play.

12. Recognise and enhance the role played by associations and groups of citizens as key partners in developing and sustaining a culture of participation and as a driving force in the practical application of democratic participation.

13. Enlist the joint effort of the authorities at every territorial level, with each authority being responsible for taking appropriate action within its competence, according to the principle of subsidiarity.

APPENDIX II

Steps and measures to encourage and reinforce citizens' participation in local public life

A. General steps and measures

I. Ascertain whether, in a complex and increasingly globalised world, the relevance of local action and decision-making is made clear to the public by identifying core roles for local authorities in a changing environment.

<…>

4. Encourage local elected representatives and local authorities, by any suitable means including the drafting of codes of conduct, to behave in a manner consistent with the high ethical standards and ensure compliance with these standards.

5. Introduce greater transparency into the way local institutions and authorities operate, and in particular:

i. ensure the public nature of the local decision-making process (publication of agendas of local council and local executive meetings; meetings of the local council and its committees open to the public; question and answer sessions, publication of minutes of meetings and decisions, etc.);

ii. ensure and facilitate access by any citizen to information concerning local affairs (setting up information bureaus, documentation centres, public databases; making use of information technology; simplifying administrative formalities and reducing the cost of obtaining copies of documents, etc.);

iii. provide adequate information on administrative bodies and their organisational structure, and inform citizens who are directly affected by any ongoing proceedings of the progress of these proceedings and the identity of the persons in charge.

6. Implement a fully-fledged communication policy, in order to afford Citizens the opportunity to better understand the main issues of concern to the community and the implications of the major political decisions which its bodies are called upon to make, and to inform citizens about the opportunities for, and forms of; participation in local public life.

7. Develop, both in the most populated urban centres and in rural areas, a form of neighbourhood democracy, so as to give citizens more influence over their local environment and municipal activities in the various areas of the municipality. More specifically:

i. set up, at sub-municipal level, bodies, where appropriate elected or composed of elected representatives, which could be given advisory and information functions and possibly delegated executive powers;

ii. set up, at sub-municipal level, administrative offices to facilitate contacts between local authorities and citizens;

iii. adopt, in each area, an integrated approach to the organisation and provision of public services, based on a willingness to listen to citizens and geared to the needs which they express;

iv. encourage local residents to become involved - directly or via neighbourhood associations - in the design and implementation of projects which have a direct bearing on their environment, such as the creation and maintenance of green areas and playgrounds, the fight against crime, the introduction of support/self-help facilities (childcare, care for the elderly, etc.).

<...>

C. Steps and measures to encourage direct public participation in local decision-making and the management of local affairs

1. Promote dialogue between citizens and local elected representatives and make local authorities aware of the various techniques for communicating with the public, and the wide range of ways in which the public can play a direct part in decision-making. Such awareness could be developed through the publication of guidelines (e.g. in the form of a charter for public participation at local level), the holding of conferences and seminars or the establishment of a well-maintained website so that examples of good practice could be posted and accessed.

2. Develop, through surveys and discussions, an understanding of the strengths and weaknesses of the various instruments of citizens' participation in decision-making and encourage innovation and experimentation in local authorities' efforts to communicate with the public and involve it more closely in the decision-making process.

3. Make full use, in particular, of:

i. new information and communication technologies, and take steps to ensure that local authorities and other public bodies use (in addition to the traditional and still valuable methods such as formal public notices or official leaflets) the full range of communications facilities available (interactive websites, multi-channel broadcast media, etc.);

ii. more deliberative forms of decision-making, i.e. involving the exchange of information and opinions, for example: public meetings of citizens; citizens' juries and various types of forums, groups, public committees whose function is to advise or make proposals; round tables, opinion polls, user surveys, etc.

4. Introduce or, where necessary, improve the legislation/regulations which enable:

i. petitions/motions, proposals and complaints filed by citizens with the local council or local authorities;

ii. popular initiatives, calling on elected bodies to deal with the matters raised in the initiative in order to provide citizens with a response or initiate the referendum procedure;

iii. consultative or decision-making referendums on matters of local concern, called by local authorities on their own initiative or at the request of the local community;

iv. devices for co-opting citizens to decision-making bodies, including representative bodies;

v. devices for involving citizens in management (user committees, partnership boards, direct management of services by citizens, etc.).

5. Give citizens more influence over local planning and, in a general manner, over strategic and long-term decisions; more specifically:

i. give citizens the opportunity to become involved in the various stages of the decision-making process concerning these decisions, notably by dividing this process into several stages (for example programming, drafting of projects and alternatives. implementation, budgetary and financial planning);

ii. illustrate each phase of the planning process by means of a lucid, intelligible material that is readily accessible to the public, using, if possible. in addition to the traditional methods (maps, scale models, audiovisual material) the other media available through new technologies (CD-Rom, DVD, electronic documentary bases accessible to the public).

6. Develop systematic feed-back mechanisms to involve citizens in the evaluation and the improvement of local management.

7. Ensure that direct participation has a real impact on the decision-making process, that citizens are well informed about the impact of their participation and that they see tangible results. Participation that is purely symbolic or used to simply grant legitimacy to pre-ordained decisions is unlikely to win public support. However, local authorities must be honest with the public about the limitations of the forms of direct participation on offer, and avoid arousing exaggerated expectations about the possibility of accommodating the various interests involved, particularly when decisions are made between conflicting interests or about rationing resources.

8. Encourage and duly recognise the spirit of volunteering that exists in many local communities, for example through grant schemes or other forms of support and encouragement for non-profit, voluntary and community organisations, citizens' action groups, etc., or through the forging of contracts or agreements between these organisations and local authorities concerning the respective rights, roles and expectations of these parties in their dealings with one another.

D. Specific steps and measures to encourage categories of citizens who, for various reasons, have greater difficulty in participating

1. Collect, on a regular basis, information on the participation of the various categories of citizens and ascertain whether certain ones such as women, young people, underprivileged social groups and certain professional groups are under-represented in the elected bodies and/or play little or no part in electoral or direct forms of participation.

2. Set targets for achieving certain levels of representation and/or participation of the groups of citizens concerned and devise packages of specific measures to increase the opportunities for their participation, for example:

i. introduce, tor the groups of citizens concerned, an active communications and information policy including, where appropriate, specific media campaigns to encourage them to participate (consideration will be given to adopting a particular language, media and campaign style geared to the needs of each group);

ii. introduce specific institutional forms of participation, designed, where possible, in consultation with the group or groups of citizens whose involvement is being encouraged (there is a wide range of possibilities for meeting the specific needs of various groups, such as various forms of meetings, conferencing or co-option);

iii. appoint officials specifically responsible for dealing with matters of concern to the excluded groups, passing on their demands for change to the relevant decision-making bodies and reporting back to the groups on the progress made and the response (positive or negative) given to their demands.

3. As regards women in particular:

i. emphasise the importance of a fair representation of women in decision-making bodies and consider any arrangements which might make it easier to combine active political involvement with family and working life;

ii. consider, if legally possible, the introduction of compulsory or recommended quota systems for the minimum number of same-sex candidates who can appear on an electoral list and/or a quota of seats reserved for women on local councils, local executive bodies and the various committees and boards formed by local bodies.

4. As regards young people in particular:

i. develop the school as an important common arena for young people's participation and democratic learning process;

ii. promote "children's council" and "youth council" type initiatives at municipal level, as genuinely useful means of education in local citizenship, in addition to opportunities for dialogue with the youngest members of society;

iii. encourage youth associations and, in particular, promote the development of flexible forms and structures tor community involvement, such as youth centres, making full use of young people's capacity to design projects themselves and to implement them;

iv. consider the reduction of the age for voting in or standing for local elections and for participating in local referendums, consultations and popular initiatives;

v. consider the various other types of initiative suggested by the European Charter on the Participation of Young People in Municipal and Regional Life adopted by the Congress of Local and Regional Authorities of Europe in 1992.

5. As regards foreigners in particular, encourage their active participation in the life of the local community on a non-discriminatory basis, by complying with the provisions contained in the Council of Europe's Convention on the participation of foreigners in public life at local level of 1992, even when its provisions are not legally binding on states, or, at least, by drawing inspiration from the mechanisms referred to in this Convention.

<…>

Recommendation № Rec (2001) 9 of the Committee of Ministers on alternatives to litigation between administrative authorities and private parties

(Adopted by the Committee of Ministers on 5 September 2001 at the 762nd meeting of the Ministers' Deputies)

(Extract)

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

<...>

13. Recommends that the governments of member states promote the use of alternative means for resolving disputes between administrative authorities and private parties by following, in their legislation and their practice, the principles of good practice contained in the appendix to this recommendation.

APPENDIX TO RECOMMENDATION REC(2001)9

I. General provisions

1. Subject of the recommendation

i. This recommendation deals with alternative means for resolving disputes between administrative authorities and private parties.

ii. This recommendation deals with the following alternative means : internal reviews, conciliation, mediation, negotiated settlement and arbitration.

iii. Although the recommendation deals with resolving disputes between administrative authorities and private parties, some alternative means may also serve to prevent disputes before they arise; this is particularly the case in respect of conciliation, mediation and negotiated settlement.

2. Scope of alternative means

i. Alternative means to litigation should be either generally permitted or permitted in certain types of cases deemed appropriate, in particular those concerning individual administrative acts, contracts, civil liability, and generally speaking, claims relating to a sum of money.

ii. The appropriateness of alternative means will vary according to the dispute in question.

3. Regulating alternative means

i. The regulation of alternative means should provide either for their institutionalisation or their use on a case-by-case basis, according to the decision of the parties involved.

ii. The regulation of alternative means should:

a. ensure that parties receive appropriate information about the possible use of alternative means;

b. ensure the independence and impartiality of conciliators, mediators and arbitrators;

c. guarantee fair proceedings allowing in particular for the respect of the rights of the parties and the principle of equality;

d. guarantee, as far as possible, transparency in the use of alternative means and a certain level of discretion;

e. ensure the execution of the solutions reached using alternative means.

iii. The regulation should promote the conclusion of alternative procedures within a reasonable time by setting time-limits or otherwise.

iv. The regulation may provide that the use of some alternative means to litigation will in certain cases result in the suspension of the execution of an act, either automatically or following a decision by the competent authority.

II. Relationship with courts

i. Some alternative means, such as internal reviews, conciliation, mediation and the search for a negotiated settlement, may be used prior to legal proceedings. The use of these means could be made compulsory as a prerequisite to the commencement of legal proceedings.

ii. Some alternative means, such as conciliation, mediation and negotiated settlement, may be used during legal proceedings, possibly following a recommendation by the judge.

iii. The use of arbitration should, in principle, exclude legal proceedings.

iv. In all cases, the use of alternative means should allow for appropriate judicial review which constitutes the ultimate guarantee for protecting both users' rights and the rights of the administration.

v. Judicial review will depend upon the alternative means chosen. Depending on the case, the types and extent of this review will cover the procedure, in particular the respect for the principles stated under section I.3.ii.*a, b, c*, and *d*, and/or the merits.

vi. In principle and subject to the law, the use of alternative means should result in the suspension or interruption of the time-limits for legal proceedings.

<…>

Recommendation № CM/Rec (2010) 13 of the Committee of Ministers on the protection of individuals with regard to automatic processing of personal data in the context of profiling

(Adopted by the Committee of Ministers on 23 November 2010 at the 1099th meeting of the Ministers' Deputies)

(Extract)

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve ever closer union among its members;

<…>

Recommends that the governments of member states:

- apply the appendix to the present recommendation to the collection and processing of personal data used in the context of profiling notably by taking measures to ensure that the principles set out in the appendix to this recommendation are reflected in their law and practice;
- ensure the broad dissemination of the principles set out in the appendix to this recommendation among persons, public authorities and public or private bodies, particularly those which participate in and use profiling, such as designers and suppliers of software, profile designers, electronic communications service providers and information society service providers, as well as among the bodies responsible for data protection and the standardisation bodies;
- encourage such persons, public authorities and public or private bodies to introduce and promote self-regulation mechanisms, such as codes of conduct, ensuring respect for privacy and data protection, and put in place the technologies found in the appendix to this recommendation.

APPENDIX TO RECOMMENDATION NO. CM/REC (2010) 13

1. Definitions

For the purposes of this recommendation:

a. "Personal data" means any information relating to an identified or identifiable individual ("data subject"). An individual is not considered "identifiable" if identification requires unreasonable time or effort.

b. "Sensitive data" means personal data revealing the racial origin, political opinions or religious or other beliefs, as well as personal data on health, sex life or criminal convictions, as well as other data defined as sensitive by domestic law.

c. “Processing” means any operation or set of operations carried out partly or completely with the help of automated processes and applied to personal data, such as storage, conservation, adaptation or alteration, extraction, consultation, utilisation, communication, matching or interconnection, as well as erasure or destruction.

d. “Profile” refers to a set of data characterising a category of individuals that is intended to be applied to an individual.

e. “Profiling” means an automatic data processing technique that consists of applying a “profile” to an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

f. “Information society service” refers to any service, normally provided for remuneration, at a distance, by electronic means.

g. “Controller” means the natural or legal person, public authority, agency or any other body which alone, or in collaboration with others, determines the purposes of and means used in the collection and processing of personal data.

h. “Processor” means the natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller.

2. General principles

2.1. The respect for fundamental rights and freedoms, notably the right to privacy and the principle of non-discrimination, shall be guaranteed during the collection and processing of personal data subject to this recommendation.

<…>

3. Conditions for the collection and processing of personal data in the context of profiling

A. Lawfulness

3.1. The collection and processing of personal data in the context of profiling should be fair, lawful and proportionate, and for specified and legitimate purposes.

3.2. Personal data used in the context of profiling should be adequate, relevant and not excessive in relation to the purposes for which they are collected or for which they will be processed.

3.3. Personal data used in the context of profiling should be stored in a form that allows the identification of the data subjects for a period no longer than is necessary for the purposes for which they are collected and processed.

3.4. Collection and processing of personal data in the context of profiling may only be performed:

a. if it is provided for by law; or

b. if it is permitted by law and:

– the data subject or her or his legal representative has given her or his free, specific and informed consent;

– is necessary for the performance of a contract to which the data subject is a party or for the implementation of pre-contractual measures taken at the request of the data subject;

– is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the personal data are disclosed;

– is necessary for the purposes of the legitimate interests of the controller or the third party or parties to whom the profiles or data are disclosed, except where such interests are overridden by the fundamental rights and freedoms of the data subjects;

– is necessary in the vital interests of the data subject.

3.5. The collection and processing of personal data in the context of profiling of persons who cannot express on their own behalf their free, specific and informed consent should be forbidden except when this is in the legitimate interest of the data subject or if there is an overriding public interest, on the condition that appropriate safeguards are provided for by law.

3.6. When consent is required it is incumbent on the controller to prove that the data subject has agreed to profiling on an informed basis, as set out in Section 4.

3.7. As much as possible, and unless the service required necessitates knowledge of the data subject's identity, everyone should have access to information about goods or services or access to these goods or services themselves without having to communicate personal data to the goods or services provider. In order to ensure free, specific and informed consent to profiling, providers of information society services should ensure, by default, non-profiled access to information about their services.

3.8. The distribution and use, without the data subject's knowledge, of software aimed at the observation or the monitoring in the context of profiling of the use being made of a given terminal or electronic communication network should be permitted only if they are expressly provided for by domestic law and accompanied by appropriate safeguards.

<…>

Recommendation of the Congress of local and regional authorities of the Council of Europe № 188 (2006) 1 on good governance in European metropolitan areas

(Extract)

The Congress,

<…>

8. Invites member states of the Council of Europe to take into account the following recommendations on Good Metropolitan Governance in shaping new, or reforming existing, metropolitan areas:

a. a metropolitan area should pursue the following objectives within the framework of Good Metropolitan Governance:

I. provide a good level of services across its territory to the population and ensure good quality of living conditions and safeguard environmental quality;

II. stimulate development of economic and cultural life as well as infrastructures within the area;

III. create forms of integration, effective co-operation and coherence to co-ordinate the separate and fragmented local authorities,

IV. create horizontal and vertical co-operation or coordination between various levels of public authorities as well as between these authorities and the non-governmental sector.

b. to achieve these objectives the metropolitan areas should be able to rely on the following elements in their policy:

I. a coherent legislative, normative and institutional framework. In particular, member states can support metropolitan governance processes by offering a legislative framework for self-organisation processes, for example in financial equalisation, spatial planning law or in legislation that fosters inter-communal co-operation;

II. a clear-cut set of competences: metropolitan areas often carry out responsibilities which requires specific legislation;

iii. appropriate funding and organisational capacities. Metropolitan areas have specific needs in order to carry out their responsibilities which require a sound organisational basis and corresponding financing;

IV. a clear radius of action and instruments for implementation of their action (central areas/suburbs);

9. The following elements should be used as criteria for the evaluation of governance structures and processes:

a. degree of transparency of the decision-making process: institutions and main stakeholders of the governance process should work in an open way and explain how decisions are made. Openness is designed to strengthen the trust of different partners and the co-ordination process as a whole;

b. degree of public involvement: Good Governance can be characterised by co-ordination of short-term actions of individual stakeholders with long-term planning by means of common visions and objectives. Thus, it is important that stakeholders should become involved in the policy making process from the conception phase to the implementation, which creates confidence in the results of policy making. Different co-ordination schemes and processes involving public, economic and civic stakeholders should be encouraged;

c. degree of accountability of public institutions: the division of tasks and responsibilities of conception, decision making and implementation between and within different institutions in metropolitan areas has to be clear. The implementation of tasks and the accountability towards stakeholders should be assigned according to the principle of subsidiarity as close as possible to the citizen;

d. degree of effectiveness and efficiency of the decisionmaking process: decisions in urban politics and metropolitan governance have to be timely and should be well-founded on clear long-term objectives;

e. degree of coherence in the policy-making process: policies and actions have to be coherent and easy to comprehend. The growing number of tasks which have to be solved in metropolitan areas call for coherence between the different strategies. To ensure coherence between sectoral and territorial policies a range of essential stakeholders and institutions has to be involved in co-ordination processes. The principle of democracy demands transparency and accountability; this obligation also applies to procedures designed to ensure coherence;

f. degree of sustainability: the central objective of governance activities should be sustainable metropolitan development. Sustainability refers to the challenge of urban and regional policies to balance social, economic and environmental issues and needs for present and future generations.

<…>

Recommendation № 1615 (2003) of the Parliamentary Assembly, which calls on the Committee of Ministers to draft a model text for a basic individual right to good administration and a single, comprehensive, consolidated model code of good administration

(Extract)

<...>

10. Accordingly, the Assembly recommends that the governments of Council of Europe member states:

10.1. create at national level (and at regional and local level as appropriate), where it does not already exist, an institution bearing a title similar to that of "parliamentary (/regional/ local government) ombudsman", preferably by incorporation into the constitution;

10.2. ensure that the institution of parliamentary ombudsman exhibits the characteristics described in paragraph 7 above, and that these characteristics are sufficiently protected and appropriately elaborated in the enabling legislation and statute;

10.3. give this institution a mandate which clearly encompasses human rights as being fundamental to the concept of good administration, and which includes a wider role in human rights protection where, in the absence of specific complementary alternative mechanisms, national circumstances so require;

10.4. exclude from the mandate of this institution the power to enter into litigation against either the administration or individual officials, whether before criminal or administrative courts, but to consider allowing the ombudsman to apply to the constitutional court for interpretative judgments;

10.5. engage fully with the Commissioner for Human Rights in his work of co-ordinating the activities of member states' ombudsmen;

10.6. following the drafting of a model text by the Committee of Ministers, adopt at constitutional level an individual right to good administration;

10.7. following the drafting of a model text by the Committee of Ministers, adopt and implement fully a code of good administration, to be effectively publicised so as to inform the public of their rights and legitimate expectations.

11. The Assembly further recommends that the Committee of Ministers:

11.1. encourage member states to implement Recommendation No. R (85) 13, whilst also giving effect to the more detailed provisions of the present recommendation;

11.2. draft a model text for a basic individual right to good administration;

11.3. draft a single, comprehensive, consolidated model code of good administration, deriving in particular from Committee of Ministers Recommendation No. R (80) 2 and Resolution (77) 31 and the European Code of Good Administrative Behaviour, with the involvement of the appropriate organs of the Council of Europe – in particular the Commissioner for Human Rights and the European Commission for Democracy through Law, as well as the Assembly – and in consultation with the European Ombudsman, thus providing elaboration of the basic right to good administration so as to facilitate its effective implementation in practice;

11.4. encourage and provide technical assistance to governments of Council of Europe member states in adopting and implementing the above-mentioned right and code;

11.5. support the Commissioner for Human Rights in his work of co-ordinating the activities of member states' ombudsmen.

<...>

Recommendation № R (91) 1 of the Committee of Ministers on administrative sanctions

(Adopted by the Committee of Ministers on 13 February 1991 at the 452nd meeting of the Ministers' Deputies)
(Extract)

The Committee of Ministers, under the terms of Article 15.6 of the Statute of the Council of Europe,

<...>

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

Scope

This recommendation applies to administrative acts which impose a penalty on persons on account of conduct contrary to the applicable rules, be it a fine or any punitive measure, whether pecuniary or not.

These penalties are hereinafter referred to as administrative sanctions.

The following are not considered to be administrative sanctions:

- measures which administrative authorities are obliged to take as a result of criminal proceedings ;
- disciplinary sanctions.

In the implementation of these principles, the requirements of good and efficient administration, as well as major public interests should be 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 effort should nevertheless be made to observe respect for the greatest possible degree of equity, according to the general aims of this recommendation.

Principles

Principle 1

The applicable administrative sanctions and the circumstances in which they may be imposed shall be laid down by law.

Principle 2

1.No administrative sanction may be imposed on account of an act which, at the time when it was committed, did not constitute conduct contrary to the applicable rules. Where a less onerous sanction was in force at the time when the act was committed, a more severe sanction subsequently introduced may not be imposed.

2.The entry into force, after the act, of less repressive provisions should be to the advantage of the person on whom the administrative authority is considering imposing a sanction.

Principle 3

1.A person may not be administratively penalised twice for the same act, on the basis of the same rule of law or of rules protecting the same social interest.

2.When the same act gives rise to action by two or more administrative authorities, on the basis of rules of law protecting distinct social interests, each of those authorities shall take into account any sanction previously imposed for the same act.

Principle 4

1.Any action by administrative authorities against conduct contrary to the applicable rules shall be taken within a reasonable time.

2.When administrative authorities have set in motion a procedure capable of resulting in the impo-sition of an administrative sanction, they shall act with reasonable speed in the circumstances.

Principle 5

Any procedure capable of resulting in the imposition of an administrative sanction which has been instituted in respect of a person shall give rise to a decision which terminates the proceedings.

Principle 6

1.In addition to the principles of fair administrative procedure governing administrative acts as set out in Resolution (77) 31, the following principles shall apply specifically to the taking of administrative sanctions:

i.Any person faced with an administrative sanction shall be informed of the charge against him.

ii.He shall be given sufficient time to prepare his case, taking into account the complexity of the matter as well as the severity of the sanctions which could be imposed upon him.

iii.He or his representative shall be informed of the nature of the evidence against him.

iv.He shall have the opportunity to be heard before any decision is taken.

v.An administrative act imposing a sanction shall contain the reasons on which it is based.

2.Subject to the consent of the person concerned and in accordance with the law, the principles in paragraph 1 may be dispensed with in cases of minor importance, which are liable to limited pecuniary penalties.

However, if the person concerned objects to the proposed sanction, all the guarantees of para-graph 1 shall apply.

Principle 7

The onus of proof shall be on the administrative authority.

Principle 8

An act imposing an administrative sanction shall be subject, as a minimum requirement, to control of legality by an independent and impartial court established by law.

<...>

Recommendation № CM/Rec (2007) 12 of the Committee of Ministers on capacity building at local and regional level[2]

(adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies)

(Extract)

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

<…>

Recommends the governments of member states:

1. to recognise clearly:

   a. the importance of local government capacity to deliver high quality local public services and to engage the inhabitants in the democratic functioning of local authorities;

   b. that the capacity of local government hinges essentially on the skills of elected representatives, the corporate management capacity of the organisation, the workforce capacity (its skills, recruitment and retention) and financial and project management skills;

   c. the importance of developing this capacity further;

2. to co-operate, where appropriate, with local authorities and other stakeholders including associations of local authorities in drawing up a strategic approach to the development of the capacity of local government which identifies needs, devises concrete, practical and targeted programmes and makes arrangements for their implementation;

3. to enable, encourage and, where appropriate, help local authorities and other stakeholders including associations of local authorities, within a framework of consultation and co-operation and drawing on the strategic approach, to:

- develop their role in strengthening local government capacity, as concerns both elected representatives and staff;
- draw up their own strategic plans for building up the capacities of local authorities to continually enhance their leadership and strategic management, service provision, community participation and public ethics;
- establish the necessary structures, processes and capacities within their own organisation to research, plan, fund, implement and evaluate capacity-building programmes for local and regional authorities;
- make best use of such capacity-building methodologies as training, peer review, benchmarking and sharing of best practices;
- make the best use of performance management techniques to improve standards of service provision;
- draw on relevant parts of the Council of Europe's acquis and tools, including notably Committee of Ministers' Recommendation Rec(2001)19 on the participation of citizens in local public life and the Handbook of good practices on public ethics at local level;

2 For the purposes of this recommendation, the term "elected representatives" includes, as appropriate, non elected persons who hold a local mandate and are politically accountable to a directly elected local assembly.

4. to review, where it is within their competence, with relevant stakeholders, including, as the case may be, local authorities and/or their associations, the conditions of service of local government employees with a view to ensuring that they permit the recruitment of high quality staff on the basis of merit and competence and that to this end adequate training opportunities, remuneration and career prospects are provided;

5. to share with other member states and international partners capacity-building tools, the results of the programmes implemented with them and make the best possible use of this information;

6. to encourage, where appropriate, international exchanges of experience between local authorities and other stakeholders including associations of local authorities;

7. to the extent that responsibility for regulating the framework of local government is entrusted to regional levels of government, to encourage them to implement the measures envisaged in the paragraphs 1 to 5 above;

8. to translate this recommendation into their official language(s) and actively disseminate it to all relevant parties, including local authorities and their associations.

<…>

Recommendation № R (89) 8 of the Committee of Ministers on Provisional Court protection in administrative matters

(Adopted by the Committee of Ministers on 13 September 1989 at the 428th meeting of the Ministers' Deputies)
(Extract)

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

<…>

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

Introduction

The following principles apply to provisional court protection against administrative acts.

Without prejudice to the next sub-paragraph, the term "administrative act" means, in accordance with Resolution (77) 31 on the protection of the individual in relation to the acts of administrative authorities, any individual measure or decision which is taken in the exercise of public authority and which is of such a nature as directly to affect the rights, liberties or interests of persons.

In those legal systems where administrative regulatory acts can be challenged before a court, the following principles also apply to provisional protection against administrative regulatory acts.

Principles

I

When a court is seized of a challenge to an administrative act, and the court has not yet pronounced its decision, the applicant may request the same court or another competent court to take measures of provisional protection against the administrative act.

The person concerned shall have the same right to request a competent court to take measures of provisional protection, prior to his challenging the act in accordance with the first sub-paragraph, in case of urgency or when an administrative complaint, the making of which does not have in itself any suspen sive effect, has been lodged against the administrative act and has not yet been decided.

II

In deciding whether the applicant should be granted provisional protection, the court shall take account of all relevant factors and interests. Measures of provisional protection may in particular be granted if the execution of the administrative act is liable to cause severe damage which could only be made good with difficulty and if there is a prima-facie case against the validity of the act.

III

Measures of provisional protection ordered by the competent court may take the form of suspending the execution of the administrative act, wholly or partially, ordering wholly or partially the restoration of the situation which existed at the time when the administrative act was taken or at any subsequent time, and imposing on the administration any appropriate obligation in accordance with the powers of the court.

Measures of provisional protection shall be granted for such period as the court thinks fit. They may be subject to certain conditions. They may be revised.

Measures of provisional protection in no way prejudge the decision to be taken by the court seized of the challenge to the administrative act.

IV

Proceedings before the court shall be speedy.

Save in cases of urgency, the procedure shall be adversarial and shall allow access by interested third persons.

When, in cases of urgency, interested persons could not be heard before the court granted pro visional protection, the matter shall be liable to a new examination within a short time, under a procedure conforming to the preceding sub-paragraph.

<...>

Resolution № 1746 (2010), final version, Democracy in Europe: crisis and perspectives

(Report of the Political Affairs Committee, rapporteur: Mr Gross). Text adopted by the Assembly on 23 June 2010 (24th Sitting)

(Extract)

1. The Parliamentary Assembly notes with concern that the recent world economic crisis has accentuated symptoms of a crisis of democracy which have been present for some time now. In particular:

1.1. lack of necessary regulation and co-operation at the international level to help face the challenges of globalisation, as well as lack of political control over financial interests;

1.2. highly centralised executive decision making and global negotiation mechanisms with little parliamentary control, insufficient transparency and without opportunities for citizens' participation. This has further deepened people's distrust in democratic institutions and the quality of the democracy they live in and increased their feeling of powerlessness and frustration;

1.3. concentration of power and money and, in some Council of Europe member states, also an excessive concentration of the media, in the hands of a few. More and more politicians have become dependent on the huge fortunes or the favours of those who own the media. As inequality and the concentration of wealth increase, so does the corruption of democratic institutions;

1.4. a disinterest in the current institutionalised procedures of democracy and a crisis in representation. Election turnouts have gone into freefall in most European countries and abstention rates reached up to 80% in some of them in the 2009 elections to the European Parliament;

1.5. populist and extremist movements, identity politics and nationalistic rhetoric have been reinforced during recent years under crisis conditions in many member states;

1.6. an almost unlimited collection of personal data by state agencies, notably the police and social security agencies, as well as by private companies, threatens personal freedom and privacy, which are preconditions for free participation in democratic life.

<...>

6. With a view to contributing to enhancing people's participation in the conduct of public affairs, improving the quality of democracy and promoting the common interest, the Assembly:

6.1. calls on Council of Europe member states to:

6.1.1. establish participatory and deliberative processes and structures, such as participatory budgeting, citizen initiated referendums and citizens' juries or conferences, open to all those living in a country and not only to nationals;

6.1.2. set up, enhance and promote independent supervisory institutions, such as ombudsperson's offices and bodies dealing with access to public documents and data protection, so as to enhance the concept of political responsibility and accountability;

6.1.3. improve citizenship education and political training by ensuring compliance with the new Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education (Recommendation CM/Rec(2010)7), as well as implementing the Council of Europe's programmes in the field of democratic citizenship and human rights education;

6.2. decides to undertake further reflection, in close consultation with the European Commission for Democracy through Law (Venice Commission), with a view to elaborating an additional protocol to the European Convention on Human Rights guaranteeing the right to participate in the conduct of public affairs as a human right and fundamental freedom. This would supplement, on the one hand, the right to vote and stand for elections, guaranteed by the Protocol to the Convention (ETS No. 9, ratified by all but two member states of the Council of Europe) and, on the other, similar initiatives taken at local level;

6.3. resolves to organise open public debates in the context of the drafting process of the new protocol so that this process offers an opportunity to promote public discourse and raise awareness on the need to increase citizens' active participation and ensure further involvement of all people in the conduct of public affairs.

<…>

Resolution № 1886 (2012), final version, The impact of the economic crisis on local and regional authorities in Europe

(Report of the Committee on Social Affairs, Health and Sustainable Development, rapporteur: Sir Alan Meale). Text adopted by the Assembly on 26 June 2012 (22nd Sitting)

(Extract)

<…>

5. In view of the above, the Assembly calls on member States of the Council of Europe to ensure that national reforms for local and regional finances are developed in a transparent way and with the participation of the local and regional authorities themselves. Such reforms should pursue the following objectives in order to ensure the sustainability of local and regional finances and to enhance their ability to provide quality services to their citizens:

5.1. as regards the legislative and fiscal framework:

5.1.1. reduce the dependence of local budgets on highly volatile tax bases such as corporate profits and property transactions;

5.1.2. where appropriate, extend access to taxes on personal income to create a more sustainable local tax base;

5.1.3. enhance local governments' discretion to set the bases and rates of local taxes and charges;

5.1.4. avoid disproportionate cuts in intergovernmental transfers to local authorities, and cuts undertaken at unreasonably short notice or concerning discretionary services, such as community-based organisations, which are important for maintaining social cohesion;

5.1.5. generally support the maintenance of a balanced mix of local taxes and intergovernmental transfers to finance local budgets;

5.1.6. remove legal requirements which impose expensive service provision;

5.2. as regards the effectiveness and efficiency of local service provision:

5.2.1. promote the targeting of social benefits to ensure that groups in need of special protection receive adequate assistance, including the possibility of means testing subsidies and benefits, and support community and home-based care for the sick and the elderly, so as to relieve some of the pressure on care institutions;

5.2.2. support the reorganisation of authorities in charge of service provision with a view to maintaining services while reducing administrative expenditures;

5.2.3. ensure that local authorities' good practices in the economic field, such as the provision of services through municipal enterprises (technical infrastructures, mutual savings banks, social services) are not sacrificed to free competition and privatisation applied out of principle. These services are, and should be, provided in the most comprehensive manner and at affordable prices through the local authorities;

5.2.4. encourage inter-municipal co-operation, wherever appropriate, to make the delivery of local services more effective and efficient;

5.2.5. promote the use of various forms of partnerships, including public-private partnerships and involvement of the voluntary sector, to redesign public service provision and delivery without reducing the accountability of public authorities;

5.2.6. encourage local authorities to optimise the effectiveness and efficiency of service provision, not least through relevant training of staff, whilst guaranteeing equal access for all sectors of the population;

5.2.7. support the efforts already being made by many local governments to reduce employment costs by means other than redundancies;

5.2.8. promote the principles of transparency and efficiency in public spending at all levels;

5.3. as regards European co-operation in this field:

5.3.1. promote further exchange of good practice at European level in order to share mutually beneficial expertise;

5.3.2. make use of the "Kiev Guidelines", agreed by the Council of Europe Conference of Ministers responsible for Local and Regional Government at its 17th session in Kiev in November 2011, as a central reference, and promote their implementation among member States of the Council of Europe;

5.3.3. at Council of Europe level, follow a common agenda agreed between the Committee of Ministers and the Congress of Local and Regional Authorities of the Council of Europe, as proposed by the Spanish Minister of Territorial Policy and Public Administration, Mr Manuel Chaves, in his report to the ministerial conference in Kiev.

<...>

The Council of Europe strategy № MCL-15 (2007) 8 on innovation and good governance at local level

(Conference of European Ministers responsible for local and regional government, Valencia, 15-16 October 2007 – Valencia Declaration. Item to be considered by the GR-DEM at its meeting on 21 February 2008)
(Extract)

<…>

ANNEX I

Strategy on innovation and good governance at local level

<…>

I. Scope

Good governance is a requirement at all levels of public administration. At local level it is of fundamental importance because local government is closest to citizens and provides them with essential services and it is at this level that they can most readily feel ownership of public action.

<…>

The Principles of Good Democratic Governance at local level are:

1) Fair Conduct of Elections, Representation and Participation, to ensure real possibilities for all citizens to have their say in local public affairs;

2) Responsiveness, to ensure that the local authority meets the legitimate expectations and needs of citizens;

3) Efficiency and Effectiveness, to ensure that objectives are met while making the best use of resources;

4) Openness and Transparency, to ensure public access to information and facilitate understanding of how local public affairs are conducted;

5) Rule of Law, to ensure fairness, impartiality and predictability;

6) Ethical Conduct,to ensure that the public interest is put before private ones;

7) Competence and Capacity, to ensure that local representatives and officials are well able to carry out their duties;

8) Innovation and Openness to Change, to ensure that benefit is derived from new solutions and good practices;

9) Sustainability and Long-term Orientation, to take the interests of future generations into account;

10) Sound Financial Management, to ensure prudent and productive use of public funds;

11) Human rights, Cultural Diversity and Social Cohesion, to ensure that all citizens are protected and respected and that no one is either discriminated against or excluded;

12) Accountability,to ensure that local representatives and officials take responsibility and are held responsible for their actions.

IV. Commitments

In order to mobilise the action of all stakeholders in favour of good democratic governance at local level, the Strategy must be jointly owned by governments and local authorities alike and therefore:

- Local authorities will be invited to make a voluntary commitment to their citizens to exercise their powers and responsibilities in accordance with the 12 Principles of Good Democratic Governance. They will be expected to make their commitment public and be accountable for it.
- Participating Governments and (associations of) local authorities will, taking full account of their respective roles and legal competences and, where relevant, drawing on existing initiatives and actions, agree on ways and means of achieving the objectives of the Strategy.
- Member States and the Congress will sustain and develop the pan-European co-operation necessary for following and giving guidance towards the implementation of this Strategy, including by helping to achieve the mutual sharing of information and the exchange of experience.

<...>

APPENDIX 1

The 12 Principles of Good Democratic Governance at local level

Principle 1.

Fair Conduct of Elections, Representation and Participation

Local elections are conducted freely and fairly, according to international standards and national legislation, and without any fraud.

Citizens are at the centre of public activity and they are involved in clearly defined ways in public life at local level.

All men and women can have a voice in decision-making, either directly or through legitimate intermediate bodies that represent their interests. Such broad participation is built on the freedoms of expression, assembly and association.

All voices, including those of the less privileged and most vulnerable, are heard and taken into account in decision-making, including over the allocation of resources.

There is always an honest attempt to mediate between various legitimate interests and to reach a broad consensus on what is in the best interest of the whole community and on how this can be achieved.

Decisions are taken according to the will of the many while the rights and legitimate interests of the few are respected.

Principle 2.
Responsiveness

Objectives, rules, structures, and procedures are adapted to the legitimate expectations and needs of citizens.

Public services are delivered and requests and complaints are responded to within a reasonable timeframe.

Principle 3.

Efficiency and Effectiveness

Results meet the agreed objectives.

Best possible use is made of the resources available.

Performance management systems make it possible to evaluate and enhance the efficiency and effectiveness of services.

Audits are carried out at regular intervals to assess and improve performance.

Principle 4.

Openness and Transparency

Decisions are taken and enforced in accordance with rules and regulations.

There is public access to all information which is not classified for well-specified reasons as provided for by law (such as the protection of privacy or ensuring the fairness of procurement procedures).

Information on decisions, implementation of policies and results is made available to the public in such a way as to enable it to effectively follow and contribute to the work of the local authority.

Principle 5.

Rule of Law

The local authorities abide by the law and judicial decisions.

Rules and regulations are adopted in accordance with procedures provided for by law and are enforced impartially.

Principle 6.

Ethical conduct

The public good is placed before individual interests.

There are effective measures to prevent and combat all forms of corruption.

Conflicts of interest are declared in a timely manner and persons involved must abstain from taking part in relevant decisions.

Principle 7.

Competence and Capacity

The professional skills of those who deliver governance are continuously maintained and strengthened in order to improve their output and impact.

Public officials are motivated to continuously improve their performance.

Practical methods and procedures are created and used in order to transform skills into capacity and to produce better results.

Principle 8.

Innovation and Openness to Change

New and efficient solutions to problems are sought and advantage is taken of modern methods of service provision.

There is readiness to pilot and experiment new programmes and to learn from the experience of others.

A climate favourable to change is created in the interest of achieving better results.

Principle 9.

Sustainability and Long-term Orientation

The needs of future generations are taken into account in current policies.

The sustainability of the community is constantly taken into account. Decisions strive to internalise all costs and not to transfer problems and tensions, be they environmental, structural, financial, economic or social, to future generations.

There is a broad and long-term perspective on the future of the local community along with a sense of what is needed for such development.

There is an understanding of the historical, cultural and social complexities in which this perspective is grounded.

Principle 10.

Sound financial management

Charges do not exceed the cost of services provided and do not reduce demand excessively, particularly in the case of important public services.

Prudence is observed in financial management, including in the contracting and use of loans, in the estimation of resources, revenues and reserves and in the use of exceptional revenue.

Multi-annual budget plans are prepared, with consultation of the public.

Risks are properly estimated and managed, including by the publication of consolidated accounts and, in the case of public-private partnerships, by sharing the risks realistically.

The local authority takes part in arrangements for inter-municipal solidarity, fair sharing of burdens and benefits and reduction of risks (equalisation systems, inter-municipal co-operation, mutualisation of risks…).

Principle 11.

Human rights, cultural diversity and social cohesion

Within the local authority's sphere of influence, human rights are respected, protected and implemented and discrimination on any ground is combated.

Cultural diversity is treated as an asset and continuous efforts are made to ensure that all have a stake in the local community, identify with it and do not feel excluded.

Social cohesion and the integration of disadvantaged areas are promoted.

Access to essential services is preserved, in particular for the most disadvantaged sections of the population.

Principle 12.

Accountability

All decision-makers, collective and individual, take responsibility for their decisions.

Decisions are reported on, explained and can be sanctioned.

There are effective remedies against maladministration and against actions of local authorities which infringe civil rights.

<…>

Kyiv guidelines agreed by the Council of Europe Conference of Ministers responsible for local and regional government

(Kyiv, 3-4 november 2011)

(Extract)

<…>

I.Council of Europe standards

4.Any policy response by central government to the impact of economic downturn on local government must be fully compatible with its obligations under the European Charter of Local Self-Government (CETS 122), which recognises that questions as to the financial resources for local authorities are to be determined within a Party's national economic policy.

5.The two recommendations of the Committee of Ministers in the field of local finance: Rec(2004)1 on financial and budgetary management at local and regional levels and Rec(2005)1 on the financial resources of local and regional authorities, offer a powerful and coherent set of guidelines aimed at ensuring a sound local finance system, many of which are ever the more useful in the context of the economic downturn.

II.Possible policy responses identified so far

6.The main options identified so far are:

1.Stabilising local revenue bases;

2.Improving accountability and efficiency;

3.Combating social deprivation;

4.Partnership in delivering public services;

5.Enhancing local flexibility and discretion;

6.Promoting Economic Recovery.

<…>

4. Partnership in delivering public services

28.Local government faces long-term challenges, which will outlast the crisis. The autonomy promoted by the European Charter should give the freedom to innovate in meeting these and some security over resources. But these challenges require a style and habit of partnership with other key actors such as other levels of government, the private sector, universities and other members of the research and training communities, social enterprises and other non-governmental organisations

29.The crisis has slowed down the spread of partnerships involving the private sector in carrying out the initial investment in a public service facility. These remain widespread in cases such as waste disposal where construction and operation can be combined in a single management and where costs can be recouped directly from beneficiaries. Efficiency can suffer, by contrast, where responsibility for operation becomes fragmented between commercial investors and public service professionals; costs can also escalate substantially when loaded with the higher interest rates attached to private sector borrowing.

30.By contrast, the crisis has increased interest in partnership with the voluntary sector and social enterprise in running community level services. Care of the elderly is an increasingly important field for such partnership. Giving social enterprises freedom to provide both residential and domiciliary care services and providing beneficiaries with cash benefits rather than services in-kind, provides an arena for choice and competition which can enhance quality of life. Family and voluntary carers, in practice mostly women, can also be supported and encouraged by measures like compensation for pension losses, arrangements for career breaks, re-entry on the labour market, respite care and even petrol allowances. Involvement of the private or voluntary sector in provision of public services must be in line with public policy and have regard to the requirements of efficiency and value for money and, above all, the needs of those which services are intended to address.

31.Partnership will also be vital in keeping local economies ahead of the game. Partnership with other local actors will be crucial in identifying contemporary opportunities, promoting technological research and innovation, providing education to improve the local skill base and providing the planning and infrastructural framework (including information and communication technology).

5. Enhancing local flexibility and discretion3

32.The impact of the crisis on compliance with the Charter of Local Self Government has been mixed. The Report "Local government in critical times: Policies for crisis, recovery and sustainable future" gives examples of both increases and losses of local tax autonomy. Examples have been given of national governments intervening in detailed local budget decisions, while there are fears that EU attempts to impose common economic government within the Eurozone will curtail the ability of local government to determine their spending levels. On the other hand some conditionality and control have been relaxed by national governments to avoid responsibility for detailed cuts in services.

33.The need to preserve and possibly enhance local discretion over local taxes and charges has already been highlighted. It will also be important to

- avoid an intuitive recentralisation of authority;
- abolish unsustainable expenditure norms which prevent efficient management of local public services; these tend to regulate inputs rather than outcomes;
- reform funding mechanisms which encourage costlier types of service provision.

<…>

3 France reserves the right not to take account of the guidelines in paragraphs 32 and 33.

Recommendation of the Congress of local and regional authorities of the Council of Europe № 60 (1999) 1 on political integrity of local and regional elected representatives

(Extract)

1. The Congress,

<…>

22. Urges the Committee of Ministers of the Council of Europe :

- to take account of the text of the code of conduct in the work of the GMC ;
- to involve the Congress closely in the work of the GMC by allowing it CLRAE representatives to participate in the GMC's discussions of issues relating to local and regional authorities ;
- to forward Recommendation 60 (1999), to which the Code of conduct for the political integrity of local and regional elected representatives is appended, to the national governments of member states so that they may take account of it in any changes in legislation or campaigns to promote ethical values at national level.

APPENDIX

European Code of conduct for the political integrity of local and regional elected representatives

Preamble

The Congress of Local and Regional Authorities of the Council of Europe,

<…>

Taking into consideration the legislation currently in force in member countries and the relevant work being done at international level, proposes the following Code of Conduct for the Political Integrity of Local and Regional Elected Representatives:

<…>

I. Scope

Article 1
Definition of an elected representative

For the purposes of this Code, the term “elected representative” means any politician holding a local or regional authority mandate conferred through a principal election (election by direct suffrage) or secondary election (election to executive office by the local or regional council).

Article 2
Definition of functions

For the purposes of this Code, the term “functions” means a principal or secondary elective mandate and all functions performed by an elected representative under that mandate.

Article 3
Object of the code

The object of this Code is to specify the standards of behaviour expected of elected representatives in the performance of their duties and to inform citizens of the standards of behaviour that they have a right to expect of their elected representatives.

II. General principles

Article 4
Primacy of law and the public interest

Elected representatives hold office under the law and must at all times act in accordance with the law.

In performing their functions, elected representatives shall serve the public interest and not exclusively their direct or indirect personal interest or the private interest of individuals or groups of individuals with the aim of deriving direct or indirect personal benefit therefrom.

Article 5
Objectives of fulfilling a mandate

Elected representatives shall undertake to perform their functions with diligence, openness and a willingness to account for their decisions.

Article 6
Constraints of fulfilling a mandate

In performing their functions, elected representatives shall respect the powers and prerogatives of all other political elected representative and all public employees.

They shall not encourage or help any other political representative or any public employee to breach the principles set forth herein when performing their functions.

III. Specific obligations

1. Taking of office

Article 7
Rules governing election campaigns

Candidates' election campaigns shall aim to provide information and explanations on their political programmes.

Candidates shall not seek to secure votes by any means other than persuasive argumentation and debate.

In particular, they shall not attempt to obtain votes by slandering other candidates, by the use of violence and/or threats, by tampering with electoral rolls and/or the results of the ballot or by granting or promising favours.

2. Holding of office

Article 8
Ban on favouring

Elected representatives shall not perform their functions or use the prerogatives of their office in the private interest of individuals or groups of individuals, with the aim of deriving a direct or indirect personal benefit therefrom.

Article 9
Ban on exercising authority to one's own advantage

Elected representatives shall not perform their functions or use the prerogatives of their office to further their own direct or indirect private or personal interests.

Article 10
Conflict of interests

When elected representatives have a direct or indirect personal interest in matters being examined by local or regional councils or by executive bodies, they shall undertake to make those interests known before deliberations are held and a vote is taken.

Elected representatives shall abstain from any deliberation or vote on a question in which they have a direct or indirect personal interest.

Article 11
Limit on concurrent holding of two or more appointments

Elected representatives shall comply with any regulations in force aimed at limiting the concurrent holding of two or more political appointments.

Elected representatives shall not hold other political appointments where this prevents them from performing their functions as an elected representative.

Nor shall they have or hold functions, elective mandates, occupations or official appointments which entail supervision of their own functions as an elected representative or which they themselves are supposed to supervise in their capacity as an elected representative.

Article 12
Exercise of discretionary powers

In exercising their discretionary powers, elected representatives shall not grant themselves any direct or indirect personal advantage, or grant any individual or group of individuals an advantage with the aim of deriving a direct or indirect personal benefit therefrom.

Detailed grounds shall be given for any decision, specifying all the factors on which the decision is based, in particular the applicable rules and regulations, and showing how the decision complies with those rules and regulations.

Failing any rules and regulations, the grounds for the decision shall include elements such as to show its proportionality, fairness and conformity with the public interest.

Article 13
Ban on corruption

In performing their functions, elected representatives shall refrain from any conduct qualifying, under the national or international criminal law in force, as active or passive bribery.

Article 14
Observation of budgetary and financial discipline

Elected representatives shall undertake to observe budgetary and financial discipline, which guarantees the proper management of public money, as defined by the relevant national legislation.

In fulfilling their duties, elected representatives shall not do anything to misappropriate public funds and/or grants. They shall not do anything that might lead to public funds and/or grants being used for direct or indirect personal purposes.

3. Relinquishing of office

Article 15
Ban on securing certain appointments

In performing their functions, elected representatives shall not take any measure such as to grant themselves a future personal professional advantage once they have relinquished their functions:

- in public or private bodies over which they exercised supervision while performing those functions;
- in public or private bodies with which they established a contractual relationship while performing those functions;

in public or private bodies which were set up during their term of office and by virtue of the powers entrusted to them.

<...>

V. Relations with the public

Article 19
Publishing and giving grounds for decisions

Elected representatives shall be accountable to the whole of the local population throughout their mandate.

Elected representatives shall give detailed grounds for any decision which they take, specifying all the factors on which the decision is based, in particular the applicable rules and regulations, and showing how the decision complies with those rules and regulations.

Where that information is confidential, the reasons for such confidentiality shall be explained.

Elected representatives shall diligently respond to any request from the public concerning the performance of their functions, the grounds for their action, or the functioning of the services and departments coming under their responsibility.

They shall encourage and promote any measure which fosters openness concerning their powers, the exercise of those powers and the functioning of the services and departments coming under their responsibility.

VI. Relations with local government staff

Article 20
Appointments

Elected representatives shall undertake to prevent any appointment of administrative staff based on principles other than recognition of merit and professional abilities and/or for purposes other than the needs of the department.

In matters of staff appointments or promotions, elected representatives shall take an objective, reasoned decision, showing due diligence.

Article 21
Respect for the role of local government staff

In performing their functions, elected representatives shall show respect for the role of the local government staff reporting to them, without prejudice to the legitimate exercise of their hierarchical authority.

They shall not ask or require public employees to take or omit to take any measure such as to give themselves a direct or indirect personal advantage or give an advantage to individuals or groups of individuals with the aim of deriving direct or indirect personal benefit therefrom.

Article 22
Promotion of the role of local government staff

In performing their functions, elected representatives shall ensure that the role and tasks of the local government employees reporting to them are promoted to the full.

They shall encourage and promote any measure which fosters improvements in the operating performance of the services or departments coming under their responsibility and the motivation of the staff concerned.

VII. Relations with the media

Article 23

Elected representatives shall respond diligently, honestly and fully to any request from the media for information concerning the performance of their functions but shall not provide any confidential information or information concerning the private lives of elected representatives or third parties.

They shall encourage and promote any measure which fosters media coverage of their powers, the performance of their functions and the functioning of the services and departments coming under their responsibility.

<...>

Resolution № 1 on "The role of local and regional authorities tn the provision of local social services"

(Adopted by the ministers attending the 12th session of the Conference of European Ministers responsible for Local Government, meeting in Istanbul on 6 - 7 April 2000)

(Extract)

<...>

RECOGNISE THAT:

1.The provision of social services must be based on the needs and expectations of the community and public authorities must therefore give primary consideration to the people concerned when deciding the best way of providing the services for which they are responsible;

2.In today's society, citizens' rising expectations and conditions on the ground are changing rapidly, particularly due to the new world economy, obliging the authorities to adjust both the services provided and the way powers are distributed;

3.Proximity of social services to people is a crucial issue and local and regional authorities have a key role to play in the provision of those services, which generally means a need for a high level of decentralisation and the active involvement of local and regional authorities in the provision of these services;

4.Decentralisation in the social services sector, as in the others, must be consistent with the principles of coherent and uniform application of public policies for the benefit of all citizens, proper co-ordination and solidarity between regions;

5.The level of decentralisation that is possible and desirable depends on factors such as the way national territory is divided up, the size of regional and local authorities, the type, significance and territorial scale of the service concerned and the actual ability of local and regional authorities to perform the relevant tasks;

6.It is necessary:

- to improve the quality and effectiveness of local social services;
- to establish appropriate machinery for co-ordination and co-operation between public authorities and partnership between public authorities and the private and voluntary sector ;
- subscribe to the principles appearing in appendix to the present resolution and recommend that the committee of ministers of the council of europe:

  I. Bring the present resolution to the attention of member governments and invite them to apply the principles set forth in it and assist local and regional authorities in implementing them;

  II. Instruct the CDLR to continue its work on local services and the development of democratic citizenship at local and regional level, having regard to the following issues:

  i) arrangements seeking to improve the quality and cost-effectiveness of local services, which could include, among others,

  – highlighting good practice and establishing objectives, standards and indicators against which performance can be assessed, and
  – increasing consultation and involvement of people;

  ii) new forms of management at local level;

  iii) development of participatory democracy at local and regional level and of dialogue between elected representatives and citizens, taking account of new communication methods and tools;

APPENDIX

I.Principles concerning the role and the responsibilities of the various tiers of government1 in the social services sector

1.It is necessary to ensure a clear definition of the responsibilities of the various tiers of government and a balanced distribution of roles between these tiers in the social services sector.

2.The definition of the role of each tier of government should take account of the following requirements:

- proximity of the services to the users;
- the possibility for the authority responsible for providing the service to adapt it to needs and circumstances (flexibility);
- quality, effectiveness, efficiency and economy in the provision of services;
- complementarity in the action of public authorities.

3.Powers must be clearly distributed, and the responsibilities of each tier of government should be properly defined, understood and acceptable to all parties. When defining the responsibilities of local and regional authorities, it is important to avoid both power vacuums, which lead to situations where there are no authorities responsible for providing a given service, and power duplication, which results in unnecessary expenditure.

4.The state or, where appropriate, the regions have primary responsibility for ensuring that all citizens have access to quality services and must therefore have certain powers in the areas of general planning, co-ordination and supervision.

5.Local and regional authorities should, where practicable and consistent with national policy, have an important role, either directly or in partnership with other agencies, in the provision of social services. Within the scope of their responsibilities, local authorities should be given a substantial degree of discretion in the provision of their services.

6.Where powers are transferred to local or regional authorities, it is necessary to ensure that these authorities have the necessary financial or other resources to perform the tasks assigned to them.

II.Principles concerning improvements in the quality and effectiveness of 1ocal social services

1.Local and regional authorities should aim to secure continuous improvement in the quality and effectiveness of the social services for which they are responsible. The legal and management frameworks in which local and regional authorities operate should be designed so as to facilitate the achievement of this objective.

2.Skilled and motivated staff are a pre-condition for ensuring continuous improvement of service delivery. Therefore, the recruitment and training policies of local government should be adapted to this end.

3.Effective and improved performance management is required. Regular and public performance assessment is a powerful instrument for achieving this. In order to enable such an assessment it is necessary to establish adequate information systems, both on existing services and on the needs of populations, and to ensure the exchange of relevant information between the different authorities involved.

4.Effective performance management also require regular reviews of services based on the following fundamental principles:

- challenge why, how and by whom a service is being provided;
- secure comparison with the performance of others across a range of relevant indicators, taking into account the views of both service users and potential suppliers;
- consult local taxpayers, service users, partners and the wider business community in the setting of new performance targets; and
- use fair and open competition wherever useful as a means of securing efficient and effective services.

5.There should be flexible service delivery arrangements, providing diversity in the way in which services are delivered, and diversity in the choice of provider - whether in the public, private or voluntary sector.

III.Principles c o ncerning co-operation and co-ordination between public authorities and between the public sector and the private and voluntary sectors.

1. Local and regional authorities should be free to work together to provide the social services for which they are responsible. It is sometimes necessary for local and regional authorities to co¬operate in order to provide an efficient service, for instance when the size of an authority and/or its financial capacity are limited in relation to the scale and cost of the service in question.

2.The forms of co-operation allowed by the law should be flexible enough to enable the authorities concerned to adapt them to their specific needs and goals.

3.When they do not use well defined co -operation forms, public authorities must ensure effective co-ordination of the provision of social services. Such co-ordination is essential both between bodies offering the same services and between those offering services where interaction may occur, as it helps to prevent the setting up of redundant bodies, enables the external effects of the provision of certain services to be taken into account and encourages the dissemination of best practices.

4.The state or the regions could use co-financing systems to foster interaction, by linking this financial contribution, where appropriate, to the implementation of effective forms of co- operation or co-ordination.

5.The machinery put in place for the purpose of co - ordination must, however, respect the autonomy granted to local and regional authorities. Machinery for institutional dialogue may provide scope for better co- ordination in the planning, programming and implementation of social services policies, without undermining the state's (or the regions') decision-making powers and strategic role or the autonomy of local and regional authorities.

6.The involvement of the private and voluntary sectors in the provision of social services is of great value and should be welcomed. This does not mean public authorities shirking their responsibilities towards citizens - rather, it means giving the driving forces of civil society their rightful role.

7.The legislative framework for such involvement should facilitate partnerships and modern procurement methods and should allow for developments in the information technologies.

8.Where the protection of citizens so requires, the basic rules concerning (a) the requirements that private operators must fulfil when providing local social services and (b) supervision by the public authorities to ensure the compliance with these requirements should be laid down by the national or regional legislation.

9.Partnership arrangements between public authorities and private operators can be complementary to services provided by the public authorities. Within the limits of the law, local and regional authorities should have the possibility to contract out public services. When choosing between direct (public) management and contracted-out (private) management, decision-makers should achieve the right balance between public welfare and best value for money.

10.When services are contracted out, the delegating authority should retain its political and legal responsibility. Effective machinery should be established to measure, monitor and assess the results of activities assigned to private bodies responsible for providing a service. The financial cost to the public authority and the requirements for any financial contributions from the public sector must be defined in advance.

IV.Principles co ncerning the enhancement of the role of 1 o cal s o cial services in co mbating so cial exclusion

1.The definition and implementation of social policies at national, regional and local level should be based on a comprehensive and integrated approach that takes account of individuals - and their needs - as a whole in order to offer tailor-made, personalised services.

2.With reference to specific needs, all residents should be provided with certain minimum social services. The level of local social services must comply with the requirements of the international and European legal instruments to which the state concerned has acceded in the social sector. Not only regional authorities but also local authorities should play a part in the process of defining the level of social services provided for the public.

3.A fair balance needs to be struck between costs financed by those who benefit from the service and costs met from taxes, in other words, between the principle of individual responsibility (and heightened individual responsibility) and the principle of solidarity. These two principles are not contradictory and their respective importance should vary according to circumstances and the desired results.

4.Citizens must be given easier access to basic information about social services at local level (users' rights, the purpose and operation of services, financial resources, results, supervisory machinery, etc) and must be involved to an appropriate degree in the decision-making process concerning the development, the management and the provision of these services.

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Recommendation № Rec (2004) 13 of the Committee of Ministers on the participation of young people in local and regional life

(Adopted by the Committee of Ministers on 17 November 2004, at the 904th meeting of the Ministers' Deputies)

(Extract)

<…>

APPENDIX TO RECOMMENDATION NO. REC (2004) 13

REVISED EUROPEAN CHARTER ON THE PARTICIPATION OF YOUNG PEOPLE IN LOCAL AND REGIONAL LIFE

Preamble

The active participation of young people in decisions and actions at local and regional level is essential if we are to build more democratic, inclusive and prosperous societies. Participation in the democratic life of any community is about more than voting or standing for election, although these are important elements. Participation and active citizenship is about having the right, the means, the space and the opportunity and where necessary the support to participate in and influence decisions and engage in actions and activities so as to contribute to building a better society.

Local and regional authorities, as the authorities closest to the young person, have a very important role to play in promoting youth participation. In doing so, local and regional authorities can ensure that young people not only hear and learn about democracy and citizenship, but rather have the opportunity to practice it. However, youth participation is not solely about developing active citizens or building democracy for the future. It is vital, if participation is to be meaningful for young people, that they can influence and shape decisions and actions when they are young and not only at some later stage in life.

When local and regional authorities support and promote youth participation they also contribute to the social integration of young people, helping them to deal not only with the challenges and pressures of youth, but also with the challenges of a modern society where anonymity and individualism are often predominant. However, for youth participation in local and regional life to be successful, lasting and meaningful requires more than the development or restructuring of political or administrative systems. Any policy or action designed to promote youth participation must ensure that the cultural environment is one of respect for young people and must also take into account the diverse needs, circumstances and aspirations of young people. And it must involve some element of fun and enjoyment.

Principles

1. The participation of young people in local and regional life must constitute part of a global policy of citizens' participation in public life, as set out in Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life.

2. Local and regional authorities are convinced that all sectoral policies should have a youth dimension. They therefore undertake to comply with the provisions of this Charter and to implement the various forms of participation, which follow in consultation and cooperation with young people and their representatives.

3. The principles and various forms of participation advocated in this Charter apply to all young people without discrimination. In order to achieve this, special attention should be paid to promoting the participation in local and regional life of young people from disadvantaged sectors of society and from ethnic, national, social, sexual, cultural, religious and linguistic minorities.

Part I. Sectoral policies

I.1 A policy for sport, leisure and associative life

4. Local and regional authorities should support organised socio-cultural activities – run by youth associations and organisations, youth groups and community centres – which, together with the family and school or work, are one of the pillars of social cohesion in the municipality or region; these are an ideal channel for youth participation and the implementation of youth policies in the fields of sport, culture, crafts and trades, artistic and other forms of creation and expression, as well as in the field of social action.

5. In order to develop the local and regional youth association sector, local and regional authorities should through appropriate measures lend their support, in particular to organisations which train facilitators and leaders of youth clubs and organisations, as well as youth workers, who play a vital part in life at local and regional level.

6. Local and regional authorities should encourage associations to promote the active participation of young people in their statutory bodies.

I.2 A policy to promote youth employment and combat unemployment

7. The economic and social conditions that young people experience impact upon their willingness and ability to participate in their local community. When young people are unemployed or living in poverty they are less likely to have the desire, resources and social support to be active citizens in local and regional life. Young people who are unemployed are likely to be among the most excluded in society and therefore local and regional authorities should develop policies and promote initiatives to reduce youth unemployment.

8. Therefore, local and regional authorities should:

i. develop polices and programmes in concertation with young people (including those who are unemployed or at risk of being unemployed), local employers, trade unions, education, training and employment authorities and youth organisations to address the causes of youth unemployment and promote employment opportunities for young people;

ii. establish local employment centres to provide specialist help and support to young unemployed people in finding meaningful and stable work. Young unemployed people should have the right to be involved in the management of these centres if they so wish;

iii. support the establishment of businesses, enterprises and cooperatives by young people or groups of young people by providing funding and other support such as premises, equipment, training and professional advice;

iv. encourage experimentation by young people with the social economy, community self-help initiatives or cooperatives.

I.3 Urban environment and habitat, housing policy, and transport

9. Together with representatives of youth organisations, local and regional authorities should create conditions for developing an urban environment policy based on a more integrated, less fragmented living environment which is conducive to social interaction and the development of high-quality public spaces.

10. Local and regional authorities should pursue housing and urban environment policies which closely involve young people in consultation arrangements bringing together locally or regionally elected representatives, economic decision makers, leaders of associations and architects. Their aim is:

i. to draw up programmes for a more harmonious environment conducive to personal self-fulfilment and the development of real solidarity between the generations;

ii. to develop a concerted policy on the urban environment that takes account of residents' social and intercultural realities in the drawing up of housing and/or housing renovation programmes.

11. In close cooperation with youth organisations, tenants' organisations and/or consumer organisations, social housing agencies and social workers, local and regional authorities should promote the development of, or develop within existing social structures:

i. local information services on housing for young people;

ii. local schemes (e.g. low-cost loans, rent guarantee systems) to help young people gain access to housing.

12. The mobility of young people is made possible through easy access to public transport, of which they are the main users. This mobility is indispensable for participation in social life and for being full citizens.

13. Young people should therefore be involved in the organisation of public transport, at both local and regional level. Specially adapted rates should allow the most disadvantaged young people to travel.

14. In rural areas, mobility and transport are a fundamental necessity for quality of life and not just necessary to facilitate participation. Therefore, local and regional authorities should support rural transport initiatives that seek to provide transport services (public or private, individual or collective) and increase mobility in rural areas for groups such as young people who are currently excluded due to lack of means of transport.

I.4 An education and training policy promoting youth participation

15. School is an institution in which young people not only spend a considerable proportion of their lives and where they undertake a formal educational programme; it is also a place where many of their views and perspectives on life are shaped. It is essential that young people learn about participation and democracy while in school and that courses on democracy, participation and citizenship are available and properly resourced. However school must also be a place where young people experience democracy in action and where their participation in decision-making is supported, promoted and is seen as effective. Therefore:

i. local and regional authorities should actively encourage the participation of young people in school life. They should provide financial and other supports such as meeting facilities to enable young people to establish democratic school student associations. These associations should be independent and self-governing, and if they want to, they should have the right to participate in decisions concerning the management of the school in partnership with the teachers and school authorities;

ii. where local and regional authorities are responsible for school curricula, they should ensure that students and student associations are consulted on an ongoing basis concerning curricula and their development. They should also ensure that civic and political education is incorporated into school curricula and given the necessary prominence and resources in the educational programme of all students.

I.5 A policy for mobility and exchanges

16. Local and regional authorities should support those associations or groups which favour the mobility of young people (young workers, students, or volunteers) through exchange policies, and develop networking policies and an awareness of European citizenship.

17. Local and regional authorities should encourage young people, their organisations and their schools to participate actively in international twinning activities, all types of exchanges, and European networks. These authorities should be ready to give them financial support, in order to promote language learning and intercultural exchanges, as well as exchanges of experience.

18. They should include young people and/or their representatives in the twinning committees and other organs responsible for implementing these exchanges.

I.6 A health policy

19. With a view to promoting the emergence and implementation of projects that originate from young people and promote both the development of the concept of all-round health and the dynamics of community life, local and regional authorities should create or develop institutional machinery for consultation between youth organisations, elected representatives and all social and professional groups concerned with social welfare and the promotion of health.

20. Faced with the ravages of tobacco, alcohol and drug abuse among young people, local and regional authorities should introduce, develop or promote, together with representatives of youth organisations and of health services, local information policies and counselling facilities for young people affected by these problems, as well as special training policies for young social workers and for voluntary workers and leaders of organisations operating prevention and rehabilitation strategies for the young people concerned.

21. In view of the current increase in sexually transmitted diseases, local and regional authorities should intensify information campaigns and preventive measures aimed at young people, thus promoting within the community a spirit of solidarity engendering social relationships in which moral judgments and segregation have no place. Young people and the representatives of local youth organisations and of health services should be closely involved in the design and implementation of these information and action programmes.

I.7 A gender equality policy

22. As part of their policies to create optimum conditions for equal participation by women and men in local and regional affairs, local and regional authorities should take affirmative action in support of the access of young men and women to positions of responsibility within professional life, associations, politics and local and regional authorities.

23. Within the limits of their powers, local and regional authorities should promote, from early childhood onwards, an educational policy of equality between women and men.

24. To promote a policy of equality between women and men, local and regional authorities should:

i. draw up a medium-term plan with the aim of eliminating inequalities between young men and young women;

ii. implement and evaluate measures which promote equal opportunities for girls and young women.

25. In order to achieve this aim, these policies should in particular enable girls and young women:

i. to receive specific information on training courses leading to professional qualifications;

ii. to learn occupational skills by offering grants and specific courses of study in professions including those which have traditionally been filled by men;

iii. to train them in the running of public affairs by entrusting them with responsibilities at the highest level, on the basis of a quota of places reserved for women;

iv. to introduce financial measures for social services which assist girls and young women.

<...>

I.12 An anti-discrimination policy

34. Local and regional authorities should actively promote human rights and measures to counter discrimination against minorities (including their young members) or against young people with disabilities and other population groups that may suffer discrimination, and should promote the development of multicultural communities through the integration of minorities, taking account of their diverse needs and customs, cultures and lifestyles.

35. In this connection, local and regional authorities should:

i. pass or reinforce anti-discrimination legislation so as to ensure equal access for all citizens to public places, to vocational training, to schooling, to housing, to cultural activities and to other areas of life. Such access should be monitored and guaranteed by joint bodies comprising local government representatives and representatives of minorities and young people themselves;

ii. foster inter-religious dialogue, multicultural, anti-racist education and education against discrimination as part of the school curriculum.

I.13 A policy on sexuality

36. During their transition from childhood dependence on family, school, religious community or other "authorities" towards an autonomous adult life, young people may be faced with a variety of questions on issues connected to their personal relationships (within the family or close circle, with their peers, with their friend or partner). The emergence and exercise of their sexuality is not always easy, even if they are not ready to admit it. In addition, there is a persistent ignorance surrounding issues of sexual health and mistrust towards official attitudes concerning the risks of certain sexual behaviours.

37. In order to help young people find their way in this area towards a healthy and fulfilling affective life, local and regional authorities, in association with parents, schools and organisations specialised in this field, should promote and support:

i. non-directive sex education in schools;

ii. organisations and services offering information about relationships, sexual methods and family planning;

iii. peer group work in this field.

38. Young people should be actively associated with the planning, implementation and evaluation of information and other services aimed at young people in this field.

I.14 A policy of access to rights and law

39. In order to live together, societies are based on rules which must be respected by all. In democratic societies, these rules are discussed and adopted by the citizens' elected representatives and given concrete expression, particularly in legislative texts which bestow rights and obligations upon all persons.

40. As these texts increase in number, it is more and more difficult for the individual to know, respect and apply them, thus creating disparities between citizens. Young people are the most naturally concerned by this phenomenon.

41. Local and regional authorities should therefore facilitate young people's access to their rights:

i. by developing their knowledge through the dissemination of information, particularly in schools, peer groups and information services;

ii. by the application of their rights through the support of services designed to work alongside young people who desire this;

iii. by allowing young people to participate in the drawing-up of new rules.

Part II. Instruments for youth participation

42. In order to achieve real youth participation a certain number of instruments need to be placed at young people's disposal. This entails developing participation training for young people, keeping them informed, providing them with means of communication, supporting their projects, and recognising and giving a higher profile to young people's dedication to community causes and voluntary work. Participation only takes on full meaning where young people's role in political parties, trade unions and associations is acknowledged and, above all, where an effort is made to promote youth associations set up with and by young people themselves.

II.1 Training in youth participation

43. Local and regional authorities, conscious of the dominant role that the school plays in the life of young people, should provide, in the school environment, support and training in youth participation, human rights education and non-formal learning in schools. They should also provide training and support for the participation of young people in associative life and in their local community by promoting:

i. vocational training for teachers and youth workers in the practice of youth participation;

ii. all forms of participation of pupils in schools;

iii. civic education programmes in schools;

iv. peer-group education, by providing the necessary space and means and by supporting the exchange of good practice.

II.2 Informing young people

44. Information is often a key to participation, and the right of young people to have access to information about opportunities and matters which concern them is increasingly recognised in official European and international documents,[3] and not only in the context of local and regional life.

45. In order to participate in activities and in the life of their community, or to benefit from services and opportunities aimed at them, young people need to know about them. Participating in activities and projects of interest to them and which they organise themselves is often a step in a process encouraging their deeper involvement in the community, including its political life.

46. Local and regional authorities should therefore support and improve existing information and counselling centres for young people, in order to ensure that they provide services of quality that meet the needs expressed by young people. Where such centres do not exist, local and regional authorities and other relevant actors should promote and assist the creation of adequate information services for young people, inter alia, through

existing structures such as schools, youth service and libraries. Specific measures should be taken to meet the information needs of groups of young people who have difficulty in accessing information (language barriers, no access to the Internet, etc.).

47. Information services for young people must conform to certain professional principles and standards.[4] Public authorities are encouraged to guarantee such standards and to promote their continual improvement, where possible in accordance with a set of nationally (or regionally) agreed quality measures and standards. Young people should have the possibility to participate in the preparation, implementation and evaluation of the activities and products of youth information centres/services and be represented in their governing bodies.

II.3 Promoting youth participation through information and communication technologies

48. Information and communication technologies can offer new possibilities for informing and allowing the participation of young people. They can be used to exchange a wide variety of information, and thanks to their inter-activity, to increase the participation of young people. Local and regional authorities should therefore use these technologies in their information and participation policies, on the condition that access to them is guaranteed for all young people in terms of places of access to and training in these new tools.

II.4 Promoting young people's participation in the media

49. Whilst young people are major media consumers, they can also be actors in this field by increasing the possibilities they are given to express themselves and participate in the production of the information supplied by the media. Through their way of dealing with certain subjects, they allow different and often more accessible information to be provided for their peers. This participation also allows young people to understand the construction of information and to develop the necessary critical faculty.

50. Local and regional authorities should therefore support the creation and the functioning of the media (radio, television, the written and electronic press, etc.) developed by and for young people, as well as relevant training programmes.

II.5 Encouraging young people to undertake voluntary work and dedicate themselves to community causes

51. Young people should be supported and encouraged to engage in voluntary activity. At a time when young people are under increasing pressure to perform and succeed as individuals in education and in the world of work, it is important that volunteerism is promoted and recognised. Therefore, local and regional authorities should:

i. support the establishment of volunteer centres and develop initiatives aimed at supporting and promoting the involvement of young people in voluntary activity such as information and promotional campaigns;

ii. in partnership with young people, voluntary organisations, educational authorities and employers, develop systems which recognise and validate voluntary activity in the formal education system and in employment.

II.6 Support for young people's projects and initiatives

52. Through their hopes and their desires, young people have many ideas which can be translated into projects and local activities that are beneficial to all. Given proper support, these projects, and their successes as well as their failures, can also help young people to develop their sense of responsibility and their autonomy, thus becoming social actors. Local and regional authorities should therefore facilitate the implementation of these projects, be they small- or large-scale, by allowing them to be accompanied in their execution by professionals and to have access to financial, material and technical assistance.

II.7 Promoting young people's organisations

53. Youth organisations are unique in that they are primarily focused on reflecting the views and serving the needs and interests of young people. They also provide a space where young people can learn and experience the opportunities and challenges of participating in decisions and actions with other young people. They can be structured organisations or they can be informal groups of young people. It is important that young people have the opportunity to join a youth organisation of their choice in their community if they so wish. Young people should also have the right and be supported to establish their own organisations if they want to. Therefore:

i. local and regional authorities should have a specific budget designated solely for supporting youth organisations that run activities or provide services or act as the voice of young people in the community and advocate on their behalf. Preference should be given to organisations that are run by and for young people and/or have policies and systems in place to enable active youth participation;

ii. local and regional authorities should develop the Council of Europe co-management principle and system of decision-making in partnership with young people and youth organisations in policy areas of relevance to young people. It is important that where such co-management structures are put in place, young people and youth organisations are respected as full partners and also have the choice not to participate if they so wish.

II.8 Youth participation in non-governmental organisations (NGOs) and political parties

54. A vibrant, independent and active non-governmental sector is an essential element of any truly democratic society. It is also important that other sectors of civil society such as political parties are strong and active at a local and regional level. Participation in the democratic life of any country, region or locality is about more than voting every few years. That is why participation in NGOs and political parties is so important, because they help citizens to be involved in, and influence, decisions and actions on an ongoing basis. Therefore it is crucial that young people are encouraged and supported to participate in associative life in their communities.

55. Local and regional authorities should provide financial and other resources to NGOs which actively promote the participation of young people in their activities and democratic decision-making structures and procedures.

56. Local and regional authorities, in partnership with political parties and in a non-partisan manner, should promote the involvement of young people in the party political system in general, and support specific actions, such as training.

Part III. Institutional participation by young people in local and regional affairs

57. In order to carry out the sectoral policies set out in Part II, local and regional authorities should undertake to put in place the appropriate structures or arrangements enabling the participation of young people in the decisions and debates affecting them.

58. These structures will take on different forms according to the level at which they are established, be it that of a village, a town, an urban neighbourhood within a city, or even a region. They should create the conditions for genuine dialogue and partnership between young people and local and regional authorities and they should enable young people and their representatives to be full actors in the policies affecting them. Such structures should normally be representative and permanent, dealing with all matters in which young people express an interest. In addition it can be envisaged that an ad hoc structure can be made to debate or act upon a specific issue. On occasion it may be appropriate to combine different forms.

III.1 Youth councils, youth parliaments, youth forums

59. Effective participation of young people in local and regional affairs should be based on their awareness of the social and cultural changes taking place within their community, and requires a permanent representative structure such as a youth council, a youth parliament or a youth forum.

60. Such a structure may be composed by election, or by appointment from within organisations of young people and/or on a voluntary basis. Its membership should reflect the community's sociological make-up.

61. Young people should assume direct responsibility for projects and play an active part in the related policies. For this purpose, local and regional authorities should create or support structures for active participation.

62. These structures provide the physical framework for the free expression by young people of their concerns, particularly as regards the raising of such concerns with the authorities, and the possibility of making proposals to them. Issues to be raised might reflect those laid out in Part I of the present Charter.

63. The roles of such a structure might include:

i. providing a forum for the free expression by young people of their concerns, relating, inter alia, to proposals and policies of the authorities;

ii. offering the possibility for young people to make proposals to the local and regional authorities;

iii. enabling authorities to consult young people on specific issues;

iv. providing a forum where projects involving young people are developed, monitored and evaluated;

v. providing a forum to facilitate consultation with young people's associations and organisations;

vi. facilitating the participation of young people in other consultative bodies of the local and regional authorities.

64. By giving young people the opportunity to speak and act on the problems affecting them, such structures provide training in democratic life and the management of public affairs.

65. Young people should therefore be encouraged to participate in such structures and the activities undertaken within their framework, in order to promote their capacities for learning about and practicing the principles of democratic citizenship. Particularly for those young people who are instigators of projects and dialogue with the authorities, such structures should also provide a forum for training in democratic leadership.

66. The local and regional authorities, and the young people themselves, will also benefit from the multiplier effect that the act of participation by young people in such structures can bring, particularly in terms of encouraging young people in the exercise of their civic rights, such as participation in elections and other forms of polling including referenda.

III.2 Support for structures of youth participation

67. In order to function effectively, institutional structures of youth participation (whether they are formal or informal) require resources and support. To this end, local and regional authorities should provide such structures with the space, financial means and material support necessary for the purpose of ensuring their smooth and effective operation. The provision of such means does not exclude such structures from seeking additional financial and material support from other sources, such as private foundations and companies.

68. Local and regional authorities should ensure that the provision of support to structures of youth participation is guaranteed. To this end, they should appoint a guarantor – a person or group of persons – to follow implementation of support measures, to whom the structures can address themselves in case of need.

69. Such a person or group of persons should be independent from the political structures and from the structures of youth participation, and nomination is agreed upon by both of the above.

70. In addition to guaranteeing the above-mentioned support, the functions of this person(s) could include:

i. acting as the interface between young people and the elected local and regional representatives on any issue raised by either of these;

ii. acting as the advocate for young people vis-à-vis the local and regional authorities in situations of tension between the two;

iii. acting as a channel through which local and regional authorities can communicate with young people;

iv. preparing regular reports for the attention of young people and the local and regional authorities in order to evaluate the level of participation by young people in local and regional life, for example through the implementation of projects or involvement in structures of youth participation, and the impact of their participation.

<…>

Recommendation № Rec (2004) 12 of the Committee of Ministers on the processes of reform of boundaries and/or structure of local and regional authorities

(Adopted by the Committee of Ministers on 20 October 2004 at the 900th meeting of the Ministers' Deputies)

(Extract)

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

<…>

Recommends that the governments of member states, where they engage in reforms of the boundaries and/or the structure of local and/or regional authorities:

1. undertake thorough preparation, in order to identify and take account of the applicable legal and practical preconditions;

2. ensure the existence of well-designed decision-making procedures based on good institutional dialogue;

3. elaborate a step-by-step plan and clearly assign responsibilities including leadership for the implementation of the reform, as well as arrange for the consistent monitoring of it;

4. undertake broad and unbiased evaluation of the results and keep the relevant local and/or regional authorities informed; in accordance with the good practice drawn up below.

<…>

Recommendation № R (97) 5 of the Committee of Ministers on the protection of medical data

(Adopted by the Committee of Ministers of the Council of Europe on 13 February 1997)

(Extract)

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

<…>

Recommends that the governments of member states:

- take steps to ensure that the principles contained in the appendix to this recommendation are reflected in their law and practice;
- ensure wide circulation of the principles contained in the appendix to this recommendation among persons professionally involved in the collection and processing of medical data;

Decides that this recommendation will replace Recommendation No. R (81) 1 on regulations for automated medical data banks.

APPENDIX TO RECOMMENDATION NO. R (97) 5

1. Definitions

For the purposes of this recommendation:

- the expression "personal data" covers any information relating to an identified or identifiable individual. An individual shall not be regarded as "identifiable" if identification requires an unreasonable amount of time and manpower. In cases where the individual is not identifiable, the data are referred to as anonymous;
- the expression "medical data" refers to all personal data concerning the health of an individual. It refers also to data which have a clear and close link with health as well as to genetic data;
- the expression "genetic data" refers to all data, of whatever type, concerning the hereditary characteristics of an individual or concerning the pattern of inheritance of such characteristics within a related group of individuals.

It also refers to all data on the carrying of any genetic information (genes) in an individual or genetic line relating to any aspect of health or disease, whether present as identifiable characteristics or not.

The genetic line is the line constituted by genetic similarities resulting from procreation and shared by two or more individuals.

<…>

2.2.A member state may extend the principles set out in this recommendation to cover medical data not processed automatically.

3. Respect for privacy

3.1.The respect of rights and fundamental freedoms, and in particular of the right to privacy, shall be guaranteed during the collection and processing of medical data.

3.2.Medical data may only be collected and processed if in accordance with appropriate safeguards which must be provided by domestic law.

In principle, medical data should be collected and processed only by health-care professionals, or by individuals or bodies working on behalf of health-care professionals. Individuals or bodies working on behalf of health-care professionals who collect and process medical data should be subject to the same rules of confidentiality incumbent on health-care professionals, or to comparable rules of confidentiality.

Controllers of files who are not health-care professionals should only collect and process medical data subject either to rules of confidentiality comparable to those incumbent upon a health-care professional or subject to equally effective safeguards provided for by domestic law.

4. Collection and processing of medical data

4.1.Medical data shall be collected and processed fairly and lawfully and only for specified purposes.

4.2.Medical data shall in principle be obtained from the data subject. They may only be obtained from other sources if in accordance with Principles 4, 6 and 7 of this recommendation and if this is necessary to achieve the purpose of the processing or if the data subject is not in a position to provide the data.

4.3.Medical data may be collected and processed:

a. if provided for by law for:

i. public health reasons; or

ii. subject to Principle 4.8, the prevention of a real danger or the suppression of a specific criminal offence; or

iii. another important public interest; or

b. if permitted by law:

i. for preventive medical purposes or for diagnostic or for therapeutic purposes with regard to the data subject or a relative in the genetic line; or

ii. to safeguard the vital interests of the data subject or of a third person; or

iii. for the fulfilment of specific contractual obligations; or

iv. to establish, exercise or defend a legal claim; or

c.if the data subject or his/her legal representative or an authority or any person or body provided for by law has given his/her consent for one or more purposes, and in so far as domestic law does not provide otherwise.

<…>

Recommendation № R (98) 12 of the Committee of Ministers on supervision of local authorities' action

(Adopted by the Committee of Ministers on 18 September 1998 at the 641st meeting of the Ministers' Deputies)

(Extract)

The Committee of Ministers, having regard to Article 15.b of the Statute of the Council of Europe,

<…>

Recommends to the governments of member states that they:

1. adopt the appropriate measures:

- to extend the application of the principles enshrined in Article 8 of the Charter to all forms of supervision of local authorities' action;
- to recognise the essential role of political supervision by citizens and to foster the implementation of this supervision, through, inter alia, the use of the instruments of direct democracy considered appropriate;
- to strengthen the transparency of local authorities' action and to ensure, in general, the public nature of decisions which engender financial costs to be borne by the community, as well as the real possibility for citizens and legal persons concerned to have access to these decisions in conformity with the procedures established according to the law;
- in accordance with Article 7, paragraph 1, of the Charter, to allow administrative sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies) only exceptionally, to accompany their use with the appropriate guarantees, in order to ensure their compatibility with the free exercise of local electoral mandates, and to give preference to procedures where the supervisory authority, or a named ad hoc authority, intervenes in the place of the authority at fault, thus reducing cases where administrative sanctions could be adopted against the latter;
- to provide procedures that local bodies can themselves initiate for solving their internal conflicts, and envisage the intervention of the supervisory administrative authorities only when these procedures achieve no result;

2. Undertake, if necessary, the appropriate legislative reforms in order to improve consistency between the systems of supervision and the principle of subsidiarity, and the effectiveness of these systems, taking into account the guidelines appearing in the appendix to this recommendation.

APPENDIX TO RECOMMENDATION NO. R (98) 12

Guidelines on the improvement of the systems of supervision of local authorities' action

I. Guidelines on the scope of administrative supervision

To provide that, unless the contrary is provided for by law, local authorities exercise their own competencies.

To favour the attribution of "own" competencies over the delegation of competencies, resulting in a reduction of expediency supervision.

To enumerate clearly, in statutory provisions, the acts subject to supervision.

To limit compulsory ex officio administrative supervision to acts of a certain significance.

To reduce a priori administrative controls (those where the involvement of a government authority is necessary for a local decision to take effect or be valid).

II. Guidelines on the development of alternative mechanisms to administrative supervision

To strengthen the dialogue between central and local authorities.

To strengthen the function of advising and assessing, which some bodies (whether independent of central administration or part of this administration) may have, in particular in the financial and management fields.

To strengthen the role of independent bodies such as ombudsmen and mediators.

To strengthen internal mechanisms of supervision, in particular in the financial and management fields.

III. Guidelines concerning the supervisory procedures

i. Judicial procedures

To deny courts the power to replace the local authority in evaluating the expediency of an act: where such evaluation is necessary, this should be a task for administrative supervisory authorities.

To give the courts the power to adopt interim measures, when these measures are justified by their urgency and/or the risk of irreparable damage.

To provide for appropriate measures in order to ensure the full and immediate execution of courts' decisions concerning the legality of the act subject to supervision, including the procedures for substituting the authorities at fault.

To provide for appropriate measures in order to reduce the time taken to examine cases brought before the court, as the length of judicial procedures runs counter to legal security and may prejudge the usefulness of the supervision.

ii. Supervisory procedures before the administrative authorities

To provide, if possible, that there is only one first instance supervisory authority; where the intervention is required of specialised supervisory authorities (depending on the content of the act subject to supervision), to define precisely the respective spheres of competence of these bodies, in order to avoid uncertainty over which authority actually has to carry out the supervision.

To set, in statutory texts, the time limit granted to the supervisory authority in order to perform the a priori supervision and to provide that the absence of any decision within the given time limit signifies agreement.

iii. Financial supervision and supervision of management

Minimise the effects of financial supervision and supervision of management in so far as these can bring into question the expediency of choices made by local elected representatives.

To organise these two kinds of supervision in order to foster good accounting practices and the effectiveness of management, prevent financial imbalances, monitor financial rehabilitation of local authorities which encounter financial difficulties and enlighten citizens with complete and objective information.

IV. Guidelines on the prevention of the risk of informal supervision

To prevent, as a general rule, local authority staff members being dependent on authorities other than the ones that employ them, when taking decisions as part of their duties.

To avoid relations between local authorities and central government departments working with them which lead to the replacement, by unofficial “technical” control, of official supervision, the level of which is lowered.

<…>

III. Documents of the Venice Commission

The European Commission for Democracy through Law (Venice Commission) is the Council of Europe's advisory body and has a high expertise primarily in the field of constitutional law in general, and the rule of law in particular.

The use of the expert opinions of the Venice Commission in the Ukrainian political and legal realms has become a common and widely used practice, which is not the case with Western European countries that have developed traditions of democracy. In Ukraine this advisory body is primarily known by its work on assessments of individual draft laws and even laws in force regarding their compliance with international standards in the field of democracy and human rights.

At the same time, such practical work on expert opinions is not exclusive practice and competence of the Venice Commission. Its theory-and-practice legal documents regarding the rule of law are equally important contributions. Thus, in March 2011, the 86th Plenary Meeting of the Venice Commission approved the Report on Rule of Law (hereinafter - the Report). This document makes the first systematic attempt to determine a structure of constituent elements of the rule of law, and most importantly - its essential content at the level of an expert institution.

The purpose of this report (as it is stated) is to find a generally recognized, clear understanding of the rule of law (as outlined above), as well as to find out its main elements. The aim was to ensure that the Council of Europe, an international organization defining the rule of law as one of its three fundamental principles along with other organizations and institutions could contribute to the practical realization of this important principle through its interpretation and application in its own relations with its member countries and within its member states themselves.

In fact, this document once again treats the fundamental principles of the Council of Europe "rule of law" alongside democracy and human rights, which generally reflects the Convention for the Protection of Human Rights and Fundamental Freedoms' approach. For the Council of Europe, the most important references to the rule of law are in the preamble to the Statute of the Council of Europe, which emphasizes the "devotion" of the member states to the "spiritual and moral values that are the common heritage of their peoples and the true source of personal liberty, political freedom and the rule of law, principles that constitute the foundation of every true democracy ".

The report proposes a rather general terminological analysis of the notion of "the Rule of Law" and related legal categories such as "Rechtsstaat", "Estado de Direito", "Etat de droit", etc.

It is worth mentioning here that at the present stage of development of legal opinion these terms have a lot of common intrinsic features, which in some cases actually makes it impossible to distinguish them. Of course, historical retrospective and a brief description of the evolution of each of them makes it possible to distinguish certain characteristic features and peculiar accents. However, in today's context, the use of these legal constructs is increasingly gaining virtually identical features.

The Venice Commission, without giving a specific definition of the rule of law (which is actually impossible) because of its characterization as a legal phenomenon, provides a fairly clear and comprehensive understanding through the system of its constituent elements: legality, legal certainty, prohibition of arbitrariness, access to justice and respect for human rights. Such a system of rules of the rule of law is quite universal and differs from other possible classifications. At the same time, it reflects the general undoubted key features of the rule of law as a legal construct and a system of interrelated elements.

Lawfulness means that the rules set by the law should be strictly adhered to. This requirement applies not only to individuals, but also to public authorities and private entities. Since the necessary condition of legality is advanced to the activities of officials, it also requires that civil servants have authority (mandate) for their actions and act within the limits of their powers. Legitimacy also provides that no person can be subjected to punishment if she/ he has not violated the previously adopted rules of law that have already entered into force and that the law should be held liable. The law should, as far as possible, be put properly into effect.

Legal certainty is essential in terms of trust to judicial system in particular and the rule of law in general. In order to achieve this trust, the state should make the text of the law readily accessible, clear and understandable. Actually, the state itself is also obliged to adhere to the laws that it had implemented and apply them in a predictable way and with logical consistency. Predictability means that the law should, if possible, be proclaimed in advance to its application and that the consequences of the law must be predictable: it must be articulated with sufficient clarity in order for a person to be able to adjust his behavior.

Prohibition of arbitrariness in modern realities means, first of all, limiting the freedom of discretion of public authorities and the state as a whole. It is a construct that provides for a clear and unequivocal restriction of the discretionary powers of the subjects of public authorities, firstly of the national level government. Although discretionary powers are necessary for the implementation of the entire range of government tasks in today's complex societies, these powers should not be exercised arbitrarily. Their implementation thus enables the adoption of substantially unfair, unfounded, foolish or arbitrary decisions that are incompatible with the notion of the rule of law.

Access to justice as a component of the rule of law at first sight has only a procedural aspect. However, it is much deeper and also involves a number of substantive legal aspects. Thus, the basic importance of this principle is that everyone should be given an opportunity to challenge actions and decisions of the authorities if they do not meet the rights or interests of the individual. Prohibition of such an appeal violates the rule of law. Normally, such appeals are to be filed in a court that acts under customary law, but in some countries an alternative appeal in less formal courts is allowed when an appeal to a formal decision can be filed to a court. However, this legislation component implies the need for the existence of a court as an independent and impartial institution, an overall system of requirements for the status, organization and principles of the activity of the judiciary itself.

According to the Report, the last component of the rule of law is the observance of human rights. The characteristic of this component can often be presented through the prism of the essence of the rule of law itself. However, as stated in these documents, the observance of the rule of law and human rights are not necessarily synonymous. However, to a large extent, both concepts coincide, and a number of rights enshrined in documents such as the Convention also expressly or indirectly relate to the rule of law. Among other things, the issue of equality and non-discrimination is also presented through the prism of this legal component.

Thus, the Report offers a generalized and systematic understanding of the essence of the rule of law on the basis of the existing practice of the work of the various institutional bodies of the Council of Europe itself and, above all, the European Court of Human Rights. However, the practical application of this document is still a complicated business. After all, practical implementation of often theoretical constructs and tools is not easy.

Taking into account the above, and based on a number of other objective arguments, the Venice Commission had prepared the Rule of Law Checklist in March 2016. This document in this section is presented only in the form of questionnaire - small excerpts exclusively for demonstration of its contextual content and conceptual idea. The checklist provides a question for each component of the rule of law, in response to which an individual will be able to receive certain information about compliance / non-compliance with the rule of law in a particular situation.

Another important document prepared by the Venice Commission is the Critical Analysis of the notions of "good governance" and "good management". (No. CDL-AD (2011) 009). This document provides a general description of the evolution of the concept of "good governance" and several related concepts. At the same time, it is clearly articulated that good governance that is believed to embrace the concept of "good management" contains many different elements, including: responsibility, transparency, speed of response to the needs of citizens, efficiency, optimality, openness, participation, predictability, rule of law, consistency, equality, ethical behavior, corruption prevention, interruption of proceedings within a reasonable time, protection of human rights, simplification of proceedings.

As for the "good governance", this concept obviously relates to certain rights included in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Some of the elements mentioned above come from here, for example: objectivity, honesty, interruption of proceedings within a reasonable time, legal certainty, proportionality, lack of discrimination, the right to be heard, optimality, and effectiveness.

Particular attention should be paid to "The European Standards of the Rule of Law and the Degree of Independence of the Council of Europe's Authorities" Memorandum (CDL-JU (2013) 020), which somewhat details the peculiarities of the relationship and the practical application of the principle of the rule of law, the principle of the separation of powers and the restriction of discretion authority. In particular, discretionary powers in law enforcement practice are necessary to ensure flexibility in the state's response to social realities and challenges. However, the use of discretionary powers should be regulated through procedural transparency and clear motivation for the adoption of an administrative decision.

Thus, the extracts from the individual documents of the Venice Commission presented here will, first of all enable local self-government officials to look at the rule of law under a slightly different perspective than it is customary in the field of public administration.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

Report on the rule of law

(Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011) (CDL-AD(2011)003-REV)

(Extract)

I. Introduction

1. The concept of the "Rule of Law", along with democracy and human rights,[4] makes up the three pillars of the Council of Europe and is endorsed in the Preamble to the European Convention on Human Rights.

2. It is also enshrined in a number of international human rights instruments and other standard-setting documents.

3. The present study takes as a background Resolution 1594 (2007) of the Parliamentary Assembly of the Council of Europe on "The principle of the rule of law" (see in particular par. 6.2 which refers to the Venice Commission). Its purpose is to identify a consensual definition of the rule of law which may help international organisations and both domestic and international courts in interpreting and applying this fundamental value. This definition should therefore be of a nature that allows of practical application.

4. Although the terminology is similar, it is important to note at the outset that the notion of "Rule of law" is not always synonymous with that of "Rechtsstaat", "Estado de Direito" or "Etat de droit" (or the term employed by the Council of Europe: "prééminence du droit"). Nor is it synonymous with the Russian notion of "Rule of the laws/of the statutes", (verkhovenstvo zakona), nor with the term "pravovoe gosudarstvo ("law governed state").[5]

5. This report aims to reconcile the above notions, and especially the notions of "Rule of Law", "Rechtsstaat" and "Etat de droit".[6]

6. The present report was adopted by the Venice Commission at its 86th plenary session (2526 March 2011).

II. Historical origins of Rule of law, Etat de droit and Rechtsstaat

7. The qualities embodied in the notion of rule of law have been propounded for centuries and go back to antiquity. Plato said that "Where the law is subject to some other authority and has none of its own, the collapse of state, in my view, is not far off, but if the law is the master of government and the government its slave, then the situation is full of promise and men enjoy all the blessings all the gods shower on a state".[7] The modern concept of the rule of law was brought to attention in particular by the British constitutional lawyer Professor A.V. Dicey in his Introduction to the Study of the Law of the Constitution (1885).[8]

4 Statute of the Council of Europe (ETS No. 001), in particular its Preamble and Article 3.

5 Hiroshi Oda, "The Emergence of Pravovoe Gosudarstvo (Rechtsstaat) in Russia" 25 Review of Central andEast European Law 1999 No. 3, 373.

6 For an account of the difference in origins and concept between Rechtsstaat, Rule of Law and Etat de droit see M. Loughlin, Foundations of Public Law (2010), chap.11.

7 Plato, Laws, Book IV, 715 d; Complete Works, Cooper, Jonh et al., Hackett Publishing Company Inc., 1997, Indiana, p. 1402. For an account of the origins of the concept of Rule of Law in the ancient world see M. Loughlin, Swords and Scales (2000), chap. 5; B. Tamanaha, On the Rule of Law: History, Politics and Theory (2004), chap. 1.

8 10th ed.1959 with an introduction by E.C.S.Wade, London, MacMillan, chap.4.

8. Dicey believed that there were two principles which were inherent in the non-codified British constitution. The first, and primary principle, was the "sovereignty or supremacy of Parliament" (thus endorsing the notion of representative government as the main feature of a democratic state). The second principle, which tempered the first (but in the UK context could not override it) was the rule of law.

9. Dicey therefore saw the rule of law as a constraint (although not ultimate control) of the theoretically unlimited power (in the British context) of the state over the individual. For him the rule of law principle resulted from the existing common (judge-made) law over the years (and was not necessary therefore to be codified in any written constitution). For Dicey the rule of law had three core features: First, that no person should be punished but for a breach of the law, which should be certain and prospective, so as to guide peoples' actions and transactions and not to permit them to be punished retrospectively. He believed that discretionary power would lead to arbitrariness. Secondly, that no person should be above the law and that all classes should be equally subjected to the law. Thirdly, that the rule of law should emanate not from any written constitution but from the "common (judge-made) law".

10. Dicey's third feature of the rule of law cannot survive a modern society, and although the first feature (legality and certainty) and the second feature (equality) are core to the concept, Dicey's view of legal certainty was not universally accepted to the extent that he believed that any discretionary power would inevitably lead to the "arbitrary" exercise of power.[9]

11. In the first half of the twentieth century the rule of law became a highly contested concept as Dicey's opposition to discretionary power was portrayed by the architects of the "welfare state" as driven by his opposition to government intervention. Discretion was seen as necessary for the decision-making required in an increasingly complex society.

12. From the middle of the twentieth century, the rule of law became reconciled to discretionary power. Discretion was accepted, but nevertheless should be constrained by the letter and purpose of the power-conferring law, as well as by other elements of the rule of law, such as that everyone have access to fair procedures before an impartial and independent court, and that the law be applied consistently, equally and in a manner that is not arbitrary or devoid of reason.

13. The Rechtsstaat concept focuses, by definition, much more on the nature of the state. Whereas the rule of law emerged from courtrooms, the Rechtstaat emerged from written constitutions.[10] The main theorist of this notion was Robert von Mohl (1831). The Rechsstaat was defined in opposition to the absolutist state, with unlimited powers conferred on the executive. Protection against absolutism had to be provided by the legislature rather than by the courts alone.

14. The French approach can be foreseen in the Declaration of the Rights of Man and the Citizen (1789). The notion of Etat de droit (which followed the positivistic concept of Etat legal) puts less emphasis on the nature of the state, which it considers as the guarantor of fundamental rights enshrined in the Constitution against the legislator. As developed at the beginning of the 20th Century by Carré de Malberg, the Etat de droit connotes (judicial) constitutional review of ordinary legislation.[11]

15. The rule of law has been variously interpreted, but it must be distinguished from a purely formalistic concept under which any action of a public official which is authorised by law is said to fulfil its requirements. Over time, the essence of the rule of law in some countries was distorted so as to be equivalent to "rule by law", or "rule by the law", or even "law by rules".

9 On the issue, see Jeffrey Jowell, "The Rule of Law and its Underlying Values", in The Changing Constitution, edited by Jeffrey Jowell and Dawn Oliver, 7th edition, Oxford University Press 2011; Kaarlo Tuori, The Rule of Law and the Rechtsstaat, in Ratio and Voluntas, Ashgate 2011, chap. 7, pp. 8 ff; Erik O. Wennerström, The Rule of Law and the European Union, Uppsala: Iustus Förlag 2007, pp. 61 ff.

10 Wennerström, p. 50.

11 See in particular Wennerström, pp. 73 ff.

These interpretations permitted authoritarian actions by governments and do not reflect the meaning of the rule of law today.[12]

16. The rule of law in its proper sense is an inherent part of any democratic society and the notion of the rule of law requires everyone to be treated by all decision-makers with dignity, equality and rationality and in accordance with the law, and to have the opportunity to challenge decisions before independent and impartial courts for their unlawfulness, where they are accorded fair procedures. The rule of law thus addresses the exercise of power and the relationship between the individual and the state. However, it is important to recognise that during recent years due to globalisation and deregulation there are international and transnational public actors as well as hybrid and private actors with great power over state authorities as well as private citizens. In part V below ("new Challenges") this report briefly considers whether the rule of law should be extended to constrain the actions of these bodies as well as the traditional public authorities at state level.

III. Rule of law in positive law

a. International law

<…>

IV. In search of a definition

34. The divergences of the meanings given to the notion of the rule of law - as well as of Rechtsstaat - may lead to doubting its usefulness as a fundamental concept in public law.[13] However, it needs to be understood and therefore be defined, both because it appears in many legal texts, and because the rule of law is accepted as a fundamental ingredient of any democratic society.

35. Looking at the legal instruments, national and international, and the writings of scholars, judges and others, it seems as if there is now a consensus on the core meaning of the rule of law and the elements contained within it.

36. Perhaps the following definition by Tom Bingham covers most appropriately the essential elements of the rule of law.

"all persons and authorities within the state , whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts".[14]

37. This short definition, which applies to both public and private bodies, is expanded by 8 "ingredients" of the rule of law. These include: (1) Accessibility of the law (that it be intelligible, clear and predictable); (2) Questions of legal right should be normally decided by law and not discretion; (3) Equality before the law; (4) Power must be exercised lawfully, fairly and reasonably; (5) Human rights must be protected; (6) Means must be provided to resolve disputes without undue cost or delay; (7) Trials must be fair, and (8) Compliance by the state with its obligations in international law as well as in national law.

38. Bingham's requirement that laws must be publicly made, taking effect in the future deals with the nature of law and legal decision-making, requiring, like Dicey, that laws themselves should be accessible and clear and prospective. However, in expanding on that definition Bingham makes it clear that, although, unlike Dicey, he rec-

12 See the 3 volume work on the rule of law by Serhiy Holovaty, The Rule of Law. Kyiv, Phoenix Publishing House (2006) LXIV,1747 (Vol. 1: The Rule of Law: From Idea to Doctrine; Vol. 2: The Rule of Law: From Doctrine to Principle; Vol. 3: The Rule of Law: The Ukrainian Experience).

13 This is for example the point of view of Martin Loughlin, as expressed in document CDL-DEM(2009)006 (The rule of law in European jurisprudence), p. 3.

14 Tom Bingham, The Rule of Law (2010).

ognises that discretion on the part of public officials is necessary in our complex society, discretion should not be unconstrained, and should not permit arbitrary or unreasonable decisions (the nature of law is thus infused with both procedural and substantive content).

39. Bingham's statement that all persons and authorities should be "bound by" the law speaks both to members of the public and private entities, who are expected to comply with the law and to public officials (who are expected both to comply with the law in the sense of not exceeding their powers, and also, to apply the law equally, and regardless of the status of the object of the law's implementation or any threats or inducements offered to the decision-maker).

40. Bingham's notion that everyone shall have the benefit of laws, implies access to justice in two senses: first, access to courts in order to claim the benefit of the laws, and secondly, that the procedures of those courts are fair and their decisions are made independently and impartially.[15]

41. Drawing on that definition and on others based on very different systems of law and the state, it seems that a consensus can now be found for the necessary elements of the rule of law as well as those of the Rechtsstaat which are not only formal but also substantial or material (materieller Rechtsstaatsbegriff). These are:

(1) Legality, including a transparent, accountable and democratic process for enacting law

(2) Legal certainty

(3) Prohibition of arbitrariness

(4) Access to justice before independent and impartial courts, including judicial review of administrative acts

(5) Respect for human rights

(6) Non-discrimination and equality before the law.

(1) Legality (supremacy of the law)

42. The importance of the principle of legality was underlined by Dicey. It first implies that the law must be followed. This requirement applies not only to individuals, but also to authorities, public and private. In so far as legality addresses the actions of public officials, it requires also that they require authorisation to act and that they act within the powers that have been conferred upon them.[16] Legality also implies that no person can be punished except for the breach of a previously enacted or determined law and that the law cannot be violated with impunity. Law should, within the bounds of possibility, be enforced.

43. The term "law", as used in this chapter, refers primarily to national legislation and common law. However, the development of international law as well as the importance given by international organisations to the respect of the rule of law lead to addressing the issue at international level as well: the principle pacta sunt servanda is the way in which international law expresses the principle of legality.[17]

(2) Legal certainty

15 Expanding on that definition, Bingham also believes that the rule of law must afford adequate protection to human rights (many of which, such as the right to a fair trial, have already been covered by his definition) and that the rule of law requires compliance by the state with its obligations in international as well as national law.

16 Jeffrey Jowell, The Rule of Law and its underlying Values, in: Jeffrey Jowell/Dawn Oliver (Eds.), The Changing Constitution (note 6 above), p. 10.

17 See Bingham, above note, who believes that "The rule of law requires compliance by the state with its obligations in international as well as national law" (chap.10).

44. The principle of legal certainty is essential to the confidence in the judicial system and the rule of law.[18] It is also essential to productive business arrangements so as to generate development and economic progress.[19] To achieve this confidence, the state must make the text of the law easily accessible. It has also a duty to respect and apply, in a foreseeable and consistent manner, the laws it has enacted. Foreseeability means that the law must where possible be proclaimed in advance of implementation and be foreseeable as to its effects: it has to be formulated with sufficient precision to enable the individual to regulate his or her conduct.

45. The need for certainty does not mean that discretionary power should not be conferred on a decision-maker where necessary, provided that procedures exist to prevent its abuse. In this context, a law which confers a discretion to a state authority must indicate the scope of that discretion. It would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion and the manner of its exercise with sufficient clarity, to give the individual adequate protection against arbitrariness.[20]

46. Legal certainty requires that legal rules are clear and precise, and aim at ensuring that situations and legal relationships remain foreseeable. Retroactivity also goes against the principle of legal certainty, at least in criminal law (Article 7 of Convention), since legal subjects have to know the consequences of their behaviour; but also in civil and administrative law to the extent it negatively affects rights and legal interests. In addition, legal certainty requires respect for the principle of res judicata. Final judgements by domestic courts should not be called into question.[21] It also requires that final court judgments be enforced. In private disputes, enforcement of final judgments may require the assistance of the state bodies in order to avoid any risk of "private justice" contrary to the rule of law.[22] Systems which allow for the quashing of final judgments without cogent reasons of public interest and for an indefinite period of time are incompatible with the principle of legal certainty.[23]

47. In addition, Parliament shall not be allowed to override fundamental rights by ambiguous laws. This offers essential legal protection of the individual vis-à-vis the state and its organs and agents.[24]

48. Legal certainty also means that undertakings or promises held out by the state to individuals should in general be honoured (the notion of the 'legitimate expectation').

49. However, the need for certainty does not mean that rules should be applied so inflexibly as to make it impossible to take into account the dictates of humanity and fairness.

50. The existence of conflicting decisions within a supreme or constitutional court may be contrary to the principle of legal certainty. It is therefore required that the courts, especially the highest courts, establish mechanisms to avoid conflicts and ensure the coherence of their caselaw.

51. Legal certainty - and supremacy of the law - imply that the law is implemented in practice. This means also that it is implementable. Therefore, assessing whether the law is implementable in practice before adopting it, as well as checking a posteriori whether it may effectively be applied is very important. This means that ex ante and ex post legislative evaluation has to be considered when addressing the issue of the rule of law.

18 The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 51.
19 See R. McCorquodale, in The Rule of Law in International and Comparative Context (above, note 10, chap. 3).
20 The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 46.
21 This does not exclude, of course, the right to apply to an international court complaining that the final domestic judgment is in violation of an international legal obligation.
22 The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 49.
23 Ibid., see para. 48.
24 Ibid. see para., 43.

(3) Prohibition of arbitrariness

52. Although discretionary power is necessary to perform a range of governmental tasks in modern, complex societies, such power should not be exercised in a way that is arbitrary. Such exercise of power permits substantively unfair, unreasonable, irrational or oppressive decisions which are inconsistent with the notion of rule of law.

(4) Access to Justice before independent and impartial courts

53. Everyone should be able to challenge governmental actions and decisions adverse to their rights or interests. Prohibitions of such challenge violate the rule of law. Normally these challenges should be made to courts of law, but some countries allow alternative challenge to more informal tribunals, from which appeal may lie to a court.

54. The role of the judiciary is essential in a state based on the rule of law. It is the guarantor of justice, a fundamental value in a law-governed State.[25] It is vital that the judiciary has power to determine which laws are applicable and valid in the case, to resolve issues of fact, and to apply the law to the facts, in accordance with an appropriate, that is to say, sufficiently transparent and predictable, interpretative methodology.[26]

55. The judiciary must be independent and impartial. Independence means that the judiciary is free from external pressure, and is not controlled by the other branches of government, especially the executive branch. This requirement is an integral part of the fundamental democratic principle of the separation of powers. The judges should not be subject to political influence or manipulation.[27] Impartial means that the judiciary is not - even in appearance - prejudiced as to the outcome of the case.

56. There has to be a fair and open hearing, and a reasonable period within which the case is heard and decided. Additionally, there must be a recognised, organised and independent legal profession, which is legally empowered, willing and de facto able to provide legal service. As justice should be affordable, legal aid should be provided where necessary.

57. Moreover, there must be an agency or organisation, a prosecutor, which is also to some degree autonomous from the executive, and which ensures that violations of the law, when not denounced by victims, can be brought before the courts.[28]

58. Finally, judicial decisions must be effectively implemented, and there should be no possibility (save in very exceptional cases) to revise a final judicial decision (respect of res judicata).

(5) Respect for human rights

59. Respect for the rule of law and respect for human rights are not necessarily synonymous. However, there is a great deal of overlap between the two concepts and many rights enshrined in documents such as the Convention also expressly or impliedly refer to the rule of law.

60. The rights most obviously connected to the rule of law include: (1) the right of access to justice, (2) the right to a legally competent judge, (3) the right to be heard, (4) inadmissibility of double jeopardy (ne bis in idem) (Article 4 of Protocol 7 to Convention (5) the legal principle that measures which impose a burden should not have retroactive effects (6) the right to an effective remedy (Article 13 of Convention) for any arguable claim, (7) anyone accused of a crime is presumed innocent until proved guilty,[29] and (8) the right to a fair trial or, in Anglo-American parlance, the principle of natural justice or due process; there has to be a fair and open hearing, absence of bias,

25 The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 39.
26 Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16
27 Thomas Carothers, The Rule of Law Revival, Foreign Affairs 77 (1998), 95 (96).
28 Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.
29 Thomas Carothers, The Rule of Law Revival, Foreign Affairs 77 (1998), 95 (96).

and a reasonable period within which the case is heard and decided. Additionally, there must be a recognised, organised and independent legal profession, which is legally empowered, willing and de facto able to provide legal service, and the decisions of which are implemented without undue delay.[30]

61. Most of these rights (as well as the principle of independence and impartiality of the judiciary) are enshrined in Article 6 of Convention. However, other rights may also have rule of law connotations, such as the right to expression, which permits criticism of the government of the day (Article 10 of Convention) and even rights such as the prohibition on torture or inhuman or degrading treatment or punishment (Article 3), which may be linked to the notion of a fair trial.

(6) Non-discrimination and equality before the law

62. Dicey affirms the notion of equality through his requirement that, under the rule of law, there is a "universal subjection" of all to the law. He was in this context enunciating a notion of formal equality, to the extent that laws, however unjust in practice, should be equally applied, and consistently implemented.

63. Formal equality is nonetheless an important aspect of the rule of law - provided that it allows for unequal treatment to the extent necessary to achieve substantive equality - and can be stretched without damage to the underlying principle to the notion of non-discrimination which, together with equality before the law, constitutes a basic and general principle relating to the protection of human rights. As underlined by the Council of Europe's 2008 document on the issue,[31] these two principles are human rights principles as much as they are rule of law principles, and the Court's case-law tends to apply the prohibition of non-discrimination without there being a special need to refer to it as a rule of law principle, although there is some recognition that equality in rights and duties of all human beings before the law is an aspect of the rule of law.

64. Non-discrimination means that the laws refrain from discriminating against individuals or groups. Any unjustified unequal treatment under the law is prohibited and all persons have guaranteed equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

65. Equality before the law means that each individual is subject to the same laws, with no individual or group having special legal privileges.

V. New challenges

66. A challenge for the future is how the achievements of the rule of law can be preserved and further developed under circumstances where individuals are increasingly influenced by and linked to new modes of governance. This topic is not only related to international organisations but is also important in the sphere of public-private partnerships and in all fields which have previously been purely national but which have been transformed to being transnational. The rule of law must be tailored in a way that freedom for all will be ensured even in areas where hybrid (state-private) actors or private entities are responsible for tasks, which formerly have been the domain of state authorities. The substance of the rule of law as a guiding principle for the future has to be extended not only to the area of cooperation between state and private actors but also to activities of private actors whose power to infringe individual rights has a weight comparable to state power. Governmental actors at the national, transnational and international level all have to act as guarantors of the fundamental principles and elements of the traditional rule of law in these areas.

30 Rule of Law Inventory Report, Hague Institute for the Internationalisation of Law, Discussion Paper for the High Level Expert Meeting on the Rule of Law of 20th April 2007, p. 16.
31 The Council of Europe and the Rule of Law - An overview, CM(2008)170 21 November 2008, see para. 53

VI. Conclusion

67. The notion of rule of law has not been developed in legal texts and practice as much as the other pillars of the Council of Europe, human rights and democracy. Human rights are at the basis of an enormous corpus of constitutional and legal provisions and of case-law, at national as well as at international level. Democracy is implemented through detailed provisions concerning elections and the functioning of institutions, even if they often do not refer to this concept.

68. Legal provisions referring to the rule of law, both at national and at international level, are of a very general character and do not define the concept in much detail.

69. This has led to doubting the very usefulness of addressing the rule of law as a practical legal concept. However, it is increasingly included in national and international legal texts and case-law, especially the case law of the European Court of Human Rights. However, we believe that the rule of law does constitute a fundamental and common European standard to guide and constrain the exercise of democratic power.

70. The aim of the present report has been to find a consensual definition which is outlined above, together with an identification of the core elements of the rule of law. Its object has been that the Council of Europe, the international organisation which has defined the rule of law as one of its three pillars, may contribute, among other organisations and institutions, to the practical implementation of this important principle through its interpretation and application visà-vis and in its member states.[32]

ANNEX

CHECKLIST FOR EVALUATING THE STATE OF THE RULE OF LAW IN SINGLE STATES

1. Legality (supremacy of the law)

a) Does the State act on the basis of, and in accordance with the law?

b) Is the process for enacting law transparent, accountable and democratic?

c) Is the exercise of power authorised by law?

d) To what extent is the law applied and enforced?

e) To what extent does the government operate without using law?

f) To what extent does the government use incidental measures instead of general rules?

g) Are there exception clauses in the law of the State, allowing for special measures?

h) Are there internal rules ensuring that the state abides by international law?

i) Does the nulla poena sine lege system apply?

32 See Review of the rule of law situation: feasibility and methodology, DG-HL (2010) 21.

2. Legal certainty

a) Are all the laws published?

b) If there is any unwritten law, is it accessible?

c) Are there limits to the legal discretion granted to the executive?

d) Are there many exception clauses in the laws?

e) Are the laws written in an intelligible language?

f) Is retroactivity of laws prohibited?

g) Is there a duty to maintain the law?

h) Are final judgments by domestic courts called into question?

i) Is the case-law of the courts coherent?

j) Is legislation generally implementable and implemented?

k) Are laws foreseeable as to their effects?

l) Is legislative evaluation practiced on a regular basis?

3. Prohibition of arbitrariness

a) Are there specific rules prohibiting arbitrariness?

b) Are there limits to discretionary power?

c) Is there a system of full publicity of government information?

d) Are reasons required for decisions?

4. Access to Justice before independent and impartial courts

a) Is the judiciary independent?

b) Is the department of public prosecution to some degree autonomous from the state apparatus? Does it act on the basis of the law and not of political expediency?

c) Are single judges subject to political influence or manipulation?

d) Is the judiciary impartial? What provisions ensure its impartiality on a case-by-case basis?

e) Do citizens have effective access to the judiciary, also for judicial review of governmental action?

f) Does the judiciary have sufficient remedial powers?

g) Is there a recognised, organised and independent legal profession?

h) Are judgments implemented?

i) Is respect of res iudicata ensured?

5. Respect for human rights

Are the following rights guaranteed (in practice)?

a) The right of access to justice: Do citizens have effective access to the judiciary?

b) The right to a legally competent judge

c) The right to be heard

d) Ne bis in idem

e) Non-retroactivity of measures

f) The right to an effective remedy

g) The presumption of innocence

h) The right to a fair trial

6. Non-discrimination and equality before the law

a) Are the laws applied generally and without discrimination?

b) Are there laws that discriminate against certain individuals or groups?

c) Are laws interpreted in a discriminatory way?

d) Are there individuals or groups with special legal privileges?

<…>

Stocktaking on the notions of "good governance" and "good administration" (№ CDL-AD (2011)009)

(Extract)

I. Introduction

1. In its Recommendation 1791(2007) on the state of human rights and democracy in Europe the Parliamentary Assembly of the Council of Europe called on the Committee of Ministers of the Council of Europe to reinforce its own activities in the field of democracy, in particular by reacting to identified deficits of democracy in member states. The Parliamentary Assembly called on the Committee of Ministers to continue its work on democracy and good governance in the information society. At its 2007 session, the Council of Europe's "Forum for the Future of Democracy" encouraged the Venice Commission to pursue this matter.

2. Mr Oliver Kask acted as rapporteur and examined the different existing concepts of the notion of "good governance" as well as the notion of "good administration". Mr Asbjørn Eide, expert from Norway, was asked to examine the relation between "good governance" and human rights (Annex I). Ms Gret Haller submitted her reflections on this topic (Annex II, CDL(2009)052).

3. A preliminary version of this report (CDL(2008)091) was prepared on the basis of comments by Messrs Kask and Eide and considered by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008).

4. The Venice Commission has taken note of the diverging views that exist, even among its own members, about the usefulness and the democratic legitimacy of the notion of good governance, and does not intend to carry out an exhaustive study on it. This document only purports to provide some elements of reflection which can be used in further discussions. The Venice Commission took note of it at its … Plenary Session (Venice, … 2011).

II. The origins of the notion of "good governance"

5. The concept of governance is a very old one; it can be traced in the works of Aristotle, who referred to good governance to describe a state ruled by an ethical and just governor.

6. In recent times, "governance" has been used increasingly to define the process of decisionmaking and implementation of decisions in a variety of contexts, such as corporate governance, international governance, national governance and local governance.

7. At the end of the 1990s, the World Bank established a link between the quality of a country's governance system and its ability to pursue sustainable economic and social development. According to World Bank, governance encompasses the form of political regime; the process by which authority is exercised in the management of a country's economic and social resources for development; and the capacity of governments to design, formulate and implement policies and discharge functions (World Bank 1991 1992 1994; World Bank 2000a). The WB thus endorsed "good governance" as a core element of its development strategy. However, while recognizing the importance of the political dimensions of governance, the Bank interpreted the concept restrictively, arguing that the first aspect – whether a government is democratic or not - falls outside its mandate. As a result, it focused on the

economic dimensions of good governance, which has been equated with 'sound development management'[33]. It avoided on purpose the use of the term "government"[34] so as not to infringe upon state sovereignty.

8. The assessment of good governance aimed at measuring the economic performance of the states and their institutions from outside, without a direct involvement of those concerned in the country. The assessment was marked by largely informal monitoring procedures, as well as the treatment of private actors on an equal footing with governments. It was exclusively based on economic factors and focused on the output, both of private entities and public institutions.

9. The concept of good governance developed by the World Bank thus largely neglected some important aspects of democracy. This was inherent to its very nature and main features, which hardly made it possible to oppose, even through a democratic process in the country concerned, an assessment based on economic efficiency. It has been argued that through the promotion of good governance by the World Bank, some governments have been affected in their capacity to strike a fair balance between private interests and public interests, which may have contributed to a certain weakening of democratic principles.

10. The concept of good governance developed by the World Bank has since been endorsed by a range of other international actors and organisations, which have often adapted it to their own needs. A number of attempts have in particular been made to modify it with a view to including a democratic element. As results from the survey compiled in sections III and IV below, the use and understanding of the concept of good governance has significantly evolved over time, also depending on the international institution referring to it. This notwithstanding, the concept of good governance does not find its origin in the constitutional or legal discourses. It is rather a non-legal concept, which is virtually absent from the legal order of the Council of Europe member states.

11. Good governance is often said to include good administration. The principle of good administration is based on clearly identifiable procedural rights, the alleged violation of which can be invoked before a court. It is therefore widely accepted that good administration is a legal concept in itself, which is enshrined in international documents as well as in the legal order of several states. This difference in nature must be borne in mind and good governance can therefore not been equated with good administration.

<…>

VII. Conclusions

64. As the use of the notion "good governance" at the international and the national level shows, the exact content of this notion remains vague and there is no consensus on a definition. Among the bodies of the Council of Europe, there is hardly any consistency or coordination as to the use of the concept of "good governance".

65. While the concept of good governance was first used in legal documents by the World Bank at the end of the 1990s and was in that context largely inspired by economic considerations, it has since been borrowed by a range of other international organisations, which have included new elements in it. It is, however, striking that good governance has almost never been used in domestic legal orders, be it the constitutional or legislative level or even in case-law. This bears witness to its non legal-nature and to the fact that it was originally aimed at monitoring from outside, i.e. without a direct involvement of those concerned in the country.

33 C. Santiso, Good Governance and Aid Effectiveness:The World Bank and Conditionality, http://www.sti.ch/fileadmin/user_upload/Pdfs/swap/swap108.pdf

34 Government is one of the actors in governance. Other actors involved in governance vary depending on the level of government that is under discussion. See UNESCAP, What is good governance, http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp.

66. Good governance, which is considered to encompass good administration, contains a multitude of elements, including:

- accountability
- transparency
- responsiveness to the people's needs
- efficiency
- effectiveness
- openness
- participation
- predictability
- rule of law
- coherence
- equity
- ethical behaviour
- combating corruption
- termination of proceedings within a reasonable time
- protection of human rights
- simplification of procedures.

67. Accountability, transparency and participation are the most frequently mentioned elements, but they seem to have different meanings according to the context in which they are used.

68. There appears to be no consensus on the question whether good governance is a means to achieve a certain aim, for example the protection of human rights, or whether it is an end in itself. This is closely related to the question as to whether good governance encompasses democracy, the rule of law or the protection of human rights or whether it has a separate existence.

69. As regards "good administration", this term seems to refer to some of the rights enshrined in Article 6 of the European Convention on Human Rights. Some of the elements mentioned are, for example:

- impartiality
- fairness
- termination of proceedings within a reasonable time
- legal certainty
- proportionality, non-discrimination
- right to be heard
- effectiveness
- efficiency

70. Good administration, however, goes beyond the scope of article 6 of Convention in many respects, including in terms of infrastructure and attitudes. States must in particular meet certain requirements with respect to organisation, which should cater for the needs of the public. This cannot always be translated into legal terms as it should lead to material adjustments ensuring the proximity and accessibility of administrative offices. For example, their location and opening hours are easier to perceive as signs of good administration than are legislative and regulatory provisions. Also, ensuring that civil servants perform their tasks both in the general interest and in the interests of the persons with whom they are dealing, is essential for good administration, which makes the training of civil servants indispensable.

71. In recent years, new instruments have contributed to the codification of good administration both in the EU and in the Council of Europe. National legislation and caselaw have also confirmed this development.

72. Good administration is recognised as a legal principle and even as a right in many contexts. The right to good administration should, however, not be seen as an enforceable right itself since it needs to be specified in a set of rights and obligations that are more concrete. It is only these that have the character of individual rights that every person may claim from the administration.

73. Good administration implies that procedural mechanisms are as important as outcomes: they are themselves an integral part of the right to good administration. How the administration acts is inseparable from the substance of the action itself. The right to good administration therefore includes both basic principles and procedural guarantees. Its legal nature notwithstanding, good administration also requires measures to (re)organise the administration, to encourage certain behaviours and to facilitate the training of civil servants.

74. To date, there is no case-law on good governance or good administration by the European Court of Human Rights. In due time, the Court of Justice of the European Communities will develop the principles referred to in Article 41 of the Charter of Fundamental Rights of the European Union. For the time being, there appears to be no enforceable ("justiciable") right to good governance or to good administration, unless expressly provided for at the national level.

75. In view of the foregoing, the Venice Commission considers that the concept of good governance can offer some guidance especially for States in a transition process provided it is not used to weaken key requirements in terms of democracy, rule of law and human rights. In that sense, good governance can only exist in societies where democratic institutions and processes including transparency and accountability prevail, and where the authorities respect and comply with the full range of human rights. The lack of consensus of the exact content of the concept of good governance including within the Council of Europe, combined with its nonlegal nature and quasi-absence at the domestic level, makes it however difficult to turn it into a workable principle.

76. A more consistent use of the concept of good governance within the Council of Europe, which could pave the way for a definition, could be a useful step forward and the Venice Commission stands ready to assist in this matter. In any event, good administration should remain a key principle materialised through a set of specified rights and obligations and efforts to promote it within the Council of Europe member states should be pursued.

ANNEX I

HUMAN RIGHTS REQUIREMENTS TO GOOD GOVERNANCE

(A note by Asbjørn EIDE Professor emeritus, Norwegian Centre for Human Rights)
(Extract)

As shown by the survey above, there is no universally recognized definition of 'good governance'. The present preoccupation with the issue appears to have originated in the World Bank and the other financial institutions, whose primary concern was to ensure that government became a reliable institution for sustainable growth. The World Bank focussed initially on four elements: Good public sector management, a reliable legal framework for development (predictability, rule of law, respect for private property and investments), accountability (to the public and to donors), transparency and information. While all of these are desirable elements in good governance, some

important elements are missing, in particular the human rights component and its many dimensions, as discussed below. The neglect of the human rights dimension in the World Bank concept can be explained by its own Articles of Agreement (Article IV section 10) which precludes it when giving loans from taking anything else than economic factors into account.

A large part of human rights deal of course also with non-economic matters and must therefore be included in a satisfactory concept of good governance. This now widely recognised, e.g. in Council of Europe Parliamentary Assembly resolution 1060(1995) quoted above, where democracy and human rights are the first elements mentioned, though without spelling out what the human rights requirements to good governance are.

In this note, the democracy/human rights linkage will be explored and elaborated. It starts from the premise that the best governance is that which optimally applies and implements human rights, ensuring that all human rights can be enjoyed by everyone under the jurisdiction of that state. The links between human rights and governance include the institutional requirements contained in human rights law, and the state obligations which are necessary corollaries of the rights contained in the international instruments.

State responsibility for human rights: Levels and nature of obligations

Wherever there is a right, there must be a duty-holder. Under human rights law the state has the primary responsibility for the implementation of human rights.. Governance must therefore be so constructed as to obtain the optimal realization of human rights for all under the jurisdiction of the state. Additionally, governance should also be such that it facilitates the cooperation by states in respecting, promoting and protecting human rights in other countries and thus in the world community as a whole, as reflected i.a. in the passage quoted above from the Cotonou Partnership Agreement between the States of African, Caribbean and Pacific Group and the European Community, adopted in 2000.

Criteria for good governance should focus on institutions and process (obligations of conduct), participation (political rights and cultural rights), and outcomes (obligations of result). Democratic governance in terms of institutions and political processes is a necessary, but not sufficient guarantee for full realization of human rights, which set requirements both to the process of governance and to its results. Even fully democratic states, behaving in accordance with the political will of the majority of its population, must recognise the limitations and duties set by human rights.

While every state member of the United Nations has a general duty under the UN Charter to promote and protect the human rights set out in the Universal Declaration, these duties are made more specific in the relevant global and regional international instruments to which they are parties.

Institutional requirements

Modern constitutional doctrines of state government are generally built on variations of the threefold institutional division of competence between the legislative, the executive and the adjudicative branch. There are no explicit requirements under international law for states to conform to that division, but there are significant elements in the normative system of human rights which point in that direction, some implicitly and others explicitly. The requirement of independent courts is explicitly inscribed in international human rights instruments (Article 14 ICCPR and Article 6 of Convention being the most prominent provisions). Furthermore, international human rights law require legality: Many provisions require the use of law as a safeguard, e.g. against illegitimate deprivation of liberty or arbitrary limitations of freedoms of action. The underlying concern is that any tampering with the freedoms and rights of an individual must be based on pre-existing, general norms. Consequently, there must be a legislature which fulfils the procedural requirements of law-making, and it must be separate from the executive branch which implements the law and which often takes the initiative to propose new laws, but which cannot adopt the general norms.

It can also be shown that human rights norms require financial accountability and transparency, which also has consequences for the institutional set-up. This includes the requirement of abstention from and prevention of corruption, and responsibility for a human rights-based allocation of available resources. Under Article 2 of the Covenant on Economic, Social and Cultural Rights, states are obliged to take steps to the maximum of their available resources to implement the economic, social and cultural rights contained in the Covenant. Corruption by the state or its agents is a direct violation of human rights since it reduces the resources available. Transparency in financial matters is necessary to be able to monitor whether benchmarks have been met by appropriate use of available resources.

Requirements of participation

Human rights contain requirements of participation in the exercise of public power at the legislative and the executive branch. The core provisions are found in UDHR Article 21 and ICCPR Article 25, and (with less elaboration) in Protocol 1 Article 3 of Convention. These provisions are built on the principle of inclusive, popular sovereignty. It is not intended in this Chapter to discuss in general the scope of the right to participation as set out or implicit in international human rights law, but a good reference can be found in a resolution of the United Nations Commission on Human Rights at its 55th session in 1999 which proclaimed a right to democracy as part of human rights, and pointed out that 'the rights of democratic governance include, inter alia, the following: (a) The rights to freedom of opinion and expression, of thought, conscience and religion, and of peaceful association and assembly; (b) The right to freedom to seek, receive and impart information and ideas through any media; (c) The rule of law, including legal protection of citizens' rights, interests and personal security, and fairness in the administration of justice and independence of the judiciary; (d) The right of universal and equal suffrage, as well as free voting procedures and periodic and free elections; (e) The right of political participation, including equal opportunity for all citizens to become candidates; (f) Transparent and accountable government institutions; (g) The right of citizens to choose their governmental system through constitutional or other democratic means; (h) The right to equal access to public service in one's own country; (Commission on Human Rights resolution 1999/57, op.para.2)

The Commission also noted, in the same resolution, that the realization of all human rights - civil, cultural, economic, political and social, including the right to development - are indispensable to human dignity and the full development of human potential and are also integral to democratic society (op. cit. para. 3).

Obligations of conduct and result, and the obligations to respect, protect and fulfil.

This brings us to the third important point, beyond institutions and participation. One function of human rights provisions is to set limits to or give guidance to process of governance: The state and its agents cannot use arbitrary deprivation of liberty, denial of freedom of expression or information, or prohibition of association and assembly as part of its governance. Another function is to direct the government to achieve certain results: It must ensure generally healthy conditions in society free from avoidable health risks, the government must ensure access to education for all and that everyone has a social insurance or social security. Good governance requires an active, agile state which can draw the appropriate balance in respecting the freedoms of its inhabitants and yet ensuring the results which are required from it under human rights law.

In light of evolving practice at the international level, there is now a broad consensus that human rights impose three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.

These obligations apply to all categories of human rights, but there is a difference of emphasis: For some of the civil rights, the main concern is with the obligation to respect, while for some economic and social rights, the elements of protection and provision become more important. Nevertheless, the threefold set of obligations for states - to respect, protect and fulfil - applies to the whole system of human rights, and should therefore be taken into account in the construction of our understanding of what would constitute good governance from a human rights perspective.

States must, at the primary level, respect the integrity and freedom of the individual, her or his freedom of action, his or her use of own resources, the freedom to find a job freely chosen or accepted, and the freedom to take the necessary actions and use the necessary resources alone or in association with others - to satisfy his or her own needs.

State obligations to protect consist of the pro¬tection of the integrity and freedom of action, including their use of own resources, against other, more aggressive or assertive subjects protection of the child against maltreatment or exploitation, protecting the woman against violence, protection against fraud, against unethical behaviour in trade and contractual relations, against the marketing and dumping of hazardous or danger¬ous products. This protective function of the State applies both to civil and to economic and social rights.

States have also obligations to fulfil the rights of everyone, particularly under economic, social and cultural rights, by way of facilitation or direct provision. The duty to facilitate takes many forms, some of which are spelled out in the relevant instruments. As an example, we can refer to the European Social Charter Article 1 (concerning the right to work) para. 3, whereby states undertake to establish or maintain free employment services for all workers, and under para. 4, to provide or promote appropriate vocational guidance, training and rehabilitation. The implementation of such obligations facilitates the opportunities of the individual to obtain a work freely chosen or accepted.

The obligation to fulfil by way of provision consist in making available what is required to satisfy basic need when necessary. Examples of the duty to fulfil could be taken from the European Social Charter, e.g. Article 12 (the right to social security) and Article 13 (the right to social and medical assistance).

Conclusion

While it is not the purpose of this note to suggest an exact definition of good governance, the following elements should be included: Good governance exist in societies where democratic institutions and processes including transparency and accountability prevail, and where the authorities respect and comply with the full range of human rights.

ANNEX II

THE CONCEPT OF GOOD GOVERNANCE

(Observations by Ms Gret HALLER (Member, Switzerland)
(Extract)

I. Introduction

1. At its 76th Plenary Session, the Commission discussed the draft Report on the concept of good governance (CDL(2008)091 – hereafter “the Report”). Given the lack of time for an extended debate, the Commission members were invited to make succinct statements and to submit written opinions, if they so wished.

2. The present opinion concentrates on the linkage between governance and democracy. It reaches the conclusion that we must scrutinise the expediency of introducing or implementing the good governance concept in internal relations among states because of this concept’s major potential for downgrading democratic standards.

3. This opinion concentrates exclusively on the concept of good governance, even though the introduction to the Report mentions basic documents concerning the difference between good governance and good administration. The latter, namely good administration, is only addressed when elements of both concepts are compared, so that the principal subject of the Report is good governance.

II. Human rights and democracy

4. The first section of the draft Report recapitulates the different uses of the governance concept at the international and national levels. The final part (V) adds the element of human rights to the good governance concept. There is, however, another element that must be linked up with the concept of good governance, namely the democracy concept. We cannot presume that democratic requirements are inherent in the human rights element. The existence of a "human right to democracy" is not unchallenged, and different theories posit that this right must be either completely accepted or rejected out of hand. We shall not go into these theories here.

5. We shall instead endeavour to shed adequate light on the linkage between the concepts of good governance and democracy in order to ascertain how the former concept can be exploited, and to highlight the possible dangers of using it. We shall first of all leave aside the concept of "good governance" and simply refer to "governance". Although the linkage with democracy is explained in the Report (para. 51), the explanation concentrates on the additional element of human rights.

III. Origin of the governance concept

6. As the Report explains, the governance concept was first developed by the World Bank with a view to finding criteria applicable to the granting of loans. Now that other international organisations have adopted this concept, it is important not to lose sight of the context in which it first emerged.

1. Elements of good governance

7. We shall begin by taking stock of a selection of components of this concept which are important, to varying degrees, for democracy. These are merely presented as examples rather than constituting an exhaustive list.

a) External perspective

8. Basically, the criteria for governance are based on an exclusively external perspective, observing and assessing from the outside. This external perspective of the governance concept is particularly important in terms of the relationship between this concept and that of democracy. Originally, democracy was the exercise of sovereignty by those subject to such sovereignty, which means that democracy embodies the internal perspective. This is an inherent source of tension between democracy and governance.

9. This was why the World Bank devised the artificial notion of governance rather than government. Using the government concept would have been seen as tantamount to interfering in the sovereignty of the states in question. Certain conditions had nevertheless to be imposed on states, including rules on the requisite conduct by the national executive. By using the concept of governance in this case, the World Bank was resorting to a category which was not different from that of government; it designated government without wielding the concept of government. Although the effectiveness of the political institutions was assessed from a purely economic angle, this had potential consequences for the constitutional systems of the states concerned.

b) Informality

10. Since the World Bank has no brief for formal intervention in the states under observation, it has had to devise methods of exerting informal influence. The structures of governance exert an informal influence rather than a formal power. They do not install any formal hierarchy in the form of hard law, but act through soft law. And yet this influence was not meant to be any weaker than formal influence and, like the latter, it could have visible effects on hierarchies. The exertion of influence was based on a combination of a political power that was not legally formalised and a rational (economic) plausibility which was supposed to lead the state concerned to approve, as appropriate, the highly detailed proposals included in the loan contracts.

c) Participation of private operators

11. Under the governance concept, governments were involved on an equal footing alongside other private operators in the countries in question. The governments had no special place in this system but were considered as a mere node in the network, on an equal footing with the other players. The participation of civil society was taken as an initial postulate on the same basis as dialogue with the relevant partners, the aim being to secure the participation of all the milieus concerned. So, in addition to the sovereignty issue there was the additional matter of divergent trends in the conception of democracy. One question that arose fairly early on was that of private players (individuals representing economic or non-economic interests) attempting to claim democratic representative status.

d) Asymmetrical responsibilities

12. Subsequently, the governance concept was further developed with a view to exerting influence inside states vis-à-vis very specific fields of distinct economic importance. From this angle, the functioning of the political community was laid to one side to the extent that it was deemed to play no role in the economy. Yet governments shoulder general responsibility for all political domains, even those which have no predominantly economic role to play. The implementation of the governance concept produced a dichotomy between the action and the responsibility for the action. It created an asymmetrical apportionment of competences in which national governments were responsible for striking a balance among various individual interests, whereas some of these interests had powerful spokespersons, via the action of the World Bank, who set limits on the exercise of the government's responsibilities.

e) Output rationale

13. The governance concept as devised by the World Bank is based on a very particular view of public institutions and of the state in particular, ie it is based on an output rationale. Evaluations must attain measurable results. However, only the output of an organisation and its activity were considered measurable. This criterion, which was developed in the context of studying institutions from the economics angle, starting with private-sector institutions before moving on to the public institutions, is exclusively based on the economic rationale, as the World Bank itself explicitly stated (see para. 30 of the Report).

<…>

IV. Developing different governance concepts

19. As the Report explains, the governance concept devised by the World Bank has long since been adopted by other international organisations and players, which have tailored it to their needs. In particular, many attempts have been made to modify this concept by explicitly incorporating the democratic aspect, as shown by the many examples set out in Chapter II of the Report. Nevertheless, the governance concept is currently always used in its original form, which takes insufficient account of the democratic aspect.

<…>

3. The concept of democratic governance

29. In the context of the efforts to democratise the governance concept, we sometimes hear of an "emerging right to democratic governance". As mentioned above, we cannot go into the question here whether or not it would be advisable to define the concept of democratic governance in the form of a fundamental right. However, the very concept of democratic governance is disputed. Its supporters see it as an opportunity for developing democratic processes worldwide, whereas its detractors highlight the anti-democratic elements which have been inherent in this concept ever since its emergence and which they consider cannot be offset by granting it new democratic attributes.

30. When we consider the concept of "democratic governance", we must also ask ourselves why we do not simply use the concept of "democracy". In other words, what is the difference between democratic governance and democracy? We have seen how different players have used the concept of governance to avoid using that of government because it would have raised tricky questions about state or member state sovereignty. The government concept is bound up with state sovereignty, and in democratic states, with the sovereignty of the people. If governance is a kind of "government without sovereignty", it can never be associated with the people's sovereignty. Under these circumstances, we must be wary of appending the adjective "democratic" to the governance concept.

V. Good governance and democracy

31. As the Report clearly states, the concept of "good governance" is impossible to define. This fact is illustrated by the number of concepts listed in the report, the list being far from exhaustive. A legal comparison of this concept with that of democracy brings in the concept of democracy understood as the exercise of sovereignty by those who are subject to it. In this connection, the expression "good governance" raises, per se, the question of what "good" actually means.

1. How can we define what is "good"?

32. For centuries, indeed millennia, people have been arguing about such concepts as "living well" and "the public good". With the advent of democratic debate, we realised that we had to regularly redefine, as an ongoing, open and democratic process, what could be described as "good" in the res publica.

33. Conversely, the concept of good governance would seem to be based on an a priori clear conception of what is good: this conception gives rise to a consensus which is shielded from the democratic debate and is therefore pre-political. However, any pre-political conception actually negates the democratic element.

2. Compensatory function

34. To that extent, the fact of defining good governance by means of such concepts as openness, participation, responsibility, efficacy and coherency (as in the EU White Paper on European governance, see para. 16 of the Report) has a compensatory function. The definition may indicate how democratic processes should be managed or highlight elements to which particular attention must be paid in setting up democratic institutions. However, it can never replace the democratic processes themselves. The 2005 Warsaw Summit took account of this fact by dealing with democracy and good governance separately (para. 5 of the Report).

35. This can be illustrated by the example of the participation concept. Participating means taking part in the debate but not in the decision-making. The right to take part in the debate can be granted to a wide variety of players. Deliberation processes can be enlarged at will in order to ensure a hearing for extremely varied interests, even mutually antagonistic ones. However, if no formal decision is taken with the participation of those involved in the deliberation, it is not a democratic process. There can no more be deliberation without democracy than democracy without deliberation.

3. Conclusion

36. Governance structures are indispensible in the transnational context, for without them no progress can be made in juridicising certain fields. Clearly, many future problems will be insoluble without transnational legal structures. However, even if we work with governance concepts and structures and ensure ongoing progress in such concepts and structures, the democracy question must always remain open.

37. Governance concepts are quite possibly inaccessible to democratisation beyond this opening to participation and deliberation. Democracy is a promise whose achievement is a hard-won conquest. It is particularly important that the process of conquering democracy is still wide open. We must consequently designate governance structures as what they really are, rather than presenting them as some kind of fair substitute for democratic processes.

38. The question is posed differently at the national state level. The Report shows that the concept of good governance is rarely used in national constitutions and legislations (pp 8 ff.). This is not surprising in view of the origins of the concept. For all the differences between the World Bank and EU concepts of governance, these two fundamentally different institutions have in common the fact that they have both used this governance concept, which emerged from studying the institutions from the economics angle, for the same reason, namely that the government concept would have raised issues of interference in the national sovereignty of states. Clearly, this problem does not arise in internal state relations. State sovereignty is taken for granted in such internal relations, and in democratic states it is reflected in the sovereignty of the people.

39. So we must carefully consider the advisability of introducing or implementing the good governance concept in internal state relations. Even if good governance has broken away from the concept originally devised by the World Bank, it still comprises a dimension based on informality and “output”; and the principle of involving private interests, which is always inherent in good governance, can spotlight participative deliberation as a valid substitute for democratic processes. Good governance therefore always has a potential for levelling democratic standards down.

40. The real need to devise governance structures at the transnational level has also had knock-on effects on national states. Transnational juridicisation is useful in more than one ways to the citizens of national states, but they will note that democratic supervision of this juridicisation is lagging several years, or indeed decades, behind and is developing very slowly or at a standstill in a number of fields. The further transnational juridicisation progresses, the greater this time-lag will become. Only the European Union is active enough in terms of democratising the transnational or supranational field to face up to incipient democratic erosion and to create the beginnings of a broader trend. This is a further reason for carefully weighing up the pros and cons of introducing the good governance concept into internal state relations.

VI. Implications for the Venice Commission

41. Governance is not a legal concept but an idea which emerged from studying the institutions from the economics angle. This was explicitly stated when the Report was being discussed at the 76th Plenary Session. The governance concept presupposes an institutional framework prioritising specific modes of organisation. Since it is not a legal concept, the Commission might opt for declaring that it has no remit for considering this problem, at least not directly. However, depending on how it is conceived, the governance concept may impact on the conception of administrative structures, on the extent of the influence that can be exerted through the democratic processes and, therefore, on the national constitutional systems. All these questions are central to the Commission's field of activities.

42. We might discuss the need for the Commission to pronounce on the good governance concept. If it decides to do so, however, its specific commitment to "democracy through law" will require it to highlight the dangers of the levelling down of democratic standards inherent in this concept.

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Memorandum "The European standards of rule of law and the scope of discretion of powers in the member-states of the Council of Europe" (CDL-JU(2013)020)

(European Commission for democracy through law (Venice Commission), in co-operation with The European court of human rights and the Constitutional court of Armenia)

(Extract)

Within the framework of the Chairmanship of the Republic of Armenia in the Committee of Ministers of the Council of Europe, the Pan-European Conference on "the European Standards of Rule of Law and the Scope of Discretion of Powers in the Member-States of the Council of Europe was convened on 3-5 July 2013 in Yerevan with the participation of delegations from thirty two countries.

Delegations of Legislative Bodies, Constitutional Courts and equivalent bodies, Ministries of Foreign Affairs and Justice, Human Rights Defenders from the member States of the Council of Europe and other countries participated in the Conference.

The President of the Republic of Armenia, the President of the European Court of Human Rights and the President of the European Commission for Democracy through Law of the Council of Europe ("Venice Commission") addressed the Conference with welcome speeches.

In their discussions on the Rule of Law, the participants of the Conference took into consideration the references to the Rule of Law in the Statute of the Council of Europe1and the European Convention on Human Rights, the approaches to the Rule of Law of the Committee of Ministers of the Council of Europe2, Resolution 1594(2007) of the Parliamentary Assembly of the Council of Europe on "The Principle of the Rule of Law"3, the case-law of the European Court of Human Rights as well as the "Declaration of the High-level Meeting of the UN General Assembly on the Rule of Law at the National and International Levels"4.

By focussing on discretion in the context of the Rule of Law, it has been noted that the Conference is also a logical follow-up to the Venice Commission's "Report on the Rule of Law"5 and the Conference on "The Rule of Law as a Practical Concept" (London, 2 March 2012), which have taken place in the framework of the Chairmanship of the United Kingdom in the Committee of Ministers of the Council of Europe.

Within the general framework of the Rule of Law, the presentations and the discussions at the Pan-European Conference focused on discretionary powers as a concept which has to be interpreted in conformity with the Rule of Law. In the field of human rights, discretion is often referred to as a margin of appreciation. Discretion was approached from the point of view of the norm-setting powers (Parliament through Laws, Government by way of decree) and the implementing bodies (administration, but also the judiciary).

In its legislative activity, Parliament is free to make the policy choices it sees fit for the country. Nonetheless, in legislating, Parliament is limited by the Constitution and by international law. Parliament's scope of legislative choices is wider in areas where the State provides benefits than in areas where it limits rights.

The principles of legality and separation of powers provide the framework in which discretion can be exercised. Parliament plays a key role in limiting the discretion of the executive power, in particular of the administration. Legislative provisions should be clear and understandable to enable the executive power to exert discretion only in areas where this is intended and not simply because the law is uncertain or ambiguous.

Discretion in the implementation of the law is necessary in order to provide for flexibility in the reaction of the State to social realities. However, the exercise of discretion must be legitimised by procedural transparency and a coherent motivation of the decisions made.

Discussion on discretion as an element of the Rule of Law gave the Conference the opportunity to contribute to the further development of the value system within the Council of Europe member States and to provide practical approaches on how discretion could be aligned with the requirements that stem from the principle of the Rule of Law, including the hierarchy of norms.

The Conference calls upon the Venice Commission to take into account the problems discussed and solutions proposed in its on-going work on the "Rule of Law Check-List",

The Conference highly appreciates the initiative of the Republic of Armenia for the organisation of this important and fruitful event.

The participants of the Conference also welcome the publication of the Volume entitled: "New Millennium Constitutionalism: Paradigms of Reality and Challenges", published in Yerevan, on the basis of contributions from a wide range of outstanding authors from all around the world, as well as the future publication of the proceedings of the Pan-European Conference as an important contribution to the development of the Rule of Law in the member States of the Council of Europe.

<…>

Rule of law checklist

(Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) (CDL-AD(2016)007-e)

(Extract)

I. Introduction

1. At its 86th plenary session (March 2011), the Venice Commission adopted the Report on the Rule of Law (CDL-AD(2011)003rev). This report identified common features of the Rule of Law, Rechtsstaat and Etat de droit. A first version of a checklist to evaluate the state of the Rule of Law in single States was appended to this report.

2. On 2 March 2012, the Venice Commission organised, under the auspices of the UK Chairmanship of the Committee of Ministers of the Council of Europe, in co-operation with the Foreign and Commonwealth Office of the United Kingdom and the Bingham Centre for the Rule of Law, a conference on "The Rule of Law as a practical concept". The conclusions of this conference underlined that the Venice Commission would develop the checklist by, inter alia, including some suggestions made at the conference.

3. A group of experts made up of Mr Bartole, Ms Bilkova, Ms Cleveland, Mr Craig, Mr Helgesen, Mr Hoffmann-Riem, Mr Tuori, Mr van Dijk and Sir Jeffrey Jowell prepared the present detailed version of the checklist.

4. The Venice Commission wishes to acknowledge the contribution of the Bingham Centre for the Rule of Law, notably for the compilation of the selected standards in part III. The Commission also wishes to thank the secretariats of the Consultative Council of European Judges (CCJE), the European Commission against Racism and Intolerance (ECRI), the Framework Convention for the Protection of National Minorities and the Group of States against Corruption (GRECO), as well as of OSCE/ODIHR and of the European Union Agency for Fundamental Rights (FRA) for their co-operation.

5. The introductive part (I) first explains the purpose and scope of the report and then develops the interrelations between the Rule of Law on the one side and democracy and human rights on the other side ("the Rule of Law in an enabling environment").

6. The second part (II, benchmarks) is the core of the checklist and develops the various aspects of the Rule of Law identified in the 2011 report: legality; legal certainty; prevention of abuse of powers; equality before the law and non-discrimination and access to justice; while the last chapter provides two examples of particular challenges to the Rule of Law (corruption and conflict of interest, and collection of data and surveillance).

7. The third part (III, selected standards) lists the most important instruments of hard and soft law addressing the issue of the Rule of Law.

8. The present checklist was discussed by the Sub-Commission on the Rule of Law on 17 December 2015 and on 10 March 2016, and was subsequently adopted by the Venice Commission at its 106th plenary session (Venice, 11-12 March 2016).

A. Purpose and scope

9. The Rule of Law is a concept of universal validity. The "need for universal adherence to and implementation of the Rule of Law at both the national and international levels" was endorsed by all Members States of the United Nations in the 2005 Outcome Document of the World Summit (§ 134). The Rule of Law, as expressed in the Preamble and in Article 2 of the Treaty on European Union (TEU), is one of the founding values that are shared between the European Union (EU) and its Member States. In its 2014 New Framework to Strengthen the Rule of Law, the European Commission recalls that "the principle of the Rule of Law has progressively become a dominant organisational model of modern constitutional law and international organisations <…> to regulate the exercise of public powers" (pp. 3-4). In an increasing number of cases States refer to the Rule of Law in their national constitutions.

10. The Rule of Law has been proclaimed as a basic principle at universal level by the United Nations – for example in the Rule of Law Indicators -, and at regional level by the Organization of American States - namely in the Inter-American Democratic Charter - and the African Union - in particular in its Constitutive Act. References to the Rule of Law may also be found in several documents of the Arab League.

11. The Rule of Law is mentioned in the Preamble to the Statute of the Council of Europe as one of the three "principles which form the basis of all genuine democracy", together with individual freedom and political liberty. Article 3 of the Statute makes respect for the principle of the Rule of Law a precondition for accession of new member States to the Organisation. The Rule of Law is thus one of the three intertwined and partly overlapping core principles of the Council of Europe, with democracy and human rights. The close relationship between the Rule of Law and the democratic society has been underlined by the European Court of Human Rights through different expressions: "democratic society subscribing to the Rule of Law", "democratic society based on the Rule of Law" and, more systematically, "Rule of Law in a democratic society". The achievement of these three principles - respect for human rights, pluralist democracy and the Rule of Law - is regarded as a single objective - the core objective - of the Council of Europe.

12. The Rule of Law has been systematically referred to in the major political documents of the Council of Europe, as well as in numerous Conventions and Recommendations. The Rule of Law is notably mentioned as an element of common heritage in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), as a founding principle of European democracies in Resolution Res(2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ), and as a priority objective in the Statute of the Venice Commission. However, the Council of Europe texts have not defined the Rule of Law, nor has the Council of Europe created any specific monitoring mechanism for Rule of Law issues.

13. The Council of Europe has nevertheless acted in several respects with a view to promoting and strengthening the Rule of Law through several of its bodies, notably the European Court of Human Rights (ECtHR), the European Commission for the Efficiency of Justice (CEPEJ), the Consultative Council of Judges of Europe (CCJE), the Group of States against Corruption (GRECO), the Monitoring Committee of the Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights and the Venice Commission.

14. In its Report on the Rule of Law of 2011, the Venice Commission examined the concept of the Rule of Law, following Resolution 1594(2007) of the Parliamentary Assembly which drew attention to the need to ensure a correct interpretation of the terms "Rule of Law", "Rechtsstaat" and "Etat de droit" or "prééminence du droit", encompassing the principles of legality and of due process.

15. The Venice Commission analysed the definitions proposed by various authors coming from different systems of law and State organisation, as well as diverse legal cultures. The Commission considered that the notion of the Rule of Law requires a system of certain and foreseeable law, where everyone has the right to be treated by all decision-makers with dignity, equality and rationality and in accordance with the laws, and to have the opportunity

to challenge decisions before independent and impartial courts through fair procedures. The Commission warned against the risks of a purely formalistic concept of the Rule of Law, merely requiring that any action of a public official be authorised by law. "Rule by Law", or "Rule by the Law", or even "Law by Rules" are distorted interpretations of the Rule of Law.

16. The Commission also stressed that individual human rights are affected not only by the authorities of the State, but also by hybrid (State-private) actors and private entities which perform tasks that were formerly the domain of State authorities, or include unilateral decisions affecting a great number of people, as well as by international and supranational organisations. The Commission recommended that the Rule of Law principles be applied in these areas as well.

17. The Rule of Law must be applied at all levels of public power. Mutatis mutandis, the principles of the Rule of Law also apply in private law relations. The following definition by Tom Bingham covers most appropriately the essential elements of the Rule of Law: "All persons and authorities within the State, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts".

18. In its report, the Commission concluded that, despite differences of opinion, consensus exists on the core elements of the Rule of Law as well as on those of the Rechtsstaat and of the Etat de droit, which are not only formal but also substantive or material (materieller Rechtsstaatsbegriff). These core elements are: (1) Legality, including a transparent, accountable and democratic process for enacting law; (2) Legal certainty; (3) Prohibition of arbitrariness; (4) Access to justice before independent and impartial courts, including judicial review of administrative acts; (5) Respect for human rights; and (6) Non-discrimination and equality before the law.

19. Since its 2011 Report was oriented towards facilitating a correct and consistent understanding and interpretation of the notion of the Rule of Law and, therefore, aimed at facilitating the practical application of the principles of the Rule of Law, a "checklist for evaluating the state of the Rule of Law in single countries" was appended to the report, listing these six elements, broken down into several sub-parameters.

20. In 2012, at a conference which the Venice Commission organised in London under the auspices of the UK Foreign Office and in co-operation with the Bingham Centre for the Rule of Law, it launched the project to further develop the checklist as a ground-breaking new, functional approach to assessing the state of the Rule of Law in a given State.

21. In 2013, the Council of the European Union has begun implementing a new Rule of Law Dialogue with the member States, which would take place on an annual basis. It underlined that "respecting the rule of law is a prerequisite for the protection of fundamental rights" and called on the Commission "to take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues". In 2014, the European Commission adopted a mechanism for addressing systemic Rule of Law issues in Member States of the European Union (EU). This "new EU Framework to strengthen the Rule of Law" establishes an early warning tool based on "the indications received from available sources and recognised institutions, including the Council of Europe"; "[i]n order to obtain expert knowledge on particular issues relating to the rule of law in Member States, the (European) Commission <…> will as a rule and in appropriate cases, seek the advice of the Council of Europe and/or its Venice Commission".

22. At the United Nations level, following the publication of "Rule of Law Indicators" in 2011, the United Nations General Assembly adopted in 2012 a Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, recognising that the "Rule of Law applies to all States equally, and to international organizations".

23. The sustainable development agenda with its 17 Sustainable Development Goals (SDGs) and 169 targets to be delivered by 2030 was unanimously adopted by the UN General Assembly in September 2015. The SDGs, which comprise a number of Goals, are aimed to be truly transformative and have profound implications for the realization of the agenda, envisaging "[a world] in which democracy, good governance and the rule of law, as well as an enabling environment at the national and international levels, are essential for sustainable development…" Goal 16 commits States to "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". The achievement of Goal 16 will be assessed against a number of targets, some of which incorporate Rule of Law components, such as the development of effective accountable and transparent institutions (target 16.6) and responsive, inclusive participatory and representative decision making at all levels (target 16.7). However, it is Target 16.3, committing States to "Promote the rule of law at the national and international levels and ensure equal access to justice for all" that offers a unique opportunity for revitalizing the relationship between citizens and the State. This Checklist could be a very important tool to assist in the qualitative measurement of Rule of Law indicators in the context of the SDGs.

24. The present checklist is intended to build on these developments and to provide a tool for assessing the Rule of Law in a given country from the view point of its constitutional and legal structures, the legislation in force and the existing case-law. The checklist aims at enabling an objective, thorough, transparent and equal assessment.

25. The checklist is mainly directed at assessing legal safeguards. However, the proper implementation of the law is a crucial aspect of the Rule of Law and must therefore also be taken into consideration. That is why the checklist also includes certain complementary benchmarks relating to the practice. These benchmarks are not exhaustive.

26. Assessing whether the parameters have been met requires sources of verification (standards). For legal parameters, these will be the law in force, as well as, for example, in Europe, the legal assessments thereof by the European Court of Human Rights, the Venice Commission, Council of Europe monitoring bodies and other institutional sources. For parameters relating to the practice, multiple sources will have to be used, including institutional ones such as the CEPEJ and the European Union Agency for Fundamental Rights.

27. The checklist is meant as a tool for a variety of actors who may decide to carry out such an assessment: These may include Parliaments and other State authorities when addressing the need and content of legislative reform, civil society and international organisations, including regional ones – notably the Council of Europe and the European Union. Assessments have to take into account the whole context, and avoid any mechanical application of specific elements of the checklist.

28. It is not within the mandate of the Venice Commission to proceed with Rule of Law assessments in given countries on its own initiative; however, it is understood that when the Commission, upon request, deals with Rule of Law issues within the framework of the preparation of an opinion relating a given country, it will base its analysis on the parameters of the checklist within the scope of its competence.

29. The Rule of Law is realised through successive levels achieved in a progressive manner: the more basic the level of the Rule of Law, the greater the demand for it. Full achievement of the Rule of Law remains an on-going task, even in the well-established democracies. Against this background, it should be clear that the parameters of the checklist do not necessarily all have to be cumulatively fulfilled in order for a final assessment on compliance with the Rule of Law to be positive. The assessment will need to take into account which parameters are not met, to what extent, in what combination etc. The issue must be kept under constant review.

30. The checklist is neither exhaustive nor final: it aims to cover the core elements of the Rule of Law. The checklist could change over time, and be developed to cover other aspects or to go into further detail. New issues might arise that would require its revision. The Venice Commission will therefore provide for a regular updating of the Checklist.

31. The Rule of Law and human rights are interlinked, as the next chapter will explain. The Rule of Law would just be an empty shell without permitting access to human rights. Viceversa, the protection and promotion of human rights are realised only through respect for the Rule of Law: a strong regime of Rule of Law is vital to the protection of human rights. In addition, the Rule of Law and several human rights (such as fair trial and freedom of expression) overlap. While recognising that the Rule of Law can only be fully realised in an environment that protects human rights, the checklist will expressly deal with human rights only when they are linked to specific aspects of the Rule of Law.

32. Since the Venice Commission is a body of the Council of Europe, the checklist emphasises the legal situation in Europe, as expressed in particular in the case-law of the European Court of Human Rights and also of the Court of Justice of the European Union within its specific remit. The Rule of Law is however a universal principle, and this document also refers, where appropriate, to developments at global level as well as in other regions of the world, in particular in part III enumerating international standards.

B. The Rule of Law in an enabling environment

33. The Rule of Law is linked not only to human rights but also to democracy, i.e. to the third basic value of the Council of Europe. Democracy relates to the involvement of the people in the decision-making process in a society; human rights seek to protect individuals from arbitrary and excessive interferences with their freedoms and liberties and to secure human dignity; the Rule of Law focuses on limiting and independently reviewing the exercise of public powers. The Rule of Law promotes democracy by establishing accountability of those wielding public power and by safeguarding human rights, which protect minorities against arbitrary majority rules.

34. The Rule of Law has become "a global ideal and aspiration", with a common core valid everywhere. This, however, does not mean that its implementation has to be identical regardless of the concrete juridical, historical, political, social or geographical context. While the main components or "ingredients" of the Rule of Law are constant, the specific manner in which they are realised may differ from one country to another depending on the local context; in particular on the constitutional order and traditions of the country concerned. This context may also determine the relative weight of each of the components.

35. Historically, the Rule of Law was developed as a means to restrict State (governmental) power. Human rights were seen as rights against intrusions by holders of this power ("negative rights"). In the meantime the perception of human rights has changed in many States as well as in European and international law. There are several differences in the details, but nonetheless there is a trend to expand the scope of civil and political rights, especially by acknowledging positive obligations of the State to guarantee effective legal protection of human rights vis-à-vis private actors. Relevant terms are "positive obligations to protect", "horizontal effects of fundamental rights" or "Drittwirkung der Grundrechte".

36. The European Court of Human Rights has acknowledged positive obligations in several fields, for instance related to Art. 8 of Convention. In several decisions the Court has developed specific positive obligations of the State by combining Art. 8 of Convention and the Rule of Law.14 Even though positive obligations to protect could not be solely derived from the Rule of Law in these cases, the Rule of Law principle creates additional obligations of the State to guarantee that individuals under their jurisdiction have access to effective legal means to enforce the protection of their human rights, in particular in situations when private actors infringe these rights. Thus the Rule of Law creates a benchmark for the quality of laws protecting human rights: legal provisions in this field – and beyond – have to be, inter alia, clear and predictable, and non-discriminatory, and they must be applied by independent courts under procedural guarantees equivalent to those applied in conflicts resulting from interferences with human rights by public authorities.

37. One of the relevant contextual elements is the legal system at large. Sources of law which enshrine legal rules, thus granting legal certainty, are not identical in all countries: some States adhere largely to statute law, save for rare exceptions, whereas others include adherence to the common law judge-made law.

38. States may also use different means and procedures - for example related to the fair trial principle - in criminal proceedings (adversarial system as compared to inquisitorial system, right to a jury as compared to the resolution of criminal cases by judges). The material means that are instrumental in guaranteeing fair trial, such as legal aid and other facilities, may also take different forms.

39. The distribution of powers among the different State institutions may also impact the context in which this checklist is considered. It should be well-adjusted through a system of checks and balances. The exercise of legislative and executive power should be reviewable for its constitutionality and legality by an independent and impartial judiciary. A wellfunctioning judiciary, whose decisions are effectively implemented, is of the highest importance for the maintenance and enhancement of the Rule of Law.

40. At the international level, the demands and implications of the Rule of Law reflect the particularities of the international legal system. In many respects that system is far less developed than national constitutional and legal systems. Apart from special regional systems like that of the European Union, international systems have no permanent legislator, and for most cases no judiciary with obligatory jurisdiction, while the democratic characteristics in decision-making are still very weak.

41. The European Union's supranational nature led it to develop the concept of Rule of Law as a general principle of law applicable to its own legal system. According to the case law of the Court of Justice of the European Union, the Rule of Law includes the supremacy of law, the institutional balance, judicial review, (procedural) fundamental rights, including the right to a judicial remedy, as well as the principles of equality and proportionality.

42. The contextual elements of the Rule of Law are not limited to legal factors. The presence (or absence) of a shared political and legal culture within a society, and the relationship between that culture and the legal order help to determine to what extent and at what level of concreteness the various elements of the Rule of Law have to be explicitly expressed in written law. Thus, for instance, national traditions in the area of dispute settlement and conflict resolution will have an impact upon the concrete guarantees of fair trial offered in a country. It is important that in every State a robust political and legal culture supports particular Rule of Law mechanisms and procedures, which should be constantly checked, adapted and improved.

43. The Rule of Law can only flourish in a country whose inhabitants feel collectively responsible for the implementation of the concept, making it an integral part of their own legal, political and social culture.

II. Benchmarks

A. Legality

1. Supremacy of the law

Is supremacy of the law recognised?

I. Is there a written Constitution?

II. Is conformity of legislation with the Constitution ensured?

III. Is legislation adopted without delay when required by the Constitution?

IV. Does the action of the executive branch conform with the Constitution and other laws?

V. Are regulations adopted without delay when required by legislation?

VI. Is effective judicial review of the conformity of the acts and decisions of the executive branch of government with the law available?

VII. Does such judicial review also apply to the acts and decisions of independent agencies and private actors performing public tasks?

VIII. Is effective legal protection of individual human rights vis-à-vis infringements by private actors guaranteed?

44. State action must be in accordance with and authorised by the law. Whereas the necessity for judicial review of the acts and decisions of the executive and other bodies performing public tasks is universally recognised, national practice is very diverse on how to ensure conformity of legislation with the Constitution. While judicial review is an effective means to reach this goal, there may also be other means to guarantee the proper implementation of the Constitution to ensure respect for the Rule of Law, such as a priori review by a specialised committee.

2. Compliance with the law

Do public authorities act on the basis of, and in accordance with standing law?

I. Are the powers of the public authorities defined by law?

II. Is the delineation of powers between different authorities clear?

III. Are the procedures that public authorities have to follow established by law?

IV. May public authorities operate without a legal basis? Are such cases duly justified?

V. Do public authorities comply with their positive obligations by ensuring implementation and effective protection of human rights?

VI. In cases where public tasks are delegated to private actors, are equivalent guarantees established by law?

45. A basic requirement of the Rule of Law is that the powers of the public authorities are defined by law. In so far as legality addresses the actions of public officials, it also requires that they have authorisation to act and that they subsequently act within the limits of the powers that have been conferred upon them, and consequently respect both procedural and substantive law. Equivalent guarantees should be established by law whenever public powers are delegated to private actors – especially but not exclusively coercive powers. Furthermore, public authorities must actively safeguard the fundamental rights of individuals vis-à-vis other private actors.

46. "Law" covers not only constitutions, international law, statutes and regulations, but also, where appropriate, judge-made law, such as common-law rules, all of which is of a binding nature. Any law must be accessible and foreseeable.

<…>

4. Law-making powers of the executive

Is the supremacy of the legislature ensured?

I. Are general and abstract rules included in an Act of Parliament or a regulation based on that Act, save for limited exceptions provided for in the Constitution?

II. What are these exceptions? Are they limited in time? Are they controlled by Parliament and the judiciary? Is there an effective remedy against abuse?

III. When legislative power is delegated by Parliament to the executive, are the objectives, contents, and scope of the delegation of power explicitly defined in a legislative act?

49. Unlimited powers of the executive are, de jure or de facto, a central feature of absolutist and dictatorial systems. Modern constitutionalism has been built against such systems and therefore ensures supremacy of the legislature.

5. Law-making procedures

Is the process for enacting law transparent, accountable, inclusive and democratic?

I. Are there clear constitutional rules on the legislative procedure?

II. Is Parliament supreme in deciding on the content of the law?

III. Is proposed legislation debated publicly by parliament and adequately justified (e.g. by explanatory reports)?

IV. Does the public have access to draft legislation, at least when it is submitted to Parliament? Does the public have a meaningful opportunity to provide input?

V. Where appropriate, are impact assessments made before adopting legislation (e.g. on the human rights and budgetary impact of laws)?

VI. Does the Parliament participate in the process of drafting, approving, incorporating and implementing international treaties?

50. As explained in the introductory part, the Rule of Law is connected with democracy in that it promotes accountability and access to rights which limit the powers of the majority.

<…>

7. Duty to implement the law

What measures are taken to ensure that public authorities effectively implement the law?

I. Are obstacles to the implementation of the law analysed before and after its adoption?

II. Are there effective remedies against non-implementation of legislation?

III. Does the law provide for clear and specific sanctions for non-obedience of the law?

IV. Is there a solid and coherent system of law enforcement by public authorities to enforce these sanctions? v. Are these sanctions consistently applied?

53. Although full enforcement of the law is rarely possible, a fundamental requirement of the Rule of Law is that the law must be respected. This means in particular that State bodies must effectively implement laws. The very essence of the Rule of Law would be called in question if law appeared only in the books but were not duly applied and enforced. The duty to implement the law is threefold, since it implies obedience to the law by individuals, the duty reasonably to enforce the law by the State and the duty of public officials to act within the limits of their conferred powers.

54. Obstacles to the effective implementation of the law can occur not only due to the illegal or negligent action of authorities, but also because the quality of legislation makes it difficult to implement. Therefore, assessing whether the law is implementable in practice before adopting it, as well as checking a posteriori whether it may be and is effectively applied is very important. This means that ex ante and ex post legislative evaluation has to be performed when addressing the issue of the Rule of Law.

55. Proper implementation of legislation may also be obstructed by the absence of sufficient sanctions (lex imperfecta), as well as by an insufficient or selective enforcement of the relevant sanctions.

8. Private actors in charge of public tasks

Does the law guarantee that non-State entities which, fully or in part, have taken on traditionally public tasks, and whose actions and decisions have a similar impact on ordinary people as those of public authorities, are subject to the requirements of the Rule of Law and accountable in a manner comparable to those of public authorities?

56. There are a number of areas where hybrid (State-private) actors or private entities exercise powers that traditionally have been the domain of State authorities, including in the fields of prison management and health care. The Rule of Law must apply to such situations as well.

B. Legal certainty

1. Accessibility of legislation

Are laws accessible?

I. Are all legislative acts published before entering into force?

II. Are they easily accessible, e.g. free of charge via the Internet and/or in an official bulletin?

2. Accessibility of court decisions

Are counts decisions accessible?

I. Are court decisions easily accessible to the public?

II. Are exemptions sufficiently justified?

57. As court decisions can establish, elaborate upon and clarify law, their accessibility is part of legal certainty. Limitations can be justified in order to protect individual rights, for instance those of juveniles in criminal cases.

3. Foreseeability of the laws

Are the effects of laws foreseeable?

I. Are the laws written in an intelligible manner?

II. Does new legislation clearly state whether (and which) previous legislation is repealed or amended? Are amendments incorporated in a consolidated, publicly accessible, version of the law?

58. Foreseeability means not only that the law must, where possible, be proclaimed in advance of implementation and be foreseeable as to its effects: it must also be formulated with sufficient precision and clarity to enable legal subjects to regulate their conduct in conformity with it.

59. The necessary degree of foreseeability depends however on the nature of the law. In particular, it is essential in criminal legislation. Precaution in advance of dealing with concrete dangers has now become increasingly important; this evolution is legitimate due to the multiplication of the risks resulting in particular from the changing technology. However, in the areas where the precautionary approach of laws apply, such as risk law, the prerequisites for State action are outlined in terms that are considerably broader and more imprecise, but the Rule of Law implies that the principle of foreseeability is not set aside.

4. Stability and consistency of law

Are laws stable and consistent?

I. Are laws stable, to the extent that they are changed only with fair warning?

II. Are they consistently applied?

60. Instability and inconsistency of legislation or executive action may affect a person's ability to plan his or her actions. However, stability is not an end in itself: law must also be capable of adaptation to changing circumstances. Law can be changed, but with public debate and notice, and without adversely affecting legitimate expectations (see next item).

5. Legitimate expectations

Is respect for the principle of legitimate expectations ensured?

61. The principle of legitimate expectations is part of the general principle of legal certainty in European Union law, derived from national laws. It also expresses the idea that public authorities should not only abide by the law but also by their promises and raised expectations. According to the legitimate expectation doctrine, those who act in good faith on the basis of law as it is, should not be frustrated in their legitimate expectations. However, new situations may justify legislative changes going frustrating legitimate expectations in exceptional cases. This doctrine applies not only to legislation but also to individual decisions by public authorities.

6. Non-retroactivity

Is retroactivity of legislation prohibited?

I. Is retroactivity of criminal legislation prohibited?

II. To what extent is there also a general prohibition on the retroactivity of other laws?

III. Are there exceptions, and, if so, under which conditions?

7. Nullum crimen sine lege and nulla poena sine lege principles

Do the nullum crimen sine lege and nulla poena sine lege (no crime, no penalty without a law) principles apply?

62. People must be informed in advance of the consequences of their behaviour. This implies foreseeability (above II.B.3) and non-retroactivity especially of criminal legislation. In civil and administrative law, retroactivity may negatively affect rights and legal interests. However, outside the criminal field, a retroactive limitation of the rights of individuals or imposition of new duties may be permissible, but only if in the public interest and in conformity with the principle of proportionality (including temporally). The legislator should not interfere with the application of existing legislation by courts.

8. Res judicata

Is respect of res judicata ensured?

I. Is respect for the ne bis in idem principle (prohibition against double jeopardy) ensured?

II. May final judicial decisions be revised?

III. If so, under which conditions?

63. Res judicata implies that when an appeal has been finally adjudicated, further appeals are not possible. Final judgments must be respected, unless there are cogent reasons for revising them.

C. Prevention of abuse (misuse) of powers

Are there legal safeguards against arbitrariness and abuse of power (détournement de pouvoir) by public authorities?

I. If yes, what is the legal source of this guarantee (Constitution, statutory law, case-law)?

II. Are there clear legal restrictions to discretionary power, in particular when exercised by the executive in administrative action?

III. Are there mechanisms to prevent, correct and sanction abuse of discretionary powers (détournement de pouvoir)? When discretionary power is given to officials, is there judicial review of the exercise of such power?

IV. Are public authorities required to provide adequate reasons for their decisions, in particular when they affect the rights of individuals? Is the failure to state reasons a valid ground for challenging such decisions in courts?

64. An exercise of power that leads to substantively unfair, unreasonable, irrational or oppressive decisions violates the Rule of Law.

65. It is contrary to the Rule of Law for executive discretion to be unfettered power. Consequently, the law must indicate the scope of any such discretion, to protect against arbitrariness.

66. Abuse of discretionary power should be controlled by judicial or other independent review. Available remedies should be clear and easily accessible.

67. Access to an ombudsperson or another form of non-contentious jurisdiction may also be appropriate.

68. The obligation to give reasons should also apply to administrative decisions.

D. Equality before the law and non-discrimination

1. Principle

Does the Constitution enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination?

2. Non-discrimination

Is respect for the principle of non-discrimination ensured?

I. Does the constitution prohibit discrimination?

II. Is non-discrimination effectively guaranteed by law?

III. Do the Constitution and/or legislation clearly define and prohibit both direct and indirect discrimination?

69. The principle of non-discrimination requires the prohibition of any unjustified unequal treatment under the law and/or by law, and that all persons have guaranteed equal and effective protection against discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3. Equality in law

Is equality in law guaranteed?

I. Does the constitution require legislation (including regulations) to respect the principle of equality in law? Does it provide that differentiations have to be objectively justified?

II. Can legislation violating the principle of equality be challenged in the court?

III. Are there individuals or groups with special legal privileges? Are these exceptions and/or privileges based on a legitimate aim and in conformity with the principle of proportionality?

IV. Are positive measures expressly provided for the benefit of particular groups, including national minorities, in order to address structural inequalities?

70. Legislation must respect the principle of equality: it must treat similar situations equally and different situations differently and guarantee equality with respect to any ground of potential discrimination.

71. For example, rules on parliamentary immunities, and more specifically on inviolability, "should … be regulated in a restrictive manner, and it should always be possible to lift such immunity, following clear and impartial procedures. Inviolability, if applied, should be lifted unless justified with reference to the case at hand and proportional and necessary in order to protect the democratic workings of Parliament and the rights of the political opposition".

72. "The law should provide that the prohibition of discrimination does not prevent the maintenance or adoption of temporary special measures designed either to prevent or compensate for disadvantages suffered by persons on grounds [of belonging to a particular group], or to facilitate their full participation in all fields of life. These measures should not be continued once the intended objectives have been achieved."

4. Equality before the law

Is equality before the law guaranteed?

I. Does the national legal order clearly provide that the law applies equally to every person irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or status? Does it provide that differentiations have to be objectively justified, on the basis of a reasonable aim, and in conformity with the principle of proportionality?

II. Is there an effective remedy against discriminatory or unequal application of legislation?

73. The Rule of Law requires the universal subjection of all to the law. It implies that law should be equally applied, and consistently implemented. Equality is however not merely a formal criterion, but should result in substantively equal treatment. To reach that end, differentiations may have to be tolerated and may even be required. For example, affirmative action may be a way to ensure substantive equality in limited circumstances so as to redress past disadvantage or exclusion.

<…>

F. Examples of particular challenges to the Rule of Law

114. There are many examples where particular actions and decisions offend the Rule of Law. However, because they are topical and pervasive at the time of the drafting of this document, two such examples are presented in this section: corruption and conflict of interest; and collection of data and surveillance.

1. Corruption and conflict of interest

a. Preventive measures

What are the preventive measures taken against corruption?

I. In the exercise of public duties, are specific rules of conduct applicable to public officials? Do these rules take into account:

(1) the promotion of integrity in public life by means of general duties (impartiality and neutrality etc.);

(2) restrictions on gifts and other benefits;

(3) safeguards with respect to the use of public resources and information which is not meant to be public;

(4) regulations on contacts with third parties and persons seeking to influence a public decision including governmental and parliamentary work?

II. Are there rules aimed at preventing conflicts of interest in decision-making by public officals, e.g. by requiring disclosure of any conflicts in advance?

III. Are all categories of public officials covered by the above measures, e.g. civil servants, elected or appointed senior officials at State and local levels, judges and other holders of judicial functions, prosecutors etc. ?

IV. Are certain categories of public officials subject to a system of disclosure of income, assets and interests, or to further requirements at the beginning and the end of a public office or mandate e.g. specific integrity requirements for appointment, professional disqualifications, post-employment restrictions (to limit revolving doors or so-called “pantouflage”)?

V. Have specific preventative measures been taken in specific sectors which are exposed to high risks of corruption, e.g. to ensure an adequate level of transparency and supervision over public tenders, and the financing of political parties and election campaigns?

b. Criminal law measures

What are the criminal law measures taken against corruption?

I. To what extent does bribery involving a public official constitute an offence?

II. Is corruption defined in policy documents or other texts, in conformity with international standards? Are there criminal law provisions aimed at preserving public integrity, e.g. trading in influence, abuse of office, breach of official duties?

III. Which public officials are within the scope of such measures, e.g. civil servants, elected or appointed senior officials including the head of State and members of government and public assemblies, judges and other holders of judicial functions, prosecutors etc. ?

IV. What consequences are attached to convictions for corruption-related offences? Do these include additional consequences such as exclusion from a public office or confiscation of profits?

c. Effective compliance with, and implementation of preventive and repressive measures

How is effective compliance with the above measures ensured?

I. How is the overall level of compliance with anti-corruption measures and policies perceived domestically?

II. Does the State comply with the results of international monitoring in this field?

III. Are effective, proportionate and dissuasive criminal and administrative sanctions provided for corruption-related acts and non-compliance with preventive mechanisms?

IV. Are the bodies responsible for combating corruption and preserving public sector integrity provided with adequate resources, including investigative powers, personnel and financial support? Do these bodies enjoy sufficient operational independence from the executive and the legislature?

V. Are measures in place to make the above bodies accessible to individuals and to encourage disclosure of possible corrupt acts, notably reporting hotlines and a policy on whistle-blowers which offers protection against retaliation in the workplace and other negative consequences?

VI. Does the State itself assess the effectiveness of its anti-corruption policies, and is adequate corrective action taken when necessary?

VII. Have any phenomena been observed in practice, which would undermine the effectiveness or integrity of anti-corruption efforts, e.g. manipulation of the legislative process, non-compliance and non-enforcement of court decisions and sanctions, immunities, interference with the enforcement efforts of anti-corruption and other responsible bodies – including political intimidation, instrumentalisation of certain public institutions, intimidation of journalists and members of civil society who report on corruption?

115. Corruption leads to arbitrariness and abuse of powers since decisions will not be made in line with the law, which will lead to decisions being arbitrary in nature. Moreover, corruption may offend equal application of the law: it therefore undermines the very foundations of the Rule of Law. Although all three branches of powers are concerned, corruption is a particular concern for the judiciary, prosecutorial and law enforcement bodies, which play an instrumental role in safeguarding the effectiveness of anti-corruption efforts. Preventing and sanctioning corruption-related acts are important elements of anti-corruption measures, which are addressed in a variety of international conventions and other instruments.

116. Preventing conflicts of interest is an important element of the fight against corruption. A conflict of interest may arise where a public official has a private interest (which may involve a third person, e.g. a relative or spouse) liable to influence, or appearing to influence, the impartial and objective performance of his or her official duties. The issue of conflicts of interest is addressed in international conventions and soft law. Legislation on lobbying and the control of campaign finance may also contribute to preventing and sanctioning conflicts of interest.

2. Collection of data and surveillance

a. Collection and processing of personal data

How is personal data protection ensured?

I. Are personal data undergoing automatic processing sufficiently protected with regard to their collection, storing and processing by the State as well as by private actors? What are the safeguards to secure that personal data are:

- processed lawfully, fairly and in a transparent manner in relation to the data subject ("lawfulness, fairness and transparency");
- collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes ("purpose limitation")?
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation")?
- accurate and, where necessary, kept up to date ("accuracy")?
- - kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed ("storage limitation");
- processed in a way that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage ("integrity and confidentiality")?

II. Is the data subject provided at least with information on:

- the existence of an automated personal data file, its main purposes;
- the identity and the contact details of the controller and of the data protection officer;
- the purposes of the processing for which the personal data are intended;
- the period for which the personal data will be stored;
- the existence of the right to request from the controller access to and rectification or erasure of the personal data concerning the data subject or to object to the processing of such personal data;
- the right to lodge a complaint to the supervisory authority and the contact details of the supervisory authority; the recipients or categories of recipients of the personal data;
- where the personal data are not collected from the data subject, from which source the personal data originate;
- any further information necessary to guarantee fair processing in respect of the data subject.

iii. Does a specific independent authority ensure compliance with the legal conditions under domestic law giving effect to the international principles and requirements with regard to the protection of individuals and of personal data?

iv. Are effective remedies provided for alleged violations of individual rights by collection of data?

117. The increasing use of information technology has made the collection of data possible to an extent which was unthinkable in the past. This has led to the development of national and international legal protection of individuals with regard to automatic processing of personal information relating to them. The most important requirements of such protection are enumerated above. These are also applicable mutatis mutandis to data processing for security purposes.

b. Targeted surveillance

What are the guarantees against abuse of targeted surveillance?

I. Is there a mandate in the primary legislation and is it restricted by principles like the principle of proportionality?

II. Are there norms providing for procedural controls and oversight?

III. Is an authorisation by a judge or an independent body required?

IV. Are there sufficient legal remedies available for an alleged violation of individual rights?

118. Surveillance may seriously infringe the right to private life. The developments of technical means make it easier and easier to use. Ensuring that it does not provide the State an unlimited power to control the life of individuals is therefore crucial.

119. Targeted surveillance must be understood as covert collection of conversations by technical means, covert collection of telecommunications and covert collection of metadata).

c. Strategic surveillance

What are the legal provisions related to strategic surveillance which guarantee against abuse?

I. Are the main elements of strategic surveillance regulated in statute form, including the definition of the agencies which are authorised to collect such intelligence, the detailed purposes for which strategic surveillance can be collected and the limits, including the principle of proportionality, which apply to the collection, retention and dissemination of the data collected?

II. Does the legislation extend data protection/privacy also to non-citizens/nonresidents?

III. Is strategic surveillance submitted to preventive judicial or independent authorisation? Are there independent review and oversight mechanisms in place?

IV. Are effective remedies provided for alleged violations of individual rights by strategic surveillance?

120. Signals intelligence must be understood as means and methods for the interception of radio – including satellite and cell phone and cable-borne communications.

121. "One of the most important developments of intelligence oversight in recent years has been that signals intelligence <…> can now involve monitoring "ordinary telecommunications" (it is "surveillance") and it has a much greater potential for affecting human rights.

d. Video surveillance

What are the guarantees against abuse of video surveillance, especially of public places?

I. Is video surveillance performed on grounds of security or safety requirements, or for the prevention and control of criminal offences, and submitted in law and in practice to the requirements laid down in Article 8 of Convention?

ii. Are people notified of their being surveyed in places accessible to the public?

iii. Do people have access to any video surveillance that may relate to them?

<…>

IV. Practice of the European Court of Human Rights

The proposed decisions of the European Court of Human Rights (hereinafter referred to as the ECHR, the Court) concern the analysis of the actual situations in which the applicants saw a possible violation of their rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) by public authorities. Judicial cases are mainly concentrated around the interpretation of Articles 2, 3, 5, 6, 8, 11, 13, 14 of the Convention, as well as Articles 1, 2 of Protocol No. 1 to it. The basic rights and freedoms defended by the court in these cases are: the right to life, prohibition of torture, the right to liberty and personal integrity, the right to a fair trial, the right to respect for private and family life, freedom of assembly and association, the right of effective means of legal defense, prohibition of discrimination, property rights, etc.

The argument used by the Court clearly demonstrates tools and methods for analyzing both the factual circumstances of a case and the national legislation as well as the Convention through the prism of the rule of law. In particular by applying such components of this international act as legality, accessibility, transparency, the right to be heard, the right to appeal, accountability, etc.

Almost all situations considered by the ECHR have been analyzed in terms of the **legality** of certain acts of public authorities. The notions of "legitimacy", "lawful", "in accordance with the law" in the practice of the Court are disclosed in several respects. First, this applies to the law itself that should be properly accessible: citizens should have instructions that are appropriate in terms of legal norms that apply to a particular case. Secondly, a norm can not be considered a "law" unless it is formulated sufficiently precisely so that citizens can regulate their behavior: if necessary, they should be able to provide appropriate advice, as far as possible in certain circumstances, to the consequences that can cause an action. In other words, the law must be clear to those concerned. Otherwise, this normative act can not be regarded by the Court as a law.

In addition, the "in accordance with the law" requirement does not simply refer to the existence of certain national legislation, but also implies the quality of the law, requiring the latter to comply with the rule of law. Thus, it is said that in national legislation there must have means of protection against arbitrary interference by public authorities with the exercise of protected rights. This also applies to discretionary powers.

The law, which provides for discretionary powers of the public authorities is not in itself incompatible with the requirements of predictability, provided that the discretionary powers and the manner in which they are implemented are specified sufficiently in order to ensure adequate protection of a citizen from arbitrary interference of the authorities, taking into account legitimacy of the purpose of the said measures.

Also, the term "legal" covers both procedural and substantive rules related to compliance to "the procedure established by law".

In practice, the stated requirements of legality should be reflected in the national legislation in the following way:

1. If a public authority has the power to intervene in the exercise of human rights and freedoms, such interference is possible only in the presence of the grounds, methods and limits of the interference clearly specified in the law.

2. Those concerned should be aware of such powers of the authorities, anticipate the consequences of their actions and have legal capacity to defend themselves against such interference.

3. The society should have effective, legitimate means of monitoring the grounds, methods and limits of the interference of public authorities in the conventional rights and freedoms.

Thus, for example, in the case of Mallow v. The United Kingdom (the case addresses a possible violation of Article 8 of the Convention regarding the definition of admissible grounds and conditions for the interference of public authorities with regard to the right to respect for private live, family and home, and correspondence) the court emphasized that the grounds and conditions of the case interference should have been based on the national law.

A law establishing the grounds and conditions of intervention must conform to qualitative characteristics, requiring its compliance with the rule of law. In particular, this concerns the clarity, comprehensiveness of the law for those who use it, as well as the presence of mechanisms to protect an individual's human rights against arbitrary interference by public authorities. Accordingly, such a law should provide the citizen with instructions on the conditions under which public authorities may intervene in his/ her right to have own privacy of life and correspondence. However, the very discretionary powers of the public authorities to determine the grounds for the intervention may not be unlimited.

In a democratic society, interference with private life is possible only when the supervisory system has adequate safeguards against abuse.

The case of "Shmushkovych vs Ukraine" and "Verentsov vs Ukraine" are illustrative examples of the application of the principle of legality. ECHR pointed out its attention to the fact that Ukraine has legislation that provides for liability for violation of the procedure of organization and holding of demonstrations (Art. 1851 of the Code of Ukraine on Administrative Offenses "Violations of the order of organizing and holding meetings, rallies, marches and demonstrations"). However, in Ukraine there is no normative act that would envisage the procedure for organizing and conducting demonstrations. The document of the times of the USSR, which regulated the procedure for obtaining consent for peaceful assembly, was not recognized by the Court as a "law" because it did not meet the criterion of "quality". This act was not formulated sufficiently clearly, so that a person could foresee, outline his actions as well-grounded. Its content did not correspond to the essence of the freedom of assembly guaranteed by the Constitution of Ukraine and the Convention. Accordingly, bringing persons to account for violations of the procedure for conducting demonstrations in the absence of such an order is nothing other than an interference with the right to freedom of peaceful assembly that had not been specified by law.

In the cases cited above, the ECHR has emphasized the unwarranted inaction of the Verkhovna Rada (Parliament) of Ukraine that is, in our opinion also a violation of the principle of accountability as a component of the rule of law. The point at issue is that for more than 20 years the Ukrainian parliament has not adopted any law that would regulate an order of holding peaceful demonstrations, although Articles 39 and 92 of the Constitution of Ukraine clearly require that such a procedure be established by law.

Violation of the principle of accountability by the state and local self-government bodies, which eventually led to unlawful interference with the human right to respect for one's own life, family and home, can also be traced in the case of "Dzemyuk vs Ukraine". Among other things the emphasis of this case is in the lack of adequate measures by the state to ensure compliance with internal environmental standards, which poses a danger to the health of people, as well as the inability of the state to regulate the activities of local authorities in accordance with such standards.

Another criterion of legality, which is reflected in the Court's practice, is the limitation of the retroactive (retrospective) effect of the law. The case is "Anhauzer-Busch Inc. vs Portugal" is particularly analyzes in detail the situation regarding the possible violation of the applicant's right of ownership as a result of the retrospective application of the law by the national court.

The legitimate criterion according to which the Court prefers to assess the actions of public authorities that interfere with the rights of people is the "legitimate aim" of such actions. It does not matter whether it is about custody of children, or the restriction of the will of the mentally ill, it is necessary that actions, restricting the rights of other people, not only were provided for by law, but also justify the purpose according to which such restrictions are established. For example, if it is done with the aim to protect health or morals, or to protect the rights and freedoms of others. Based on factual circumstances, the public authorities should be convinced that the purpose for which the restrictions are established does exist, and the powers used by the authorities are precisely aimed at achieving it. To a certain extent, verification of the legitimate aim in the work of the public authority is correlated with the observance of the principle of transparency and accessibility as an integral part of the rule of law. The court must make sure that all actions of the authorities are transparent and accessible to those to whom they are directed and that these actions do not conceal any other interest or purpose contrary to the letter or spirit of the Convention.

Examples from the point of view of checking "legitimacy" and "legitimate purpose" are "Winterwerp vs The Netherlands" and "Rakevich v. Russia". Both refer to the possible violation of paragraph 1 of Art. 5 of the Convention as regards the violation of the right to liberty and security of person, in particular towards persons with a mental illness. The ECHR came to the conclusion that a person with a mental illness can only be considered if there is a relevant medical opinion about this. It is possible to deprive this freedom only if the medical report states the necessity of hospitalization of a person whose behavior may pose a danger to himself or others.

Detention is only to be deemed to have been committed legally if done by the competent authority in accordance with the procedure provided for by national law.

In addition to the "legitimate purpose", measures taken by public authorities regarding protected rights must meet the criterion of "the need for a democratic society". According to established jurisprudence, the notion of "necessity" implies that the intervention corresponds to an urgent public need and that it is proportional to the legitimate aim. In other words, the purpose cannot always justify the means by which it is achieved. The medium itself must be evaluated from the point of view of respect for human rights, the principle of the rule of law and that in the end constitutes the notion of "democratic society".

For example, in the case of "Olson vs Sweden" that concerned a possible violation of Art. 8 of the Convention in relation to the right to respect for one's life, family and home, the Court investigated, among other things, the observance of guardianship in their activities by the criterion of "the need for a democratic society." Despite the fact that the actions of public authorities responsible for the transfer of children to care for foster families were found to be lawful and in line with the purpose of the law on the protection of children's health, the ECHR found that Sweden had violated Art. 8 of the Convention. The reason for the fact that the decisions taken on the transfer of children to care were not confirmed to be "sufficient" reasons that substantiate as proportionate to the legitimate aim. Therefore, having in regard to the discretion of state authorities, were not the actions "necessary in a democratic society". The court also concluded that three of the Olson's children were divided between three trustees, who lived at a considerable distance. This hindered the communication of children between themselves and of children with their parents.

In addition to protecting legality as a component of the rule of law, the ECHR investigated a significant part of cases from the point of view of possible interference by public authorities with the right to appeal and the right to be heard. In the Convention, these rights have been consolidated in the following articles: Clause 4 of Art. 5 "The right to liberty and security of person" ("Everyone who is deprived of his liberty as a result of arrest or detention has the right to initiate proceedings in which the court determines the lawfulness of the detention without delay and makes a decision on release if the detention is unlawful"); Art. 6 "The right to a fair trial"; Art. 13 "The right to an effective remedy", etc.

The practice of the ECHR demonstrates a number of elaborated criteria, in the presence of which it is possible to establish violations of the above rights. The most widespread occurrence of a violation of the right to a fair trial is the length of non-enforcement of court decisions. The very possibility of failure to deliver execution of the final decision of the judicial body by by public authorities is regarded by the Court as transforming the right to a fair trial and, accordingly, the right to challenge it into an illusion. It is worth noting that the ECHR judges the reasons for non-compliance significance reason in each case, but never perceives a lack of funds, the state's uncontrollability of utilities as reasons sufficient to fail to comply with the Court's judgment. Indicative in this regard are the cases of "Ovcharov and Khomych vs Ukraine" and "Filsthein vs Ukraine". In both cases, the ECHR established a violation of the right to a fair trial as a result of a long failure to comply with the decisions of the domestic courts. In addition, it stated the violation of the right to appeal and the right to be heard due to the lack of an effective remedy for the applicants, since all their complaints directed at the public authorities did not lead to the restoration of the rights violated. In addition, in these cases the decisions on the state's responsibility for the actions of local self-government bodies and enterprises created by them are indicative. In this aspect, the Court's implementation of the principle of accountability of the state to public authorities can be traced again. The ECHR has stated: local governments are state organizations in the sense that they are governed by public law and carry out state functions that they owe to them in accordance with the Constitution and laws of Ukraine. Consequently, the actions and / or inaction of local authorities is the state's concern that is responsible for debts of municipal enterprises the same way it is responsible for debts of state enterprises.

The next criterion used by the Court to verify the state's right to a fair trial is the possibility of verbal hearing. The argument about the types of proceedings and, consequently, the appropriateness of their application for certain categories of disputes has been reflected in the case of "Jusilla v. Finland". The ECHR has developed a number of basic conditions in the presence of which the right to a fair trial is not be considered violated if the state authorities apply a written procedure for reviewing cases that does not interfere with the right to be heard. This concerns, in particular, the value of the case, the need to adhere to a reasonable period of consideration, the applicant's awareness of the availability of alternatives, etc.

Another criterion for a fair trial is its public character. The Convention protects the parties from the justice in secrecy, without public scrutiny; publicity is also one of the means by which you can maintain trust in the courts. By revealing transparency of justice, publicity contributes to the achievement of the objective of a fair trial, the guarantee of which is one of the fundamental principles of any democratic society within the meaning of the Convention. Such a conclusion contains the argument of the Court in the "Martinique vs France" case, in which it was found that the unjustifiably closed nature of the hearing created an imbalance in the parties' capacities, which ultimately constituted an infringement of the right to a fair trial.

The next requirement that characterizes this right is equality of parties in the process of consideration of cases. Each party should have a reasonable opportunity to present their case. Such an opportunity should not put the party at a disadvantage vis-à-vis its opponent. An example of such an approach is the case of "Henry vs France". In this case the Court, among other things, determined the unequal situation of the tax service, the actions of which the applicant complained. The latter has not been given parity in considering her complaint. In effect, the national court restricted the applicant's right to be heard in the context of providing substantiated arguments in the case. Accordingly, the tax office was in a privileged, unequal situation with the applicant. Such a situation enabled the Court to establish a violation of the right to a fair trial. Another violation of this right in the proceeding was the excessive length of the proceedings before the domestic courts. The ECHR concluded the time for consideration of the case - 7 years and three months - as absolutely unfounded. There were no serious grounds justifying delays according to the Court resolution so it recognized the period of trial unreasonable and accordingly, stated another violation of the right to a fair trial.

Similar findings were made by the Court in "Erkner & Gofauer vs Austria", which lasted more than 16 years. This case however, is more indicative of its subject of consideration. These are actions of the public authorities, in particular local self-government, in the field of land relations management, namely in the process of seizure of agricultural land from private property with payment of compensation to owners. The very process of this process clearly demonstrates the need to adhere to the principles of transparency, accessibility, and the right to be heard

when using the powers of the public authorities, in particular in delicate, sensitive areas as it is private ownership of land. Failure to comply with these principles eventually leads to a misbalance between protection of property rights and requirements of public interest. If the Court made an exact conclusion stating the state's violation of the applicants' right to peaceful possession of the property.

One more indicative case involving the violation of property rights is the case of "Bistrovic v. Croatia". The government has carried out the removal of the share of agricultural land from the private estate for the construction of the highway and the compensation for seized property was determined solely on the basis of an expert assessment of the value of the withdrawn land, without taking into account a number of arguments that significantly affected the amount of compensation. During the consideration of this case, the ECHR has identified another criterion for observance of the right to a fair trial, namely the right of the party to thoroughly review the main provisions (arguments) of the proceedings. He stated that proceedings before the courts should go in accordance with the rule of law, which can be determined in the case of the proper administration of justice. The rights guaranteed by the Convention will be illusory and theoretical in the absence of an obligation on the part of the judiciary to indicate the grounds for a decision.

In this case, the right to be heard was not implemented. Neither the administrative authorities nor the national court, in determining compensation, did not take into account a number of arguments: the distance from the house to the future highway is 2-3 m; The estate had its suburbs, a huge courtyard and low noise level, making the property very suitable for agricultural activity. Accordingly, the amount of compensation was not fair and the offer violated the applicants' right to peaceful possession of the property.

Separate cases should be noted concerning the assessment of the actions of public authorities in preventing discrimination, inhuman treatment and the protection of the right to life.

Prohibition on discrimination against human rights does not have an exhaustive list of grounds, so the Court carefully scrutinizes the circumstances of each case in order to find out whether it is possible that one or another action of a public authority is discriminatory. As it is the case of "E.B. vs France ", the ECHR investigated whether the denial of the right to adopt a child was due to the fact that the applicant was homosexual and did not live in a paired union, and how much her orientation might had affected the child's interests. In the case of "D.G. and others vs the Czech Republic" the fact of mainly Roma nationality children placement in specialized, rather than ordinary schools was evaluated from the point of view of possible discrimination. In the first case, the Court did not find discrimination on the basis of sexual orientation, and in the second case the teaching of children of one nationality, in most cases separate from other children was recognized as discriminatory on ethnic grounds.

The humanistic motives and human-centered understanding of law are permeated by the Court's argument in the case of N. against the United Kingdom ". He, through an analysis of the actual situation, concludes that the deportation of a person on legal grounds, suffering from any serious physical or mental illness that is accompanied by suffering, pain and reduced life expectancy, and also requires specialized medical treatment that may not be readily available in the applicant country or available only at a high price equivalent to inhumane treatment.

On the role of state bodies, namely the court, in the provision of human right to life, the arguments in the case of Öneryildiz v. Turkey are emphasized. First, attention should be drawn to the positive obligation of the state to take all necessary measures to protect life, in particular to use a legislative and administrative framework designed to effectively prevent threats against the right to life. Secondly, national courts should under no circumstances allow offenses that threaten human life to be without punishment. This is important in order to maintain public confidence and ensure the rule of law.

Summarizing the above, the following conclusions should be made:

1. The legality, in the light of which the Court appreciates the admissibility of certain acts of the public authorities, has a multicomponent content. First of all, the fact of having the relevant legislation is checked. Then the "quality" of the law is assessed, how much it meets the criteria for accessibility, clarity, clarity, comprehensiveness and the rule of law. In addition, it appears that the law has the ability to control the actions of the authorities and limit the discretionary powers of the latter.

2. The actions of the bodies of public authority not only must comply with the letter of law, but also have a legitimate aim, the achievement of which this law is adopted. However, a legitimate aim cannot justify its achievement if it turns out that it is disproportionate to the purpose and is not necessary in a democratic society.

3. Observance of the right to appeal, the right to be heard, which is incorporated into the Convention's fair trial rights and effective remedies, are reviewed by the Court through the following main tokens:

- The public nature of the hearings;
- The possibility of oral hearing;
- The equality of parties;
- Ensuring the consideration of all arguments;
- The length of court proceedings;
- The length of execution of court decisions.

4. The accountability of public authorities as a component of the rule of law in the practice of the Court is reflected mainly in the investigation of the facts of unfulfilled passive and active obligations of the authorities before people and society.

5. The questions of transparency of actions of the authorities, availability of both the bodies themselves and their actions for perception by those concerned, can be traced in judicial arguments in the vast majority of cases. Although the Court itself does not distinguish these concepts as separate verification criteria, their content is used or taken into account.

Case of Malone v. The United Kingdom (Application no. 8691/79)

(Extract)

<...>

AS TO THE LAW

I. ALLEGED BREACH OF ARTICLE 8 (art. 8)

62. Article 8 (art. 8) provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The applicant alleged violation of this Article (art. 8) under two heads. In his submission, the first violation resulted from interception of his postal and telephone communications by or on behalf of the police, or from the law and practice in England and Wales relevant thereto; the second from "metering" of his telephone by or on behalf of the police, or from the law and practice in England and Wales relevant thereto.

<...>

3. Whether the interferences were justified

65. The principal issue of contention was whether the interferences found were justified under the terms of paragraph 2 of Article 8 (art. 8-2), notably whether they were "in accordance with the law" and "necessary in a democratic society" for one of the purposes enumerated in that paragraph.

(a) "In accordance with the law"

(i) General principles

66. The Court held in its Silver and Others judgment of 25 March 1983 (Series A no. 61, pp. 32-33, para. 85) that, at least as far as interferences with prisoners' correspondence were concerned, the expression "in accordance with the law/ prévue par la loi" in paragraph 2 of Article 8 (art. 8-2) should be interpreted in the light of the same general principles as were stated in the Sunday Times judgment of 26 April 1979 (Series A no. 30) to apply to the comparable expression "prescribed by law/ prévues par la loi" in paragraph 2 of Article 10 (art. 10-2).

The first such principle was that the word "law/loi" is to be interpreted as covering not only written law but also unwritten law (see the above-mentioned Sunday Times judgment, p. 30, para. 47). A second principle, recognised by Commission, Government and applicant as being applicable in the present case, was that "the interference in question must have some basis in domestic law" (see the the above-mentioned Silver and Others judgment, p. 33, para. 86). The expressions in question were, however, also taken to include requirements over and above compliance with the domestic law. Two of these requirements were explained in the following terms:

"Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." (Sunday Times judgment, p. 31, para. 49; Silver and Others judgment, p. 33, paras. 87 and 88)

67. In the Government's submission, these two requirements, which were identified by the Court in cases concerning the imposition of penalties or restrictions on the exercise by the individual of his right to freedom of expression or to correspond, are less appropriate in the wholly different context of secret surveillance of communications. In the latter context, where the relevant law imposes no restrictions or controls on the individual to which he is obliged to conform, the paramount consideration would appear to the Government to be the lawfulness of the administrative action under domestic law.

<...>

68. There was also some debate in the pleadings as to the extent to which, in order for the Convention to be complied with, the "law" itself, as opposed to accompanying administrative practice, should define the circumstances in which and the conditions on which a public authority may interfere with the exercise of the protected rights. The above-mentioned judgment in the case of Silver and Others, which was delivered subsequent to the adoption of the Commission's report in the present case, goes some way to answering the point. In that judgment, the Court held that "a law which confers a discretion must indicate the scope of that discretion", although the detailed procedures and conditions to be observed do not necessarily have to be incorporated in rules of substantive law (ibid., Series A no. 61, pp. 33-34, paras. 88-89). The degree of precision required of the "law" in this connection will depend upon the particular subject-matter (see the above-mentioned Sunday Times judgment, Series A no. 30, p. 31, para. 49). Since the implementation in practice of measures of secret surveillance of communications is not open to scrutiny by the individuals concerned or the public at large, it would be contrary to the rule of law for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference.

<...>

(b) "Necessary in a democratic society" for a recognised purpose

81. Undoubtedly, the existence of some law granting powers of interception of communications to aid the police in their function of investigating and detecting crime may be "necessary in a democratic society ... for the prevention of disorder or crime", within the meaning of paragraph 2 of Article 8 (art. 8-2) (see, mutatis mutandis, the above-mentioned Klass and Others judgment, Series A no. 28, p. 23, para. 48). The Court accepts, for example, the assertion in the Government's White Paper (at para. 21) that in Great Britain "the increase of crime,and particularly the growth of organised crime, the increasing sophistication of criminals and the ease and speed with which they can move about have made telephone interception an indispensable tool in the investigation and prevention of serious crime". However, the exercise of such powers, because of its inherent secrecy, carries with it a danger of abuse of a kind that is potentially easy in individual cases and could have harmful consequences for democratic society as a whole (ibid., p. 26, para. 56). This being so, the resultant interference can only be regarded as "necessary in a democratic society" if the particular system of secret surveillance adopted contains adequate guarantees against abuse (ibid., p. 23, paras. 49-50).

<...>

FOR THESE REASONS, THE COURT

1. Holds unanimously that there has been a breach of Article 8 (art. 8) of the Convention;

2. Holds by sixteen votes to two that it is not necessary also to examine the case under Article 13 (art. 13);

3. Holds unanimously that the question of the application of Article 50 (art. 50) is not ready for decision;

accordingly,

(a) reserves the whole of the said question;

(b) refers back to the Chamber the said question.

<...>

Case of Winterwerp v. the Netherlands (Application no. 6301/73)

(Extract)

<...>

I. ON THE ALLEGED VIOLATION OF ARTICLE 5 PARA. 1 (art. 5-1)

<...>

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(e) the lawful detention <...> of persons of unsound mind <...>;

A. "The lawful detention of persons of unsound mind"

<...>

37. The Convention does not state what is to be understood by the words "persons of unsound mind". This term is not one that can be given a definitive interpretation: as was pointed out by the Commission, the Government and the applicant, it is a term whose meaning is continually evolving as research in psychiatry progresses, an increasing flexibility in treatment is developing and society's attitude to mental illness changes, in particular so that a greater understanding of the problems of mental patients is becoming more wide-spread.

In any event, sub-paragraph (e) of Article 5 para. 1 (art. 5-1-e) obviously cannot be taken as permitting the detention of a person simply because his views or behaviour deviate from the norms prevailing in a particular society. To hold otherwise would not be reconcilable with the text of Article 5 para. 1 (art. 5-1) which sets out an exhaustive list.

<...>

Neither would it be in conformity with the object and purpose of Article 5 para. 1 (art. 5-1), namely to ensure that no one should be dispossessed of his liberty in an arbitrary fashion (see the Lawless judgment of 1 July 1961, Series A no. 3, p. 52, and the above-mentioned Engel and others judgment, p. 25, para. 58). Moreover, it would disregard the importance of the right to liberty in a democratic society (see the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 36, para. 65, and the above-mentioned Engel and others judgment, p. 35, para. 82 in fine).

38. Just as the Convention does not give any definition of "persons of unsound mind", so the Netherlands legislation does not define "mentally ill persons" (krankzinnige); what the legislation does is to lay down the grounds for committing such persons to a psychiatric hospital (see paragraph 11 above). Thus, an application may be made for the provisional detention of a "mentally ill person" either in his own interests or in the interests of public order; there must be a medical declaration to the effect that the person concerned "is in a state of mental illness and that it is necessary or desirable to treat him in a psychiatric hospital" (sections 12 and 16 of the Act; paragraph 13 above).

<...>

Having regard to the above-mentioned practice, the law in force does not appear to be in any way incompatible with the meaning that the expression "persons of unsound mind" is to be given in the context of the Convention. The Court therefore considers that an individual who is detained under the Netherlands Mentally Ill Persons Act in principle falls within the ambit of Article 5 para. 1 (e) (art. 5-1-e).

39. The next issue to be examined is the "lawfulness" of the detention for the purposes of Article 5 para. 1 (e) (art. 5-1-e). Such "lawfulness" presupposes conformity with the domestic law in the first place and also, as confirmed by Article 18 (art. 18), conformity with the purpose of the restrictions permitted by Article 5 para. 1 (e) (art. 5-1-e); it is required in respect of both the ordering and the execution of the measures involving deprivation of liberty (see the above-mentioned Engel and others judgment, p. 28, para. 68 in fine).

As regards the conformity with the domestic law, the Court points out that the term "lawful" covers procedural as well as substantive rules. There thus exists a certain overlapping between this term and the general requirement stated at the beginning of Article 5 para. 1 (art. 5-1), namely observance of "a procedure prescribed by law" (see paragraph 45 below).

Indeed, these two expressions reflect the importance of the aim underlying Article 5 para. 1 (art. 5-1) (see paragraph 37 above): in a democratic society subscribing to the rule of law (see the Golder judgment of 21 February 1975, Series A no. 18, pp. 16-17, para. 34, and the above-mentioned Klass and others judgment, p. 25, para. 55), no detention that is arbitrary can ever be regarded as "lawful".

The Commission likewise stresses that there must be no element of arbitrariness; the conclusion it draws is that no one may be confined as "a person of unsound mind" in the absence of medical evidence establishing that his mental state is such as to justify his compulsory hospitalisation (see paragraph 76 of the report). The applicant and the Government both express similar opinions.

<...>

41. As to the facts of the instant case, the medical evidence submitted to the courts indicated in substance that the applicant showed schizophrenic and paranoiac reactions, that he was unaware of his pathological condition and that, on several occasions, he had committed some fairly serious acts without appreciating their consequences. In addition, various attempts at his gradual rehabilitation into society haven failed (see paragraphs 24, 27, 29 and 30 above).

42. Mr. Winterwerp criticises the medical reports as unsatisfactory for the purposes of Article 5 para. 1 (e) (art. 5-1-e). In addition, he queries whether the burgomaster's initial direction to detain was founded on psychiatric evidence.

In the Court's view, the events that prompted the burgomaster's direction in May 1968 (see paragraph 23 above) are of a nature to justify an "emergency" confinement of the kind provided for at that time under section 14 of the Netherlands Act. While some hesitation may be felt as to the need for such confinement to continue for as long as six weeks, the period is not so excessive as to render the detention "unlawful". Despite the applicant's criticisms, the Court has no reason whatsoever to doubt the objectivity and reliability of the medical evidence on the basis of which the Netherlands courts, from June 1968 onwards, have authorised his detention as a person of unsound mind. Neither is there any indication that the contested deprivation of liberty was effected for a wrongful purpose.

43. The Court accordingly concludes that Mr. Winterwerp's confinement, during all the various phases under consideration, constituted "the lawful detention of [a person] of unsound mind", within the meaning of sub-paragraph (e) of Article 5 para. 1 (art. 5-1-e).

B. “In accordance with a procedure prescribed by law”

44. The applicant maintains that his deprivation of liberty was not carried out “in accordance with a procedure prescribed by law”. For the applicant, this expression implies respect of certain elementary principles of legal procedure, such as informing and hearing the person concerned and affording him some kind of participation and legal assistance in the proceedings. In his submission, these principles have not been observed in his case.

The Government reply that the relevant procedure under Netherlands law, in ensuring regular review by an independent judge who bases his decision on medical declarations, undoubtedly meets such requirements as may be made in this respect by Article 5 para. 1 (art. 5-1).

According to the Commission, Article 5 para. 1 (e) (art. 5-1-e), apart from making medical reports necessary, involves a simple reference back to domestic law without laying down any minimum procedural guarantees.

45. The Court for its part considers that the words “in accordance with a procedure prescribed by law” essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law.

However, the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary. The Netherlands Mentally Ill Persons Act (described above at paragraphs 11 to 20) satisfies this condition.

46. Whether the procedure prescribed by that Act was in fact respected in the applicant’s case is a question that the Court has jurisdiction to examine

<…>

The Court notes that the solution adopted in the instant case by the Utrecht Regional Court was dictated by the latter’s Rules of Order which had been approved by Royal Decree on the advice of the Hoge Raad (see paragraph 17 above). Whether the content of those Rules is in conformity with the Code of Civil Procedure raises a problematical question of Netherlands law which, in the absence of any case-law by the Hoge Raad, seemingly remains open to argument. In these circumstances, the Court has no sufficient reason for finding that the Utrecht Regional Court failed to act “in accordance with a procedure prescribed by law”.

<…>

50. To sum up, the applicant was detained “in accordance with a procedure prescribed by law”.

<…>

D. Conclusion

52. The Court therefore concludes that Article 5 para. 1 (art. 5-1) has not been violated.

<…>

Case of Olsson v. Sweden (No. 1) (Application no. 10465/83)

(Extract)

<...>

II. ALLEGED VIOLATION OF ARTICLE 8 (art. 8) OF THE CONVENTION

A. Introduction

58. The applicants asserted that the decision to take the children into care, the manner in which it had been implemented and the refusals to terminate care had given rise to violations of Article 8 (art. 8) of the Convention, which reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

This allegation was contested by the Government, but accepted by a majority of the Commission.

59. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life; furthermore, the natural family relationship is not terminated by reason of the fact that the child is taken into public care (see the W v. the United Kingdom judgment of 8 July 1987, Series A no. 121, p. 27, § 59). It follows - and this was not contested by the Government - that the measures at issue amounted to interferences with the applicants' right to respect for their family life.

Such an interference entails a violation of Article 8 (art. 8) unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 § 2 (art. 8-2) and was "necessary in a democratic society" for the aforesaid aim or aims (ibid., p. 27, § 60 (a)).

B. "In accordance with the law"

60. The applicants did not deny that the authorities had acted in accordance with Swedish law. However, they alleged that the measures taken were not "in accordance with the law" within the meaning of Article 8 (art. 8), notably because the relevant legislation set no limits on the discretion which it conferred and was drafted in terms so vague that its results were unforeseeable.

The Government contested this claim, which was not accepted by the Commission.

61. Requirements which the Court has identified as flowing from the phrase "in accordance with the law" include the following.

> (a) A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen - if need be, with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail; however, experience shows that absolute precision is

unattainable and the need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see, for example, the Sunday Times judgment of 26 April 1979, Series A no. 30, p. 31, § 49).

(b) The phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law; it thus implies that there must be a measure of protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by, inter alia, paragraph 1 of Article 8 (art. 8-1) (see the Malone judgment of 2 August 1984, Series A no. 82, p. 32, § 67).

(c) A law which confers a discretion is not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see the Gillow judgment of 24 November 1986, Series A no. 109, p. 21, § 51).

<...>

C. Legitimate aim

64. The applicants submitted that, of the aims listed in paragraph 2 of Article 8 (art. 8-2), only the "protection of health or morals" could have justified the decision to take the children into care, but that their health or morals were not in fact endangered when it was adopted.

The Commission, on the other hand, considered that the decisions concerning the care and the placement of the children were taken in their interests and had the legitimate aims of protecting health or morals and protecting the "rights and freedoms of others".

65. In the Court's view, the relevant Swedish legislation is clearly designed to protect children and there is nothing to suggest that it was applied in the present case for any other purpose. The interferences in question - intended as they were to safeguard the development of Stefan, Helena and Thomas - therefore had, for the purposes of paragraph 2 of Article 8 (art. 8-2), the legitimate aims attributed to them by the Commission.

D. "Necessary in a democratic society"

66. The applicants maintained that the measures at issue could not be regarded as "necessary in a democratic society". This submission was contested by the Government, but accepted by a majority of the Commission.

1. Introduction

67. According to the Court's established case-law, the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued; in determining whether an interference is "necessary in a democratic society", the Court will take into account that a margin of appreciation is left to the Contracting States (see, amongst many authorities, the above-mentioned W v. the United Kingdom judgment, Series A no. 121, p. 27, § 60 (b) and (d)).

68. There was considerable discussion during the hearing before the Court as to the approach to be adopted by the Convention institutions in resolving the necessity issue.

The Commission's Delegate summarised the approach taken by the majority of the Commission as being: "to stay ... within the judgments of the domestic courts and, after making a detailed study of the relevant judgments, conclude whether or not [their] contents ... reveal sufficient reasons for taking a child into public care." She summarised the minority's approach as being: "to stay within the judgments of the domestic courts and to examine whether the reasons [therein] seem to indicate that [they] have based themselves on irrelevant circumstances or that they have applied unacceptable criteria or standards for the justification of a public-care order. In essence the question is whether the national court has misjudged the necessity." The Government favoured the minority's approach, adding that a wide margin of appreciation should be afforded to the national authorities so long as there was no reason to believe that the decisions were not taken in good faith, with due care and in a reasonable manner.

<...>

69. In concluding that there had been a violation of Article 8 (art. 8), the majority of the Commission based itself on the care decisions concerning the applicants' children in combination with the placement of the children in separate foster homes and far away from the applicants.

In this respect, the Court shares the view of the Government that these are matters which should be examined separately: the factors and considerations which are relevant to an assessment of their necessity may not be the same.

2. The taking of the children into care and the refusals to terminate care

70. The applicants contended that it was not necessary to take the children into and maintain them in care; they alleged, inter alia, that no concrete facts had been established showing that the children were in danger, that there were no substantiated reasons justifying the taking into care and that there were no valid motives for refusing the requests for termination of care.

The Government contested this allegation. The majority of the Commission, on the other hand, was not convinced that the factual basis was so grave as to justify the taking into care, although it did observe that it was "understandable that the care order was not lifted".

71. Before turning to the substance of this issue, it is convenient to deal with an initial point. In its above-mentioned W v. the United Kingdom judgment, the Court held that certain procedural requirements were implicit in Article 8 (art. 8): as regards decisions in child-care matters, the parents must "have been involved in the decision-making process, seen as a whole, to a degree sufficient to provide them with the requisite protection of their interests" (Series A no. 121, p. 29, § 64).

The Court agrees with the Commission that this requirement was satisfied as regards the care decisions themselves. Mr. and Mrs. Olsson attended a number of case conferences and were present at the meetings which preceded the Council's decision of 16 September 1980 to take the children into care and its decision of 1 June 1982 not to terminate care (see paragraphs 10, 11, 12 and 27 above). They also attended hearings before the County Administrative Court and the Administrative Court of Appeal. Furthermore, they were legally represented during all the relevant judicial proceedings.

<...>

82. There is nothing to suggest that the Swedish authorities did not act in good faith in implementing the care decision. However, this does not suffice to render a measure "necessary" in Convention terms (see paragraph 68

above): an objective standard has to be applied in this connection. Examination of the Government's arguments suggests that it was partly administrative difficulties that prompted the authorities' decisions; yet, in so fundamental an area as respect for family life, such considerations cannot be allowed to play more than a secondary role.

83. In conclusion, in the respects indicated above and despite the applicants' unco-operative attitude (see paragraph 26 above), the measures taken in implementation of the care decision were not supported by "sufficient" reasons justifying them as proportionate to the legitimate aim pursued. They were therefore, notwithstanding the domestic authorities' margin of appreciation, not "necessary in a democratic society".

E. Overall conclusion

84. To sum up, the implementation of the care decision, but not that decision itself or its maintenance in force, gave rise to a breach of Article 8 (art. 8).

<...>

FOR THESE REASONS, THE COURT

1. Rejects unanimously the Government's plea concerning the scope of the case;

2. Holds by ten votes to five that the decision to take the children into care and its maintenance in force did not give rise to a violation of Article 8 (art. 8) of the Convention;

<...>

Case of Hentrich v. France (Application no. 13616/88)

(Extract)

<...>

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

34. In the applicant's submission, the pre-emption of her property by the Revenue amounted to a de facto expropriation and infringed Article 1 of Protocol No. 1 (P1-1), which provides: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

35. Because the right of pre-emption was exercised, Mrs Hentrich was deprived of her property within the meaning of the second sentence of the first sub-paragraph of Article 1 (P1-1); the Government did not contest that.

36. The Court therefore has to satisfy itself that the requirements of the provision in question were complied with.

A. Purpose of the interference

37. In the applicant's view, the prevention of tax evasion would only be an aim in the public interest if the owner was presumed guilty of tax evasion and if his property was subsequently used for a purpose that was in the public interest. A purchaser of real property could only be deprived by the Revenue of any profit made at the time of purchase in the event of fraud. That a price was too low might be explained by innocuous factors, such as goodwill, ignorance or urgency.

38. The Government maintained that the pre-emption procedure was the only means available to the Revenue for regulating, and raising moral standards in, the property market and preventing tax evasion. The value of the procedure, which the Revenue considered to be particularly effective, lay in its deterrent nature and the fact that it was exceptional, being used only when - as in the instant case - the price was manifestly too low.

39. Like the Commission, the Court notes that the right of pre-emption is exercised only where the declared price falls short of the Revenue's valuation of the real property purchased. The right of pre-emption is not designed to punish tax evasion, and it applies even where the declared price corresponds to the price actually paid, but its purpose is to prevent non-payment of higher registration fees. The purchaser's good or bad faith is therefore immaterial.

The Court reiterates that the notion of "public interest" is necessarily extensive and that the States have a certain margin of appreciation to frame and organise their fiscal policies and make arrangements - such as the right of pre-emption - to ensure that taxes are paid. It recognises that the prevention of tax evasion is a legitimate objective which is in the public interest. It does not have to decide in the instant case whether the right of pre-emption could legitimately be designed also to regulate the property market.

B. Lawfulness of the interference

40. In Mrs Hentrich's submission, the pre-emption procedure was arbitrary as the Revenue had not given reasons for its decision and the taxpayer had not been able to know or criticise the reasons for it subsequently.

41. The Government maintained that the pre-emption measure had to comply with Law no. 79-587 of 11 July 1979 and was reviewable by the courts. Admittedly, the concept of a price being too low was imprecise, but it was to be assessed with reference to transfers of the same type in similar circumstances and the assessment could be challenged by the dispossessed owner.

42. Unlike the Commission, the Court considers it necessary to rule on the lawfulness of the interference.

While the system of the right of pre-emption does not lend itself to criticism as an attribute of the State's sovereignty, the same is not true where the exercise of it is discretionary and at the same time the procedure is not fair.

In the instant case the pre-emption operated arbitrarily and selectively and was scarcely foreseeable, and it was not attended by the basic procedural safeguards. In particular, Article 668 of the General Tax Code, as interpreted up to that time by the Court of Cassation and as applied to the applicant, did not sufficiently satisfy the requirements of precision and foreseeability implied by the concept of law within the meaning of the Convention.

A pre-emption decision cannot be legitimate in the absence of adversarial proceedings that comply with the principle of equality of arms, enabling argument to be presented on the issue of the underestimation of the price and, consequently, on the Revenue's position - all elements which were lacking in the present case.

The Court notes that the French legal system has in fact been modified in this respect, it now being mandatory for the reasons for administrative pre-emption decisions to be subject to the adversarial principle. It must, however, observe that this development did not avail the applicant, although it could have done.

C. Proportionality of the interference

43. According to Mrs Hentrich, the fact that it was impossible to defend herself against the effect of the pre-emption - which she described as dishonouring - made the measure a disproportionate one, as did the inadequacy of the compensation paid for the expropriation.

44. The Government disagreed with the Commission's opinion that the measure was disproportionate to the objective sought to be achieved because of the existence of the adversarial procedure of a supplementary tax assessment. They said that this procedure had neither the same purpose nor the same effects. Pre-emption, which was more markedly exemplary in character, was designed essentially to ensure that the sale price of the real property concerned was not taken as a bench-mark, whereas supplementary tax assessments, which were of more general application, were unsuited to this type of situation. A revised assessment was a tax penalty which had no impact on the general organisation of the property market and whose legal consequences affected only the parties to the sale and more particularly the purchaser.

In the Government's submission, dispossessed purchasers did not sustain any financial loss since they received, in addition to the price paid to acquire the real property, a supplementary payment of 10% and could claim reimbursement of the costs and fair expenses of the contract and, on production of vouchers, reimbursement of sums committed before the pre-emption. Any purely non-pecuniary damage that might be suffered would certainly not be disproportionate to the aim pursued.

Whatever the reason for the declared price being too low, the community suffered a substantial loss of transfer duty, and this called for an appropriate response.

45. In order to assess the proportionality of the interference, the Court looks at the degree of protection from arbitrariness that is afforded by the proceedings in this case.

46. In this instance the trial and appeal courts interpreted the domestic law as allowing the State to avail itself of its right of pre-emption without having to indicate the reasons of fact and law for its decision.

47. The Court notes, firstly, that the Revenue may, through the exercise of its right of pre-emption, substitute itself for any purchaser, even one acting in perfectly good faith, for the sole purpose of warning others against any temptation to evade taxes. This right of pre-emption, which does not seem to have any equivalent in the tax systems of the other States parties to the Convention, does not apply systematically - in other words, every time the price has been more or less clearly underestimated - but only rarely and scarcely foreseeably. Furthermore, the State has other suitable methods at its disposal for discouraging tax evasion where it has serious grounds for suspecting that this is taking place; it can, for instance, take legal proceedings to recover unpaid tax and, if necessary, impose tax fines. Systematic use of these procedures, combined with the threat of criminal proceedings, should be an adequate weapon.

48. The Court considers that the question of proportionality must also be looked at from the point of view of the risk run by any purchaser that he will be subject to pre-emption and therefore penalised by the loss of his property solely in the interests of deterring possible underestimations of price. The exercise of the right of pre-emption entails sufficiently serious consequences for the measure to attain a definite level of severity. Merely reimbursing the price paid - increased by 10% - and the costs and fair expenses of the contract cannot suffice to compensate for the loss of a property acquired without any fraudulent intent.

49. Having regard to all these factors, the Court considers that, as a selected victim of the exercise of the right of pre-emption, Mrs Hentrich "bore an individual and excessive burden" which could have been rendered legitimate only if she had had the possibility - which was refused her - of effectively challenging the measure taken against her; the "fair balance which should be struck between the protection of the right of property and the requirements of the general interest" was therefore upset (see, mutatis mutandis, the Sporrong and Lönnroth v. Sweden judgment of 23 September 1982, Series A no. 52, p. 28, para. 73, and the AGOSI v. the United Kingdom judgment of 24 October 1986, Series A no. 108, p. 19, para. 55, and p. 21, para. 62).

D. Conclusion

50. Accordingly, there has been a breach of Article 1 of Protocol No. 1 (P1-1).

<...>

FOR THESE REASONS, THE COURT

1. Dismisses unanimously the Government's preliminary objections;

2. Holds by five votes to four that there has been a breach of Article 1 of Protocol No. 1 (P1-1);

<...>

Erkner and Hofauer v. Austria (Application no. 9616/81)

(Extract)

<...>

I. ALLEGED BREACH OF ARTICLE 6 § 1 (art. 6-1) OF THE CONVENTION

<...>

1. Applicability of Article 6 § 1 (art. 6-1)

62. The Forstern-Pöndorf agricultural consolidation plans concerned, inter alia, land belonging to the Erkner and Hofauer families, which was taken from them in exchange for land previously belonging to other owners. The applicants contested - and continue to contest - the lawfulness of the compensation obtained. Any decision - whether favourable or unfavourable - by the authorities dealing with the matter consequently affected, affects or will in the future affect their property rights. The outcome of the proceedings complained of is accordingly "decisive for private rights and obligations" (see the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 39, § 94, and the Sramek judgment of 22 October 1984, Series A no. 84, p. 17, § 34), so that Article 6 § 1 (art. 6-1) applies in the instant case; the Government, moreover, conceded this.

2. Compliance with Article 6 § 1 (art. 6-1)

(a) "Independent and impartial tribunal" - "public hearing"

63. Before the Court, the applicants cited the fact that the hearings before the Provincial Board in March 1986 were not held in public; they also contended that the land reform boards were not independent and impartial. As regards the latter contention, they relied on the organisational charts of the Federal Ministry of Agriculture and Forestry and the Office of the Provincial Government of Upper Austria to point to the existence of hierarchical links between the civil-servant members, the participation in the vote by civil servants responsible for preparing expert opinions, and the short term of office (five years).

These were new complaints. They were not raised as such before the Commission and were not based on the facts as found by the Commission within the framework fixed by its decision on admissibility. That being so, the Court has no jurisdiction to entertain them (see in particular, mutatis mutandis, the Bozano judgment of 18 December 1986, Series A no. 111, p. 27, § 62).

(b) "Reasonable time"

(i) Period to be considered

64. In civil proceedings, the "reasonable time" referred to in Article 6 § 1 (art. 6-1) normally begins to run from the moment the action was instituted before the "tribunal" (see, as the most recent authority, the Deumeland judgment of 29 May 1986, Series A no. 100, p. 26, § 77); it is conceivable, however, that in certain circumstances the time may begin to run earlier (see the Golder judgment of 21 February 1975, Series A no. 18, p. 15, § 32).

<...>

In the instant case, the proceedings are still pending. Consequently, the length of time to be considered already exceeds sixteen and a half years (10 August 1970 - 24 March 1987).

(ii) Relevant criteria

66. The reasonableness of the length of proceedings is to be assessed according to the particular circumstances and having regard to the criteria stated in the case-law of the Court, especially the degree of complexity of the case, the applicants' behaviour and the conduct of the relevant authorities (see, inter alia, the Buchholz judgment of 6 May 1981, Series A no. 42, pp. 15-16, § 49, and the Zimmermann and Steiner judgment of 13 July 1983, Series A no. 66, p. 11, § 24).

67. Any land consolidation is by its nature a complex process. Usually - and quite legitimately - the proper valuation of parcels of land to be surrendered and to be received in exchange is at the forefront of the landowners' concerns. The difficulties inherent in such an assessment are often exacerbated by farmers' traditional attachment to their fields and meadows. Furthermore, the operation is designed to increase the profitability of holdings and develop the infrastructure of the area concerned; it therefore affects the interests not only of individuals but also of the community as a whole.

The consolidation in dispute concerned many people, including thirty-eight landowners, and covered 266 hectares (see paragraph 9 above). As soon as the initial measures were adopted, the applicants asserted that they were being required to exchange land of excellent quality for mediocre plots (see paragraph 12 above). This was essentially a question of fact, to be resolved by obtaining relevant information such as the area of the parcels of land and their use, yield capacity, geographical situation and so forth. After the successful appeals by the Erkners

and the Hofauers, however, the appropriate authorities were under a duty to draw up a new plan. No doubt - as the Government conceded - they were not obliged to start completely afresh, but it was necessary for them first to give each of the landowners concerned a hearing.

In these circumstances, the application of the law appears to have raised issues of fact of considerable complexity.

68. In the Government's submission, the applicants did their utmost to prevent or delay a decision on the merits, notably by taking advantage of every avenue of appeal available to them. In particular, the Government claimed that they were wrong to apply several times to a higher body, thereby interrupting the work of the lower authority.

The Court does not accept this submission.

It points out, in the first place, that it has consistently held that applicants cannot be blamed for making full use of the remedies available to them under domestic law (see, mutatis mutandis, the Eckle judgment of 15 July 1982, Series A no. 51, p. 36, § 82). In the instant case, as the Commission rightly pointed out, the remedies resorted to were mostly successful (see paragraphs 17, 20, 21, 22, 25, 28 and 31).

<...>

The most striking feature, however, is the time taken by the relevant authorities to adopt and publish a new plan after the setting aside of an earlier one: more than two years and six months for the second plan (31 May 1977 - 18 December 1979: see paragraphs 20-21 above); approximately one year and seven months for the third plan (29 December 1980 - 27 July 1982: see paragraphs 22 and 24 above); and more than one year and four months for the fourth plan, which is still awaited (31 October 1985 - 24 March 1987: see paragraph 31 above).

Such lengthy periods are unacceptable.

70. In all, the proceedings complained of have already taken more than sixteen and a half years (see paragraph 65 above). Such a length of time is unreasonable in the circumstances of the case, having regard notably to the special duty to act expeditiously entailed by the provisional transfer of land. Doubtless the case was not of the easiest and the applicants themselves were responsible for some of the procrastination, but a number of delays are nonetheless attributable to the authorities dealing with the case. As a result of these delays, viewed together and cumulatively, the applicants' case was not heard within a reasonable time, as required by Article 6 § 1 (art. 6-1).

II. ALLEGED BREACH OF ARTICLE 1 OF PROTOCOL NO. 1 (P1-1)

71. In the applicants' submission, the provisional transfer of their land in 1970 interfered with their right of property. They claimed that they had still not received the compensation in land to which they were entitled under the provincial legislation and that they had on this account suffered an "annual loss of yield" amounting to 50,000 schillings over the period 1971-1984 and to 30,000 schillings thereafter. They alleged a breach of Article 1 of Protocol No. 1 (P1-1), which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

<...>

77. It should also be pointed out that the relevant provincial legislation did not permit any reconsideration of the provisional transfer, notwithstanding the applicants' successful appeals against the consolidation plans. Nor does it provide for the possibility of compensating the applicants financially for the loss they may have sustained on account of the forced exchange of their land for other, inferior land pursuant to the provisional transfer (see paragraphs 34-36 and 47 above).

78. The Court is not unmindful of the legislature's concern, however. In authorising a provisional transfer at an early stage of the consolidation process, its intention is to ensure that the land in question can be continuously and economically farmed in the interests of the landowners generally and of the community. Furthermore, although the applicants lost their land in consequence of the transfer decided on in 1970, they received other land in lieu, even if they are not satisfied with it. The applicable system, however, suffers from a degree of inflexibility: before the entry into force of a consolidation plan, it provides no means of altering the position of landowners or of compensating them for damage they may have sustained in the time up to the final award of the statutory compensation in land.

79. In the circumstances of the present case, therefore, the necessary balance between protection of the right of property and the requirements of the public interest was lacking: the applicants, who remain uncertain as to the final fate of their property, have been made to bear a disproportionate burden. There is no need at this stage to determine whether they have suffered actual prejudice (see the above-mentioned Sporrong and Lönnroth judgment, p. 28, § 73).

80. The Court accordingly finds that there has been a breach of Article 1 of Protocol No. 1 (P1-1).

<...>

Case of Dzemyuk v. Ukraine (Application no. 42488/02)

(Extract)

<...>

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

73. The applicant complained of a violation of Article 8 of the Convention. In particular, he submitted that the construction of a cemetery near his house had led to the contamination of his supply of drinking water and water used for private gardening purposes, preventing him from making normal use of his home and its amenities, including the soil of his own plot of land, and negatively affecting his and his family's physical and mental health.

The text of Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home ....

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

74. The Government raised no objection as to the admissibility of this complaint. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Applicability of Article 8

1. The parties' submissions

75. The Government submitted that there was no evidence of any adverse effects on the applicant's health which had resulted from the construction and use of the cemetery in issue. Nevertheless, they agreed that the applicant could have sustained some suffering as a result of the construction of the cemetery in the land plot adjacent to his house.

76. The applicant maintained his complaints, stating that the continued use of the cemetery had rendered his home virtually uninhabitable and his land unsuitable for use. He submitted that he could not use his plot of land for gardening nor the well on his land for drinking water for fear of being poisoned. The applicant further submitted that he and his family had been disturbed by the burial ceremonies carried out near their house.

2. The Court's assessment

77. As the Court has noted in a number of its judgments, Article 8 has been relied on in various cases in which environmental concerns are raised (see, among many other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 68, Convention 2005IV). However, in order to raise an issue under Article 8 the interference about which the applicant complains must directly affect his home, family or private life and must attain a certain minimum level if the complaints are to fall within the scope of Article 8 (see *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303C; and *Fadeyeva*, cited above, § 69-70). Therefore, the first point for decision is whether the environmental pollution of which the applicant complains can be regarded as affecting adversely, to a sufficient extent, the enjoyment of the amenities of his home and the quality of his private and family life (see *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 66, 2 December 2010). In this respect, the Court recalls that water pollution was one of the factors which was found to affect the applicants' health and hence their ability to enjoy their home, private and family life in the case of *Dubetska and Others v. Ukraine* (no. 30499/03, §§ 110 and 113, 10 February 2011).

78. The assessment of the minimum level is relative and depends on all the circumstances of the case, such as, the intensity and duration of the nuisance and its physical or mental effects. The general context of the environment should also be taken into account. The Court recently recalled that there could be no arguable claim under Article 8 if the detriment complained of was negligible when compared to the environmental hazards inherent in life in every modern city (see *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 188, 14 February 2012).

79. As regards health impairment, it is hard to distinguish the effect of environmental hazards from the effects of other relevant factors, such as, age, profession or personal lifestyle. Also, as regards the general context of the environment, there is no doubt that severe water and soil pollution may negatively affect public health in general and worsen the quality of an individual's life, but it may be impossible to quantify its actual effects in each individual case, "quality of life" itself being a subjective characteristic which does not lend itself to a precise definition (see, *mutatis mutandis*, *Ledyayeva and Others v. Russia*, nos. 53157/99, 53247/99, 53695/00 and 56850/00, § 90, 26 October 2006).

80. Taking into consideration the evidentiary difficulties involved, the Court will primarily give regard to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case. As a basis for the analysis it may use, for instance, domestic legal provisions determining unsafe levels of

pollution and environmental studies commissioned by the authorities. Special attention will be paid by the Court to individual decisions taken by the authorities with respect to an applicant's particular situation, such as an undertaking to revoke a polluter's operating licence or to resettle a resident away from a polluted area. However, the Court cannot rely blindly on the decisions of the domestic authorities, especially when they are obviously inconsistent or contradict each other. In such a situation it has to assess the evidence in its entirety. Further sources of evidence for consideration in addition to the applicant's personal accounts of events, will include, for instance, his medical certificates as well as relevant reports, statements or studies made by private entities (see *Dubetska and Others v. Ukraine*, § 107, cited above, with further references).

81. The Court recalls that Article 8 has been found to apply where the dangerous effects of an activity to which the individuals concerned were likely to be exposed established a sufficiently close link with private and family life for the purposes of Article 8 of the Convention (see *Hardy and Maile v. the United Kingdom*, § 189, cited above). In that case, the Court recognised that the potential risks to the environment caused by the construction and operation of two liquefied natural gas ("LNG") terminals established a sufficiently close link with the applicant's private live and home for the purposes of Article 8 and thereby triggered the application of that provision (see *Hardy and Maile v. the United Kingdom*, § 192, cited above).

82. As to the present case, the Court accepts that the applicant and his family may have been affected by the water pollution at issue. However, the Court must establish, in the absence of direct evidence of actual damage to the applicant's health, whether the potential risks to the environment caused by the cemetery's location established a close link with the applicant's private life and home sufficient to affect his "quality of life" and to trigger the application of the requirements of Article 8 of the Convention (see paragraphs 78 – 81 above).

83. The Court notes that the domestic environmental health and sanitary regulations clearly prohibited placing the cemetery in close proximity to residential buildings and water sources (see paragraphs 67 to 72 above). It appears that the nearest boundary of the cemetery is situated 38 metres away from the applicant's house (see paragraph 33 above). This cannot be regarded as a minor irregularity but as a rather serious breach of domestic regulations given that the actual distance is just over one tenth of the minimum distance permissible by those rules. Furthermore, the cemetery is a continuous source of possible health hazards and the potential damage caused by such is not easily reversible or preventable. Such environmental dangers have been acknowledged by the authorities on numerous occasions, including, by prohibiting the use of the illegal cemetery for burials and by the offer to resettle the applicant (see paragraphs 20 – 25 and 49 above). It further notes that the domestic authorities established that the construction of a cemetery at the said location placed the applicant at risk of contamination of the soil and of the drinking and irrigation water sources because of emanations from decomposing bodies like ptomaine (see paragraph 10 above). The Court has particular regard to the fact that there was no centralised water supply in the Tatariv village and villagers used their own wells (see paragraph 9 above). It also appears that the high level of *E. coli* found in the drinking water of the applicant's well was far in excess of permitted levels and may have emanated from the cemetery (see paragraphs 12, 18 and 30 above), although the technical reports came to no definitive or unanimous conclusion as to the true source of *E. coli* contamination (see paragraph 31 above). In any event, the high level of *E. coli*, regardless of its origin, coupled with clear and blatant violation of environmental health safety regulations confirmed the existence of environmental risks, in particular, of serious water pollution, to which the applicant was exposed.

84. Under such circumstances, the Court concludes that the construction and use of the cemetery so close to the applicant's house with the consequent impact on the environment and the applicant's "quality of life" reached the minimum level required by Article 8 and constituted an interference with the applicant's right to respect for his home and private and family life. It also considers that the interference, being potentially harmful, attained a sufficient degree of seriousness to trigger the application of Article 8 of the Convention.

C. Compliance with Article 8

1. Submissions by the parties

85. The Government maintained that the cemetery had been built in the interests of the villagers of Tatariv, as there had been absolutely no other place in the mountainous region near the village that could be used for a cemetery. They further stated that while it was true that the cemetery had been built in breach of environmental health laws and regulations as it had lacked the health protection zone required by law, the authorities had done all they could to prohibit burials and to provide the applicant with an opportunity to be re-housed, even though such an obligation to resettle had not existed in law. According to them, he had continuously rejected such proposals. In this respect they supplied letters of 10, 15 and 16 December 2009 from Tatariv Council and the Ivano-Frankivsk Regional State Administration, in which the municipal authorities stated that the applicant was not interested in resettlement (see paragraph 34 above). The Government accepted that the fact that the cemetery was placed on the VL plot engaged State's positive obligations under Article 8 of the Convention.

86. The applicant maintained his complaints and submitted that the decision to construct the cemetery in the vicinity of his house had been taken in breach of domestic regulations and that the Ukrainian authorities' measures to remedy the situation had been insufficient and inadequate. In particular, he stated that the authorities had done nothing to close the illegal cemetery, had failed to discontinue burials or to redress the situation by providing him with an alternative. The applicant submitted that he did not have anywhere to move to and he did not have enough money to build a new house. He mentioned that, despite his requests, no detailed and specific resettlement proposal had ever been made by the authorities.

2. The Court's assessment

87. Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities' adopting measures designed to secure respect for private life and home (see, with further references, *Moreno Gómez v. Spain*, no. 4143/02, § 55, Convention 2004X).

88. Environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health. The Court notes that the allegations of environmental harm in the instant case do not, as such, relate to the State's involvement in industrial pollution (see, in the context of serious industrial pollution, *Dubetska and Others v. Ukraine*, § 73, cited above). However, they concern allegations of health hazards arising from the local authority's decision to locate a cemetery just 38 meters from the applicant's home in breach of domestic regulations plus the State's failure to act in securing compliance with the domestic environmental standards. The allegations also concern the State's failure to regulate the activities of the municipality in line with such standards. The Court's task in such a situation is to assess whether the State took all reasonable measures to secure the protection of the applicant's rights under Article 8 of the Convention. In making such an assessment factors, including compliance with the domestic environmental regulations and judicial decisions, must be analysed in the context of a given case (see, *mutatis mutandis*, *Dubetska and Others v. Ukraine*, cited above, § 141). In particular, where domestic environmental regulations exist, a breach of Article 8 may be established where there is a failure to comply with such regulations (see *Moreno Gómez v. Spain*, cited above, §§ 56 and 61).

89. Moreover, the principles applicable to an assessment of the State's responsibility under Article 8 of the Convention in environmental cases are broadly similar, regardless of whether the case is to be analysed in terms of a

positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under Article 8 § 1 of the Convention or in terms of an "interference by a public authority" to be justified in accordance with Article 8 § 2. Furthermore, the procedural safeguards available to the applicant under Article 8 may be rendered inoperative and the State may be found liable under the Convention where a judicial decision, prescribing certain conduct to the authorities on environmental issues, is ignored by the authorities or remains unenforced for an important period of time (see, *mutatis mutandis*, *Taşkın and Others v. Turkey*, no. 46117/99, §§ 124-25, Convention 2004X).

90. Given that the applicant complains about direct Government responsibility for the placement of the cemetery in close proximity to his home and the pollution flowing therefrom, the Court will consider the case as one of direct interference with the applicant's rights under Article 8 (see paragraph 84 above).

91. As to the assessment of compliance with the requirement of lawfulness under Article 8 of the Convention, combined with the requirements of compliance with the domestic regulations, the Court notes the following:

(i) Tatariv Council's decision to situate the cemetery on the VL plot was taken in breach of the National Environmental Health Regulations and in particular the 300 metres "health protection zone" requirement (see paragraph 71 and 72 above). There was no lawfully approved construction plan, in contravention of the Laws of Ukraine "On Burials and Burial Service" (see paragraph 68 above) and "On Drinking Water and the Drinking Water Supply". In particular, the latter Act in its Sections 27 – 30 established obligatory sanitary and hygiene standards of drinking water and water supply, envisaging no *E. coli* content in drinking water (see paragraph 72 above);

(ii) The unlawfulness of the placement of the cemetery and the non-compliance with health and water protection zones were signalled on numerous occasions by the environmental health authorities and were acknowledged in the decisions of the domestic courts on at least six occasions (see paragraphs 12 - 14, 18, 35, 37, 42, 46 and 49 - 51 above);

(iii) The domestic authorities, responsible for the administration and maintenance of the cemetery under the law, failed to respect and to give full effect to the final and binding judgment of 26 December 2003 given by the Verkhovyna Court, confirmed by the appeal court and the Supreme Court, by which Tatariv Council was obliged to close the cemetery (see paragraph 49 above). This judgment remains unenforced to this day (see paragraph 61 above) and members of Tatariv Council, on several occasions, have refused to adopt a decision in compliance with that judgment;

(iv). The domestic authorities continued to disrespect the domestic environmental regulations as well as the final and binding judicial decisions confirming that they acted illegally and the decision of 26 December 2003 confirming that the cemetery should have been closed.

92. The Court notes that the Government have not disputed that the cemetery was built and used in breach of the domestic regulations (see paragraph 85 above). It further appreciates the difficulties and possible costs in tackling environmental concerns associated with water pollution in mountainous regions. At the same time, it notes that the siting and use of the cemetery were illegal in a number of ways: environmental regulations were breached; the conclusions of the environmental authorities were disregarded; final and binding judicial decisions were never enforced and the health and environment dangers inherent in water pollution were not acted upon (see paragraph 91 above). The Court finds that the interference with the applicant's right to respect for his home and private and family life was not "in accordance with the law" within the meaning of Article 8 of the Convention. There has consequently been a violation of that provision in the present case. The Court considers, in view of its findings of illegality of the authorities' actions, that it is unnecessary to rule on the remaining aspects of the alleged breach of Article 8 of the Convention.

<...>

Case of Ovcharov and Khomich v. Ukraine (Applications nos. 32910/06 and 50081/06)

(Extract)

<...>

II. COMPLAINTS UNDER ARTICLES 6 § 1 AND 13 OF THE CONVENTION ABOUT LENGTHY NON-ENFORCEMENT OF THE JUDGMENTS IN THE APPLICANTS' FAVOUR

26. The applicants complained about the State authorities' failure to enforce the judgments taken in their favour in due time and the lack of effective remedies in that respect. In this regard they relied on Articles 6 § 1 and 13 of the Convention, which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

27. Relying on the provisions of national legislation (among others, the 1963 and 2003 Civil Codes and the 1997 Local Self-Government Act), the Government submitted that they were not responsible for the debts of the municipal companies. They further submitted that the applicants had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that the applicants had not availed themselves of the opportunity to be registered as creditors in insolvency, if any, or liquidation proceedings pending against the debtor companies, and had failed to challenge the liquidation commission's inactivity before the relevant commercial court or to apply to any domestic court against the Bailiffs' Service to challenge the allegedly inadequate enforcement of the judgments in their favour.

28. The Government further drew the Court's attention to the fact that application no. 32910/06 was limited to the complaints by Mr Ovcharov only and did not concern the alleged violations of the rights of his wife, as she was not a party to the present proceedings.

29. The Court notes that the debtor enterprises in the applicants' cases were owned and controlled by local authorities (see paragraphs 5, 13 and 14, respectively). According to the established case-law of the Convention organs, agencies of local self-government are State organisations in the sense that they are governed by public law and exercise public functions vested in them by the Constitution and the laws. The Court reiterates that under the international law the term "State organisation" is not limited only to organs of the central Government. In cases where State power is decentralised it extends to any national authority which exercises public functions (see, for example, *Mikryukov v. Russia*, no. 7363/04, § 21, 8 December 2005 with further references). It follows that the actions and/or omissions of the local authorities are attributed to the respondent State and for these reasons the Court concludes that the latter is accountable for the debts of municipal enterprises to the same extent as it is accountable for the debts of State-owned enterprises. Accordingly, the Court dismisses the Government's objection.

30. As regards the Government's objection that the applicants had failed to exhaust domestic remedies, the Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlib v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that these objections must be rejected in the instant case for the same reasons.

31. As regards the Government's submission concerning application no. 32910/06, the Court notes that the fact that there were two beneficiaries under the judgment of 17 December 2003 (Mr Ovcharov and his wife – see paragraph 5 above) does not affect the applicant's right to have the judgment – in his part, at least – enforced within a reasonable time.

32. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

33. In their observations on the merits of the applicants' claims, the Government contended that there had been no violation of Articles 6 § 1 or 13 of the Convention.

34. The applicants disagreed.

35. The Court notes that the judgments in the applicants' favour have remained unenforced for more than five years.

36. The Court reiterates that it has already found violations of Articles 6 § 1 and 13 of the Convention in cases like the present applications (see, among other authorities, *Kucherenko v. Ukraine*, no. 27347/02, § 27, 15 December 2005).

37. Having examined all the materials in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

38. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention in the present applications in respect of the lengthy non-enforcement of the judgments in the applicants' favour and the lack of an effective remedy for their complaints in that respect.

<...>

Case of Filshteyn v. Ukraine (Application no. 12997/06)

(Extract)

<...>

I. COMPLAINTS ABOUT THE LENGTHY NON-ENFORCEMENT OF THE JUDGMENTS IN THE APPLICANT'S FAVOUR

19. The applicant complained about the State authorities' failure to enforce the judgments taken in her favour in due time and the lack of effective remedies in that respect. In this regard she relied on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest

The applicant also relied on a number of provisions of the Universal Declaration of Human Rights.

A. Admissibility

1. Complaints under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1

20. Relying on the provisions of national legislation (among others, the 1963 and 2003 Civil Codes and the 1997 Local Self-Government Act), the Government submitted that they were not responsible for the debts of the municipal company. They further submitted that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. In particular, they maintained that the applicant had not availed herself of the opportunity to be registered as a creditor in the insolvency and liquidation proceedings pending against the debtor company, and had failed to challenge the liquidation commission's inactivity before the relevant commercial court or to apply to any domestic court against the Bailiffs' Service to challenge the allegedly inadequate enforcement of the judgments in her favour. Additionally, the Government challenged the victim status of the applicant,

as, in their view, she did not request the State Bailiffs' Service to institute enforcement proceedings under the judgment of 28 March 2003 (see paragraph 8 above).

21. The Court notes that the debtor enterprise in the present case was owned and controlled by local authorities (see paragraph 5 above). According to the established case-law of the Convention organs, agencies of local self-government are State organisations in the sense that they are governed by public law and exercise public functions vested in them by the Constitution and the laws. The Court reiterates that under the international law the term "State organisation" is not limited only to organs of the central Government. In cases where State power is decentralised it extends to any national authority which exercises public functions (see, for example, *Mikryukov v. Russia*, no. 7363/04, § 21, 8 December 2005 with further references). It follows that the actions and/or omissions of the local authorities are attributed to the respondent State and for these reasons the Court concludes that the latter is accountable for the debts of municipal enterprises to the same extent as it is accountable for the debts of State-owned enterprises. Accordingly, the Court dismisses the Government's objection.

22. As regards the Government's objection that the applicant had failed to exhaust domestic remedies, the Court notes that similar objections have already been rejected in a number of judgments adopted by the Court (see *Sokur v. Ukraine* (dec.), no. 29439/02, 16 December 2003; *Sychev v. Ukraine*, no. 4773/02, §§ 42-46, 11 October 2005; and *Trykhlib v. Ukraine*, no. 58312/00, §§ 38-43, 20 September 2005). The Court considers that this objection must be rejected in the instant case for the same reasons.

23. As regards the Government's objection to the victim status of the applicant, the Court notes that in the instant case the applicant has obtained a judgment against the State, in the person of the State Bailiffs' Service, which has become final and enforceable. The Court reiterates that it is inappropriate to require an individual who has obtained a judgment against the State at the end of legal proceedings to then bring enforcement proceedings to obtain satisfaction (see *Lizanets v. Ukraine*, no. 6725/03, § 43, 31 May 2007 and the case-law referred to therein). Accordingly, the Court dismisses the Government's objection.

24. The Court notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Complaints under provisions of the Universal Declaration of Human Rights

25. The Court reiterates that it is competent to examine the complaints under the European Convention on Human Rights and Protocols thereto only and is not competent to ensure the application of other international instruments. Accordingly, it dismisses the applicant's complaints under the provisions of the Universal Declaration of Human Rights as being out of the Court's competence *ratione materiae* in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Merits

26. In their observations on the merits of the applicant's claims, the Government contended that there had been no violation of Articles 6 § 1 or 13 of the Convention or Article 1 of Protocol No. 1.

27. The applicant disagreed.

28. The Court notes that the judgments in the applicant's favour have remained unenforced for more than five years.

29. The Court reiterates that it has already found violations of Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 in cases like the present application (see, among other authorities, *Kucherenko v. Ukraine*, no. 27347/02, § 27, 15 December 2005).

30. Having examined all the materials in its possession, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

31. There has, accordingly, been a violation of Articles 6 § 1 and 13 of the Convention and a violation of Article 1 of Protocol No. 1 in respect of the lengthy non-enforcement of the judgments in the applicant's favour and the lack of an effective remedy for her relevant complaints in the present application.

<...>

Case of Shmushkovych v. Ukraine (Application no. 3276/10)

(Extract)

<...>

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

26. The applicant complained under Article 11 of the Convention that the State had unlawfully interfered with his right to freedom of peaceful assembly by fining him for the purportedly late notification of the picket he had organised. That interference, he argued, had not been necessary in a democratic society.

"1. Everyone has the right to freedom of peaceful assembly ...

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others..."

A. Admissibility

27. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

28. The applicant maintained that the Ukrainian legislation did not have clear and foreseeable legislation in the sphere of freedom of assembly. The judicial practice was inconsistent: some courts applied the 1988 Decree, while others did not, considering that decree invalid and contrary to the Constitution. He referred to examples of the domestic courts' decisions (see paragraphs 22 and 23 above) in which the courts held that the national legislation did not regulate the procedure for organising and holding peaceful assemblies. He noted that the 1988 Decree

provided that persons wishing to hold a peaceful assembly had to seek permission, whereas the Constitution provided only for advance notification to the authorities of an intention to hold such an assembly. Therefore it could not be said that the Decree complemented the constitutional provisions on freedom of assembly, since it clearly conflicted with them. Furthermore, Article 92 of the Constitution provided that human rights guarantees had to be regulated exclusively by laws and Article 39 of the Constitution provided that restrictions on the right to peaceful assembly could be established only by law, yet the 1988 Decree was not a law of Ukraine. In the applicant's opinion, in its decision of 19 April 2001 the Constitutional Court had not accepted the validity of the 1988 Decree concerning the requirement of at least ten days' advance notification.

29. The applicant further considered that Article 185-1 of the CAO did not meet the requirement of quality of law, as it provided for liability for violation of a procedure which had not been defined by the domestic law.

30. He also complained that his punishment had not been necessary because the picket in question had not caused any disturbance of public order and the domestic authorities had not assessed the circumstances of the case but limited themselves to establishing a formal failure to give ten days' advance notification of the picket.

31. The Government agreed that the domestic court's finding that the applicant had incurred administrative liability constituted an interference with his right to freedom of peaceful assembly. They maintained, however, that the interference had been justified.

32. The Government submitted that the interference had been "prescribed by law". They argued that under the Court's case-law the "law" did not necessarily mean an Act of the national parliament, but could include enactments of lower rank than statutes and unwritten law. In a sphere covered by the written law, the "law" was the enactment in force as the competent courts had interpreted it in the light, if necessary, of any new practical developments (*Kruslin v. France*, 24 April 1990, § 29, Series A no. 176A). They noted that under Article 39 of the Constitution the freedom of assembly could be restricted by the courts and, according to the Constitutional Court decision of 19 April 2001, the executive authorities could coordinate with the organisers of the assemblies details such as time, venue, length and so on, and notification of a planned assembly should be given within a time-limit that would be sufficient for the authorities to decide whether the assembly was legal and, if necessary, whether an application should be made to a court to settle any dispute that had arisen.

33. The Government agreed that formally there was no law regulating relations concerning the freedom of assembly, but maintained that the 1988 Decree was valid and that the Constitutional Court had not declared it invalid. They considered that the rules set forth in the 1988 Decree were sufficiently foreseeable and precise and that the national courts of all levels had accepted the applicability of that decree in the applicant's case.

34. They also maintained that the restriction on the applicant's right to freedom of assembly had pursued the legitimate aim of protecting the rights and freedoms of others and had been necessary, given that the picket had taken place in an area through which many people passed every day with the consequence that an assembly of people was deemed to endanger the life and health of others, including tourists and representatives of different religions, politics and so on. Furthermore, the place was not equipped with the necessary sanitary facilities. They noted, lastly, that during another event organised by the applicant's organisation there had been a violation of public order and that this had demonstrated the importance of timely notification so that the authorities could make the necessary arrangements to ensure safety and public order.

2. The Court's assessment

a) Whether there was an interference

35. The Court considers, as undisputed by the parties, that the applicant's punishment for organising and holding a peaceful assembly constituted an interference with his right to freedom of peaceful assembly.

b) Whether the interference was justified

36. An interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2 and is "necessary in a democratic society" for the achievement of those aims.

37. The Court reiterates that the expression "prescribed by law" in Article 11 of the Convention not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, for example, *The Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, p. 31, § 49; *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, Convention 1999III; *Rotaru v. Romania* [GC], no. 28341/95, § 55, Convention 2000V; and *Maestri v. Italy* [GC], no. 39748/98, § 30, Convention 2004I).

38. The Court notes that the fine was imposed on the applicant under Article 185-1 of the CAO, which prescribed a penalty for violations of the procedure for organising and holding demonstrations. Therefore, the interference had a basis in domestic law. It has not been disputed that the Code was accessible and the Court does not have reason to doubt that. It remains, therefore, to be determined whether this provision was foreseeable.

39. The Court notes that it is in dispute between the parties whether there was any legal act in Ukraine providing for the "procedure" referred to in Article 185-1 of the CAO. The Government alleged that the "procedure" was envisaged by the 1988 Decree, while the applicant contended that this legal act of the former USSR was no longer valid and applicable in Ukraine as it was contrary to the Constitution.

40. The Court reiterates that its power to review compliance with domestic law is limited as it is in the first place for the national authorities to interpret and apply that law. The Court notes that it recently examined in detail the existing Ukrainian legal framework concerning procedure for holding peaceful demonstrations in the case of Vyerentsov (*Vyerentsov v. Ukraine,* cited above, §§ 51 to 57). The Court established in particular that:

"54. <…> From the materials of the case and the applicant's submissions it is clear that there is no single view on the applicability of the 1988 Decree and the existence of a clear and foreseeable procedure for organising and holding peaceful demonstrations. The practice of the domestic courts also reveals inconsistencies in this sphere […]. It is true that the Constitution of Ukraine provides for some general rules as to the possible restrictions on the freedom of assembly, but those rules require further elaboration in the domestic law. The only existing document establishing such a procedure is the 1988 Decree, whose provisions are not generally accepted as the valid procedure for holding demonstrations and which provides, as is confirmed in the practice of the domestic courts […], for a different procedure from the one outlined in the Constitution. Indeed, whilst the Ukrainian Constitution requires advance notification to the authorities of an intention to hold a demonstration and stipulates that any restriction thereon can be imposed only by a court, the 1988 Decree, drafted in accordance with the Constitution of the USSR of 1978, provides that persons wishing to hold a peaceful demonstration have to seek permission from the local administration which is also entitled to ban any such demonstration. From the preamble of the Decree it is clear that it had been intended for a very different purpose, namely for only certain categories of individuals to be provided by the administration with facilities to express their views in favour of a particular ideology, this in

itself being incompatible with the very essence of the freedom of assembly guaranteed by the Ukrainian Constitution and the Convention. As found by a domestic court […], demonstrations under the 1988 Decree were considered on the basis of their compatibility with "non-existent constitutions of non-existent subjects". Therefore, it cannot be concluded that the "procedure" referred to in Article 185-1 of the Code on Administrative Offences was formulated with sufficient precision to enable the applicant to foresee, to a degree that was reasonable in the circumstances, the consequences of his actions (see, *mutatis mutandis*, *Mkrtchyan*, *ibid.*) <…>

55. The Court further observes that, admittedly, the Resolution of the Ukrainian Parliament on temporary application of certain legislative acts of the Soviet Union refers to temporary application of Soviet legislation and no law has yet been enacted by the Ukrainian Parliament regulating the procedure for holding peaceful demonstrations, although Articles 39 and 92 of the Constitution clearly require that such a procedure be established by law, that is, by an Act of the Ukrainian Parliament. Whilst the Court accepts that it may take some time for a country to establish its legislative framework during a transitional period, it cannot agree that a delay of more than twenty years is justifiable, especially when such a fundamental right as freedom of peaceful assembly is at stake. The Court thus concludes that the interference with the applicant's right to freedom of peaceful assembly was not prescribed by law" (*Vyerentsov v. Ukraine,* cited above, §§ 54 and 55).

The Court sees no reasons to depart from those conclusions in the present case, which concerns the same legal framework and in which the parties had raised similar arguments to those advanced in the case of Vyerentsov cited above.

41. Having reached the conclusion that the interference with the applicant's right to freedom of peaceful assembly was not prescribed by law, the Court does not need to verify whether the other two requirements (legitimate aim and necessity of the interference) set forth in Article 11 § 2 have been complied with.

42. Accordingly, there has been a violation of Article 11 of the Convention.

<…>

Case of Anheuser-Busch Inc. v. Portugal (Application no. 73049/01)

(Extract)

<…>

ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

46. The applicant company complained of an infringement of its right to the peaceful enjoyment of its possessions. Noting that a trade mark constituted a "possession" within the meaning of Article 1 of Protocol No. 1, it said that it had been deprived of that possession by the application of a bilateral treaty that had come into force after it had filed its application to register the mark. It argued that the Supreme Court's decision had to be regarded as an expropriation (as it had prevented the applicant company from enjoying the protection of its intellectual property right), but had not been effected in the general interest. Article 1 of Protocol No. 1 reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

<…>

C. The Court's assessment

1. The general principles

62. Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest … The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, in which the Court reaffirmed some of the principles it had established in its judgment in *Sporrong and Lönnroth v. Sweden*, 23 September 1982, § 61, Series A no. 52; see also *Beyeler*, cited above, § 98).

63. The concept of "possessions" referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision. The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (see *Iatridis*, § 54, *Beyeler*, § 100, both cited above, and *Broniowski v. Poland* [GC], no. 31443/96, § 129, Convention 2004V).

64. Article 1 of Protocol No. 1 applies only to a person's existing possessions. Thus, future income cannot be considered to constitute "possessions" unless it has already been earned or is definitely payable. Further, the hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, § 69, Convention 2002-VII).

65. However, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, Convention 2004-IX). However, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50).

2. Application of these principles to the instant case

(a) Whether Article 1 of Protocol No. 1 was applicable

(i) Intellectual property in general

66. The first issue which arises with regard to the question of the applicability of Article 1 of Protocol No. 1 in the instant case is whether that provision applies to intellectual property as such. In deciding that it does (see paragraph 43 of the Chamber judgment), the Chamber referred to the case-law of the European Commission of Human Rights (see *Smith Kline and French Laboratories Ltd v. the Netherlands*, no. 12633/87, Commission decision of 4 October 1990, Decisions and Reports 66, p. 70).

67. The Court notes that the Convention institutions have been called upon to rule on questions of intellectual property only very rarely. In the above-mentioned case of *Smith Kline and French Laboratories Ltd*, the Commission stated as follows:

"The Commission notes that under Dutch law the holder of a patent is referred to as the proprietor of a patent and that patents are deemed, subject to the provisions of the Patent Act, to be personal property which is transferable and assignable. The Commission finds that a patent accordingly falls within the scope of the term 'possessions' in Article 1 of Protocol No. 1."

68. The Commission followed this decision in *Lenzing AG v. the United Kingdom* (no. 38817/97, Commission decision of 9 September 1998, unreported), which also concerned a patent. However, it explained in that case that the "possession" was not the patent as such, but the applications made by the applicant company in civil proceedings in which it had sought to bring about changes to the British system for registering patents. The Commission noted in conclusion that there had been no interference with the applicant company's right to the peaceful enjoyment of its possessions, as it had been given an opportunity to set out its claims concerning the patent to a court with full jurisdiction.

69. In *British-American Tobacco Company Ltd v. the Netherlands*, the Commission expressed the opinion that Article 1 of Protocol No. 1 did not apply to an application for a patent that had been rejected by the competent national authority. It stated:

"... the applicant company did not succeed in obtaining an effective protection for their invention by means of a patent. Consequently, the company were denied a protected intellectual property right but were not deprived of their existing property." (see British-American Tobacco Company Ltd v. the Netherlands, 20 November 1995, opinion of the Commission, §§ 71-72, Series A no. 331)

As the Chamber noted in its judgment, the Court decided in *British-American Tobacco Company Ltd* not to examine separately the issue whether a patent application constituted a "possession" that came within the scope of the protection afforded by Article 1 of Protocol No. 1 (cited above, § 91), as it had already examined the position with respect to Article 6 § 1 of the Convention.

70. In *Hiro Balani v. Spain*, the question of the applicability of Article 1 of Protocol No. 1 to intellectual property was not examined. The Court did, however, find a violation of Article 6 § 1 of the Convention on account of the Spanish Supreme Court's failure to examine a ground of appeal by the applicant company alleging non-compliance with the priority rule (see *Hiro Balani v. Spain*, 9 December 1994, § 28, Series A no. 303-B).

71. More recently, in *Melnychuk v. Ukraine*, which concerned an alleged violation of the applicant's copyright, the Court reiterated that Article 1 of Protocol No. 1 was applicable to intellectual property. It observed, however, that the fact that the State, through its judicial system, had provided a forum for the determination of the applicant's rights and obligations did not automatically engage its responsibility under that provision, even if, in exceptional circumstances, the State might be held responsible for losses caused by arbitrary determinations. The Court noted that this was not the position in the case before it, as the national courts had acted in accordance with domestic law, giving full reasons for their decisions. Thus, their assessment was not flawed by arbitrariness or manifest unreasonableness contrary to Article 1 of Protocol No. 1 (see *Melnychuk v. Ukraine* (dec.), no. 28743/03, Convention 2005IX; see also, *Breierova and Others v. the Czech Republic* (dec.), no. 57321/00, 8 October 2002).

72. In the light of the above-mentioned decisions, the Grand Chamber agrees with the Chamber's conclusion that Article 1 of Protocol No. 1 is applicable to intellectual property as such. It must now examine whether this conclusion also applies to mere applications for the registration of a trade mark.

<...>

(b) Whether there has been interference

79. The Court has found that Article 1 of Protocol No. 1 is applicable in this case. It must now examine whether there has been interference with the applicant company's rights to the peaceful enjoyment of its possessions.

80. The applicant company submitted that the interference stemmed from the Supreme Court's judgment of 23 January 2001, which had attached greater weight to the Bilateral Agreement of 1986 than to the chronologically earlier application for registration of the "Budweiser" mark. It was that judgment which had effectively deprived the applicant company of its right of property of the mark in circumstances which, in its submission, infringed the relevant international instruments and Article 1 of Protocol No. 1 for failure to comply with the priority rule. Had the Bilateral Agreement not been applied, the applicant company's application for registration would necessarily have been accepted, since it satisfied all the other applicable statutory conditions.

81. The question before the Court, therefore, is whether the decision to apply the provisions of the Bilateral Agreement of 1986 to an application for registration filed in 1981 could amount to interference with the applicant company's right to the peaceful enjoyment of its possessions.

82. In that connection it reiterates that, in certain circumstances, the retrospective application of legislation whose effect is to deprive someone of a pre-existing "asset" that was part of his or her "possessions" may constitute interference that is liable to upset the fair balance that has to be maintained between the demands of the general interest on the one hand and the protection of the right to peaceful enjoyment of possessions on the other (see, among other authorities, *Maurice v. France* [GC], no. 11810/03, §§ 90 and 93, Convention 2005-IX). This also applies to cases in which the dispute is between private individuals and the State is not itself a party to the proceedings (see *Lecarpentier v. France*, no. 67847/01, §§ 48, 51 and 52, 14 February 2006; see also, in connection with Article 6 of the Convention, *Cabourdin v. France*, no. 60796/00, §§ 28-30, 11 April 2006).

<…>

87. In the light of the foregoing, the Court therefore concludes that the Supreme Court's judgment in the instant case did not constitute interference with the applicant company's right to the peaceful enjoyment of its possessions. There has, therefore, been no violation of Article 1 of Protocol No. 1.

<…>

Case of Bistrović v. Croatia (Application no. 25774/05)

(Extract)

<…>

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

22. The applicants complained that they had not received the full market value of their expropriated property and that no account had been taken in the expropriation proceedings of the significantly decreased value of their remaining property. They relied on Article 1 of Protocol No. 1 of the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

<…>

The Court's assessment

32. The Court notes at the outset that it was common ground in the present case that the applicants had been deprived of their property in accordance with the provisions of the Expropriation Act with a view of building a motorway, and that the expropriation thus pursued a lawful aim in the public interest. Accordingly, it is the second sentence of the first paragraph of Article 1 of Protocol No. 1 which is applicable in the instant case (see, among other authorities, the judgments in *Mellacher and Others v. Austria*, 19 December 1989, Series A no. 169, pp. 24-25, § 42 and *Papachelas v. Greece* [GC], no. 31423/96, § 45, Convention 1999II).

33. The essential object of Article 1 of Protocol No. 1 is to protect individuals against unjustified interference by the State with the peaceful enjoyment of their possessions. However, by virtue of Article 1 of the Convention, each Contracting Party "shall secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention". The discharge of this general duty may entail positive obligations inherent in ensuring the effective exercise of the rights guaranteed by the Convention. In the context of Article 1 of Protocol No. 1, those positive obligations may require the State to take the measures necessary to protect the right of property (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 96, Convention 2002-VII and *Broniowski v. Poland* [GC], no 31443/96, § 143, Convention 2004-V), particularly where there is a direct link between the measures which an applicant may legitimately expect from the authorities and the effective enjoyment of his possessions (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 134, Convention 2004XII). This means, in particular, that the States are under an obligation to provide judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any cases concerning property matters (see, *mutatis mutandis*, *Sovtransavto Holding v. Ukraine*, cited above, § 96).

34. In each case involving an alleged violation of this provision, the Court must determine whether, due to the State's interference or passivity, a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1 of Protocol No. 1 (see *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, p. 26, § 69 and *Novoseletskiy v. Ukraine*, no. 47148/99, § 101, 22 February 2005). Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it does not impose a disproportionate burden on the applicant. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1. That Article does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for less than reimbursement of the full market value (see *Holy Monasteries (The) v. Greece*, judgment of 9 December 1994, Series A no. 301A, pp. 34-35, §§ 70-71 and *Papachelas v. Greece*, cited above, § 48).

35. In order to assess the conformity of the State's conduct with the requirements of Article 1 of Protocol No. 1, the Court must have regard to the fact that the Convention is intended to guarantee rights that are practical and effective. It must go beneath appearances and look into the reality of the situation, which requires an overall examination of the various interests in issue; this may call for an analysis not only of the compensation terms – if the situation is akin to the taking of property (see, for example, *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, pp. 50-51, §§ 120-121) – but also, as in the instant case, of the conduct of the parties to the proceedings, including the steps taken by the State (see *Beyeler v. Italy* [GC], no. 33202/96, § 114, Convention 2000I, and *Novoseltskiy v. Ukraine*, cited above, §102).

36. Turning to the particular circumstances of the present case, the Court notes that the applicants requested the Varaždin County Court to reconsider the administrative decision expropriating a part of their estate and assessing the compensation to be paid for this expropriation. The Court notes that the matter to be decided represented the most serious interference with the applicants' right guaranteed under Article 1 of Protocol No. 1, since it concerns expropriation of their property. Bearing in mind the utmost importance of the consequences of the expropriation for the applicants' property rights, the Court considers that a careful examination of all relevant factors by a court dealing with the case was necessary to ensure that the requirements of Article 1 of Protocol No.1 were complied with.

37. In this respect the Court also reiterates that proceedings before courts must conform to the rule of law, which can be identified with the good administration of justice and that, in the absence of any obligation for a judicial authority to give reasons for their decisions, the rights guaranteed by the Convention would be illusory and theoretical. Without requiring a detailed response to each argument presented before a court, this obligation nevertheless presupposes the right of a party to the proceedings to have his or her essential contentions carefully examined (see *Novoseletskiy v. Ukraine*, cited above, § 111).

38. The Court notes that in the present case there was a serious dispute as to the primary facts. Throughout the proceedings the applicants argued that partial expropriation significantly decreased the economic value of the remaining property as well as rendering it useless to them for a variety of reasons, such as the lack of vehicle access to the property, the motorway's very close proximity to their house and inadequate protection from noise and pollution. However, although the County Court addressed a part of the applicants' arguments, it did not answer their main objections concerning the administrative authority's findings.

39. Thus, a number of questions relevant to the applicants' rights under Article 1 of Protocol No.1, such as the method of calculating the market value of the applicants' property, the precise effect of the planned motorway on their living conditions, the applicants' assertion that the expert opinion relied on in the administrative body's decision had been drawn without the expert ever visiting the actual site, remained unanswered. Furthermore, a crucial question concerning the effect of the partial expropriation on the value of the applicants' remaining estate was never addressed and thus the potential decrease in this value in assessing the compensation to be awarded was not taken into account.

40. In this respect, the Court recalls that it has already examined on many occasions domestic authorities' refusal to fix a special indemnity for properties remaining to their owners after a partial expropriation. In some cases the Court found that, when fixing the compensation, the domestic courts had not had regard to the nature of the construction and whether or not it provided any advantage for the owners, but had only fixed compensation with regard to the plots actually expropriated. The Court considered, however, that, having regard to the margin of appreciation left under Article 1 of Protocol No.1 to the national authorities, there appeared no indication warranting the conclusion that the refusal to grant special indemnities might amount to a violation of Article 1 of Protocol No.1 (see, for example, *Azas v. Greece*, no. 50824/99, §§ 51-53, 19 September 2002 and *Interoliva ABEE v. Greece*, no. 58642/00, 10 July 2003).

41. In the case of *Ouzounoglou v. Greece*, however, the Court found that the construction of a motorway in the near vicinity of the applicant's house (about 15 metres) must have limited the free disposition of her right to use the house, which limitation was found to amount to an interference with the applicant's right to peaceful enjoyment of her possessions, and that the nature of the construction had evidently contributed more directly to the substantial depreciation of the value of the remaining property than in the other cases concerning Greece, mentioned above (see *Ouzounoglou v. Greece*, no. 32730/03, § 30, 24 November 2005). Therefore, such interference might warrant the granting of additional compensation for the limited use of the house.

42. In the Court's view the present case falls in the latter category of cases. In this respect the Court notes that the applicants argued that the future motorway would pass two to three metres from their house and that the estate had lost its hitherto pleasant surroundings, a huge courtyard and low noise exposure, all of which had made the property very suitable for agricultural activity. The Court notes that none of these factors were taken into account by the domestic authorities when fixing the compensation for the applicants' expropriated property.

43. Furthermore, throughout the domestic proceedings the applicants asserted that the expert's report serving as a basis for assessing the effects of the motorway on their remaining property had been drawn up without the expert ever visiting the actual site, which had resulted in their house being erroneously drawn. The Court considers that it was necessary to have these facts established in a precise manner by further verifying the applicants' argument that their house had been erroneously drawn on the map of the land plot. Only after such verification of all factors concerning the effects of the motorway construction on the applicants' remaining property, such as the decrease in the value of their estate, the possibility of selling it and the applicants' interest in further use of the remaining estate, would it be possible for the domestic authorities to fix adequate compensation in the expropriation proceedings.

44. The Court therefore finds that, by failing to establish all the relevant factors for establishing the compensation for the applicants' expropriated property, and by failing to grant indemnity for the decrease in the value of their remaining estate, the national authorities have failed to strike a fair balance between the interests involved and have failed to make efforts to ensure adequate protection of the applicants' property rights in the context of expropriation proceedings which involved the ultimate interference on the part of the State with these rights.

45. Having regard to the foregoing, the Court finds that there has been an infringement of the applicants' right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

<...>

Case of D.H. and others v. The Czech Republic (Application no. 57325/00)

(Extract)

<...>

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL No. 1

124. The applicants maintained that they had been discriminated against in that because of their race or ethnic origin they had been treated less favourably than other children in a comparable situation without any objective and reasonable justification. They relied in that connection on Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1, which provide as follows:

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 2 of Protocol No. 1

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

<...>

C. The Court's assessment

1. Recapitulation of the main principles

175. The Court has established in its case-law that discrimination means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, Convention 2002IV, and *Okpisz v. Germany*, no. 59140/00, § 33, 25 October 2005). However, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (see *Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (merits), 23 July 1968, p. 34, § 10, Series A no. 6; *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, Convention 2000-IV; and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, Convention 2006VI). The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory notwithstanding that it is not specifically aimed at that group (see *Hugh Jordan*, cited above, and *Hoogendijk*, cited above), and that discrimination potentially contrary to the Convention may result from a *de facto* situation (see *Zarb Adami*, cited above).

176. Discrimination on account of, *inter alia*, a person's ethnic origin is a form of racial discrimination. Racial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction. It is for this reason that the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment (see *Nachova*, cited above, and *Timishev*, cited above). The Court has also held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (see *Timishev*, cited above, § 58).

177. As to the burden of proof in this sphere, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified (see, among other authorities, *Chassagnou and Others v. France* [GC], nos. 25088/94, 28331/95 and 28443/95, §§ 91-92, Convention 1999III, and *Timishev*, cited above, § 57).

178. As regards the question of what constitutes prima facie evidence capable of shifting the burden of proof on to the respondent State, the Court stated in *Nachova and Others* (cited above, § 147) that in proceedings before it there are no procedural barriers to the admissibility of evidence or predetermined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake.

179. The Court has also recognised that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation – see *Aktaş v. Turkey*, no. 24351/94, § 272, Convention 2003V). In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, Convention 2000-VII, and *Anguelova v. Bulgaria*, no. 38361/97, § 111, Convention 2002IV). In *Nachova and Others* (cited above, § 157), the Court did not rule out requiring a respondent Government to disprove an arguable allegation of discrimination in certain cases, even though it considered that it would be difficult to do

so in that particular case in which the allegation was that an act of violence had been motivated by racial prejudice. It noted in that connection that in the legal systems of many countries proof of the discriminatory effect of a policy, decision or practice would dispense with the need to prove intent in respect of alleged discrimination in employment or in the provision of services.

180. As to whether statistics can constitute evidence, the Court has in the past stated that statistics could not in themselves disclose a practice which could be classified as discriminatory (see *Hugh Jordan*, cited above, § 154). However, in more recent cases on the question of discrimination in which the applicants alleged a difference in the effect of a general measure or *de facto* situation (see *Hoogendijk*, cited above, and *Zarb Adami*, cited above, §§ 77-78), the Court relied extensively on statistics produced by the parties to establish a difference in treatment between two groups (men and women) in similar situations.

Thus, in *Hoogendijk* the Court stated: "[W]here an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government, it will be in practice extremely difficult for applicants to prove indirect discrimination."

181. Lastly, as noted in previous cases, the vulnerable position of Roma/Gypsies means that special consideration should be given to their needs and their different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 96, Convention 2001I, and *Connors v. the United Kingdom*, no. 66746/01, § 84, 27 May 2004).

In *Chapman* (cited above, §§ 93-94), the Court also observed that there could be said to be an emerging international consensus among the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community.

2. Application of the above-mentioned principles to the instant case

182. The Court notes that as a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority (see also the general observations in the Parliamentary Assembly's Recommendation No. 1203 (1993) on Gypsies in Europe, cited in paragraph 56 above, and point 4 of its Recommendation no. 1557 (2002) on the legal situation of Roma in Europe, cited in paragraph 58 above). As the Court has noted in previous cases, they therefore require special protection (see paragraph 181 above). As is attested by the activities of numerous European and international organisations and the recommendations of the Council of Europe bodies (see paragraphs 54-61 above), this protection also extends to the sphere of education. The present case therefore warrants particular attention, especially as when the applications were lodged with the Court the applicants were minor children for whom the right to education was of paramount importance.

183. The applicants' allegation in the present case is not that they were in a different situation from non-Roma children that called for different treatment or that the respondent State had failed to take affirmative action to correct factual inequalities or differences between them (see *Thlimmenos*, cited above, § 44, and *Stec and Others*, cited above, § 51). In their submission, all that has to be established is that, without objective and reasonable justification, they were treated less favourably than non-Roma children in a comparable situation and that this amounted in their case to indirect discrimination.

184. The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group (see *Hugh Jordan*, cited above, § 154, and *Hoogendijk*, cited above). In accordance with, for

instance, Council Directives 97/80/EC and 2000/43/EC (see paragraphs 82-84 above) and the definition provided by ECRI (see paragraph 60 above), such a situation may amount to "indirect discrimination", which does not necessarily require a discriminatory intent.

(a) Whether a presumption of indirect discrimination arises in the instant case

185. It was common ground that the impugned difference in treatment did not result from the wording of the statutory provisions on placements in special schools in force at the material time. Accordingly, the issue in the instant case is whether the manner in which the legislation was applied in practice resulted in a disproportionate number of Roma children – including the applicants – being placed in special schools without justification, and whether such children were thereby placed at a significant disadvantage.

186. As mentioned above, the Court has noted in previous cases that applicants may have difficulty in proving discriminatory treatment (*Nachova and Others*, cited above, §§ 147 and 157). In order to guarantee those concerned the effective protection of their rights, less strict evidential rules should apply in cases of alleged indirect discrimination.

187. On this point, the Court observes that Council Directives 97/80/EC and 2000/43/EC stipulate that persons who consider themselves wronged because the principle of equal treatment has not been applied to them may establish before a domestic authority by any means, including on the basis of statistical evidence, facts from which it may be presumed that there has been discrimination (see paragraphs 82-83 above). The recent case-law of the Court of Justice of the European Communities (see paragraphs 88-89 above) shows that it permits claimants to rely on statistical evidence and the national courts to take such evidence into account where it is valid and significant.

The Grand Chamber further notes the information furnished by the third-party interveners that the courts of many countries and the supervisory bodies of the United Nations treaties habitually accept statistics as evidence of indirect discrimination in order to facilitate the victims' task of adducing prima facie evidence.

The Court also recognised the importance of official statistics in the above-mentioned cases of *Hoogendijk* and *Zarb Adami* and has shown that it is prepared to accept and take into consideration various types of evidence (see *Nachova and Others*, cited above, § 147).

188. In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence.

189. Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 157). Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (ibid., § 147), it would be extremely difficult in practice for applicants to prove indirect discrimination without such a shift in the burden of proof.

190. In the present case, the statistical data submitted by the applicants were obtained from questionnaires that were sent out to the head teachers of special and primary schools in the town of Ostrava in 1999. They indicate that at the time 56% of all pupils placed in special schools in Ostrava were Roma. Conversely, Roma represented only 2.26% of the total number of pupils attending primary school in Ostrava. Further, whereas only 1.8% of non-Roma pupils were placed in special schools, the proportion of Roma pupils in Ostrava assigned to special schools was 50.3%. According to the Government, these figures are not sufficiently conclusive as they merely re-

flect the subjective opinions of the head teachers. The Government also noted that no official information on the ethnic origin of the pupils existed and that the Ostrava region had one of the largest Roma populations.

191. The Grand Chamber observes that these figures are not disputed by the Government and that they have not produced any alternative statistical evidence. In view of their comment that no official information on the ethnic origin of the pupils exists, the Court accepts that the statistics submitted by the applicants may not be entirely reliable. It nevertheless considers that these figures reveal a dominant trend that has been confirmed both by the respondent State and the independent supervisory bodies which have looked into the question.

192. In their reports submitted in accordance with Article 25 § 1 of the Framework Convention for the Protection of National Minorities, the Czech authorities accepted that in 1999 Roma pupils made up between 80% and 90% of the total number of pupils in some special schools (see paragraph 66 above) and that in 2004 "large numbers" of Roma children were still being placed in special schools (see paragraph 67 above). The Advisory Committee on the Framework Convention observed in its report of 26 October 2005 that according to unofficial estimates Roma accounted for up to 70% of pupils enrolled in special schools. According to the report published by ECRI in 2000, Roma children were "vastly over-represented" in special schools. The Committee on the Elimination of Racial Discrimination noted in its concluding observations of 30 March 1998 that a disproportionately large number of Roma children were placed in special schools (see paragraph 99 above). Lastly, according to the figures supplied by the European Monitoring Centre on Racism and Xenophobia, more than half of Roma children in the Czech Republic attended special school.

193. In the Court's view, the latter figures, which do not relate solely to the Ostrava region and therefore provide a more general picture, show that, even if the exact percentage of Roma children in special schools at the material time remains difficult to establish, their number was disproportionately high. Moreover, Roma pupils formed a majority of the pupils in special schools. Despite being couched in neutral terms, the relevant statutory provisions therefore had considerably more impact in practice on Roma children than on non-Roma children and resulted in statistically disproportionate numbers of placements of the former in special schools.

194. Where it has been shown that legislation produces such a discriminatory effect, the Grand Chamber considers that, as with cases concerning employment or the provision of services (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 157), it is not necessary in cases in the educational sphere to prove any discriminatory intent on the part of the relevant authorities (see paragraph 184 above).

195. In these circumstances, the evidence submitted by the applicants can be regarded as sufficiently reliable and significant to give rise to a strong presumption of indirect discrimination. The burden of proof must therefore shift to the Government, which must show that the difference in the impact of the legislation was the result of objective factors unrelated to ethnic origin.

(b) Objective and reasonable justification

196. The Court reiterates that a difference in treatment is discriminatory if "it has no objective and reasonable justification", that is, if it does not pursue a "legitimate aim" or if there is not a "reasonable relationship of proportionality" between the means employed and the aim sought to be realised (see, among many other authorities, *Larkos v. Cyprus* [GC], no. 29515/95, § 29, Convention 1999-I, and *Stec and Others*, cited above, § 51). Where the difference in treatment is based on race, colour or ethnic origin, the notion of objective and reasonable justification must be interpreted as strictly as possible.

<…>

204. In view of the fundamental importance of the prohibition of racial discrimination (see *Nachova and Others*, cited above, § 145, and *Timishev*, cited above, § 56), the Grand Chamber considers that, even assuming the condi-

tions referred to in paragraph 202 above were satisfied, no waiver of the right not to be subjected to racial discrimination can be accepted, as it would be counter to an important public interest (see, *mutatis mutandis*, *Hermi v. Italy* [GC], no. 18114/02, § 73, Convention 2006XII).

(c) Conclusion

205. As is apparent from the documentation produced by ECRI and the report of the Commissioner for Human Rights of the Council of Europe, the Czech Republic is not alone in having encountered difficulties in providing schooling for Roma children: other European States have had similar difficulties. The Court is gratified to note that, unlike some countries, the Czech Republic has sought to tackle the problem and acknowledges that, in its attempts to achieve the social and educational integration of the disadvantaged group which the Roma form, it has had to contend with numerous difficulties as a result of, *inter alia*, the cultural specificities of that minority and a degree of hostility on the part of the parents of non-Roma children. As the Chamber noted in its admissibility decision in the instant case, the choice between a single school for everyone, highly specialised structures and unified structures with specialised sections is not an easy one. It entails a difficult balancing exercise between the competing interests. As to the setting and planning of the curriculum, this mainly involves questions of expediency on which it is not for the Court to rule (see *Valsamis v. Greece*, 18 December 1996, § 28, *Reports of Judgments and Decisions* 1996-VI).

206. Nevertheless, whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation (see *Buckley v. the United Kingdom*, 25 September 1996, § 76, *Reports* 1996IV, and *Connors*, cited above, § 83).

207. The facts of the instant case indicate that the schooling arrangements for Roma children were not attended by safeguards (see paragraph 28 above) that would ensure that, in the exercise of its margin of appreciation in the education sphere, the State took into account their special needs as members of a disadvantaged class (see, *mutatis mutandis, Buckley*, cited above, § 76, and *Connors*, cited above, § 84). Furthermore, as a result of the arrangements the applicants were placed in schools for children with mental disabilities where a more basic curriculum was followed than in ordinary schools and where they were isolated from pupils from the wider population. As a result, they received an education which compounded their difficulties and compromised their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population. Indeed, the Government have implicitly admitted that job opportunities are more limited for pupils from special schools.

208. In these circumstances and while recognising the efforts made by the Czech authorities to ensure that Roma children receive schooling, the Court is not satisfied that the difference in treatment between Roma children and non-Roma children was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued. In that connection, it notes with interest that the new legislation has abolished special schools and provides for children with special educational needs, including socially disadvantaged children, to be educated in ordinary schools.

209. Lastly, since it has been established that the relevant legislation as applied in practice at the material time had a disproportionately prejudicial effect on the Roma community, the Court considers that the applicants as members of that community necessarily suffered the same discriminatory treatment. Accordingly, it does not need to examine their individual cases.

210. Consequently, there has been a violation in the instant case of Article 14 of the Convention taken in conjunction with Article 2 of Protocol No. 1 as regards each of the applicants.

<…>

Case of E.B. v. France (Application no. 43546/02)

(Extract)

<...>

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

<...>

B. The Court's assessment

70. The Court observes that in *Fretté v. France* (cited above) the Chamber held that the decisions to reject the application for authorisation had pursued a legitimate aim, namely to protect the health and rights of children who could be involved in an adoption procedure (§ 38). With regard to whether a difference in treatment was justified, and after observing that there was no common ground between the legal systems of the Contracting States, the Chamber found it quite natural that the national authorities should enjoy a wide margin of appreciation when they were asked to make rulings on such matters, subject to review by the Court (§ 41). Having regard to the competing interests of the applicant and children who were eligible for adoption, and to the paramountcy of the latter's best interests, it noted that the scientific community was divided over the possible consequences of a child being adopted by one or more homosexual parents, that there were wide differences in national and international opinion and that there were not enough children to adopt to satisfy demand (§ 42). Taking account of the broad margin of appreciation to be left to States in this area and to the need to protect children's best interests to achieve the desired balance, the Chamber considered that the refusal to authorise adoption had not infringed the principle of proportionality and that, accordingly, the justification given by the Government appeared objective and reasonable and the difference in treatment complained of was not discriminatory within the meaning of Article 14 of the Convention (§§ 42 and 43).

71. The Court notes that the present case also concerns the question of how an application for authorisation to adopt submitted by a homosexual single person is dealt with; it nonetheless differs in a number of respects from the above-cited case of *Fretté*. The Court notes in particular that whilst the ground relating to the lack of a referent of the other sex features in both cases, the domestic administrative authorities did not – expressly at least – refer to E.B.'s "choice of lifestyle" (see *Fretté*, cited above, § 32). Furthermore, they also mentioned the applicant's qualities and her child-raising and emotional capacities, unlike in *Fretté* where the applicant was deemed to have had difficulties in envisaging the practical consequences of the upheaval occasioned by the arrival of a child (§§ 28 and 29). Moreover, in the instant case the domestic authorities had regard to the attitude of E.B.'s partner, with whom she had stated that she was in a stable and permanent relationship, which was a factor that had not featured in the application lodged by Mr Fretté.

72. In the instant case the Court notes that the domestic administrative authorities, and then the courts that heard the applicant's appeal, based their decision to reject her application for authorisation to adopt on two main grounds.

73. With regard to the ground relied on by the domestic authorities relating to the lack of a paternal or maternal referent in the household of a person seeking authorisation to adopt, the Court considers that this does not necessarily raise a problem in itself. However, in the circumstances of the present case it is permissible to question the merits of such a ground, the ultimate effect of which is to require the applicant to establish the presence of a referent of the other sex among her immediate circle of family and friends, thereby running the risk of rendering

ineffective the right of single persons to apply for authorisation. The point is germane here because the case does not concern an application for authorisation to adopt by a – married or unmarried – couple, but by a single person. In the Court's view, that ground might therefore have led to an arbitrary refusal and have served as a pretext for rejecting the applicant's application on grounds of her homosexuality.

74. The Court observes, moreover, that the Government, on whom the burden of proof lay (see, *mutatis mutandis*, *Karner v. Austria*, no. 40016/98, §§ 41-42, Convention 2003IX), were unable to produce statistical information on the frequency of reliance on that ground according to the – declared or known – sexual orientation of the persons applying for adoption, which alone could provide an accurate picture of administrative practice and establish the absence of discrimination when relying on that ground.

75. In the Court's view, the second ground relied on by the domestic authorities, based on the attitude of the applicant's partner, calls for a different approach. Although she was the long-standing and declared partner of the applicant, Ms R. did not feel committed by her partner's application to adopt. The authorities, which constantly remarked on this point – expressly and giving reasons – concluded that the applicant did not provide the requisite safeguards for adopting a child.

76. It should first be noted that, contrary to the applicant's submissions, the question of the attitude of her partner, with whom she stated that she was in a stable and lasting relationship, is not without interest or relevance in assessing her application. It is legitimate for the authorities to ensure that all safeguards are in place before a child is taken into a family.

<...>

89. The Court considers that the reference to the applicant's homosexuality was, if not explicit, at least implicit. The influence of the applicant's avowed homosexuality on the assessment of her application has been established and, having regard to the foregoing, was a decisive factor leading to the decision to refuse her authorisation to adopt (see, *mutatis mutandis*, *Salgueiro da Silva Mouta*, cited above, § 35).

90. The applicant therefore suffered a difference in treatment. Regard must be had to the aim behind that difference in treatment and, if the aim was legitimate, to whether the different treatment was justified.

91. The Court reiterates that, for the purposes of Article 14, a difference in treatment is discriminatory if it has no objective and reasonable justification, which means that it does not pursue a "legitimate aim" or that there is no "reasonable proportionality between the means employed and the aim sought to be realised" (see, *inter alia*, *Karlheinz Schmidt*, cited above, § 24; *Petrovic*, cited above, § 30; and *Salgueiro da Silva Mouta*, cited above, § 29). Where sexual orientation is in issue, there is a need for particularly convincing and weighty reasons to justify a difference in treatment regarding rights falling within Article 8 (see, *mutatis mutandis*, *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 89, Convention 1999-VI; *Lustig-Prean and Beckett v. the United Kingdom,* nos. 31417/96 and 32377/96, § 82, 27 September 1999; and *S.L. v. Austria*, no. 45330/99, § 37, Convention 2003-I).

92. In that connection the Court observes that the Convention is a living instrument, to be interpreted in the light of present-day conditions (see, *inter alia*, *Johnston and Others*, cited above, § 53).

93. In the Court's opinion, if the reasons advanced for such a difference in treatment were based solely on considerations regarding the applicant's sexual orientation this would amount to discrimination under the Convention (see *Salgueiro da Silva Mouta,* cited above, § 36).

94. The Court points out that French law allows single persons to adopt a child (see paragraph 49 above), thereby opening up the possibility of adoption by a single homosexual, which is not disputed. Against the background of the domestic legal provisions, it considers that the reasons put forward by the Government cannot be regarded as particularly convincing and weighty such as to justify refusing to grant the applicant authorisation.

95. The Court notes, lastly, that the relevant provisions of the Civil Code are silent as to the necessity of a referent of the other sex, which would not, in any event, be dependent on the sexual orientation of the adoptive single parent. In this case, moreover, the applicant presented, in the terms of the judgment of the *Conseil d'Etat*, "undoubted personal qualities and an aptitude for bringing up children", which were assuredly in the child's best interests, a key notion in the relevant international instruments (see paragraphs 29-31 above).

96. Having regard to the foregoing, the Court cannot but observe that, in rejecting the applicant's application for authorisation to adopt, the domestic authorities made a distinction based on considerations regarding her sexual orientation, a distinction which is not acceptable under the Convention (see *Salgueiro da Silva Mouta,* cited above, § 36).

97. Consequently, having regard to its finding under paragraph 80 above, the Court considers that the decision in question is incompatible with the provisions of Article 14 taken in conjunction with Article 8.

98. There has accordingly been a breach of Article 14 of the Convention taken in conjunction with Article 8.

<...>

Case of Jussila v. Finland (Application no. 73053/01)

(Extract)

<...>

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

22. The applicant complained that the tax-surcharge proceedings were unfair as the courts did not hold an oral hearing in his case. The Court has examined this complaint under Article 6 of the Convention, the relevant part of which provides:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law. ..."

<...>

40. An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 (see *Findlay v. the United Kingdom*, 25 February 1997, § 79, *Reports of Judgments and Decisions* 1997-I), and where an applicant has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses.

41. That said, the obligation to hold a hearing is not absolute (see *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 66, Series A no. 171-A). There may be proceedings in which an oral hearing may not be required: for example where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (see, for example, *Döry v. Sweden*, no. 28394/95, § 37, 12 November 2002, and *Pursiheimo v. Finland* (dec.), no. 57795/00, 25 November 2003; compare *Lundevall v. Sweden*, no. 38629/97, § 39, 12 November 2002, and *Salomonsson v. Sweden*, no. 38978/97, § 39, 12 November 2002; and see also *Göç v. Turkey* [GC], no. 36590/97, § 51, Convention 2002-V, where the applicant should have been heard on elements of personal suffering relevant to levels of compensation).

42. The Court has further acknowledged that the national authorities may have regard to the demands of efficiency and economy and found, for example, that the systematic holding of hearings could be an obstacle to the particular diligence required in social security cases and ultimately prevent compliance with the reasonable-time requirement of Article 6 § 1 (see *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263 and the cases cited therein). Although the earlier cases emphasised that a hearing must be held before a court of first and only instance unless there were exceptional circumstances that justified dispensing with one (see, for instance, *Håkansson and Sturesson*, cited above, § 64; *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21-22, Series A no. 283-A; and *Allan Jacobsson v. Sweden (no. 2)*, 19 February 1998, § 46, *Reports* 1998-I), the Court has clarified that the character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations. It does not mean that refusing to hold an oral hearing may be justified only in rare cases (see *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005). The overarching principle of fairness embodied in Article 6 is, as always, the key consideration (see, *mutatis mutandis*, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 52, Convention 1999-II, and *Sejdovic v. Italy* [GC], no. 56581/00, § 90, Convention 2006-II).

43. While it may be noted that the above-mentioned cases in which an oral hearing was not considered necessary concerned proceedings falling under the civil head of Article 6 § 1 and that the requirements of a fair hearing are the most strict in the sphere of criminal law, the Court would not exclude that in the criminal sphere the nature of the issues to be dealt with before the tribunal or court may not require an oral hearing.

<...>

Case of Martinie v. France (Application no. 58675/00)

(Extract)

<…>

(i) Lack of a public hearing before the Court of Audit

39. The Court reiterates that the public character of proceedings before the judicial bodies referred to in Article 6 § 1 protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1, namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention (see, among many other authorities, *Axen v. Germany*, 8 December 1983, § 25, Series A no. 72).

40. The right to a public hearing implies a public hearing before the relevant court (see, *inter alia*, *mutatis mutandis*, *Fredin v. Sweden (no. 2)*, 23 February 1994, § 21, Series A no. 283A, and *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312). Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case submitted to them, to derogate from this principle: in accordance with the actual wording of this provision, "… the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice"; holding proceedings, whether wholly or partly, in camera must be strictly required by the circumstances of the case (see, for example, *mutatis mutandis*, *Diennet v. France*, 26 September 1995, § 34, Series A no. 325A).

41. Moreover, the Court has held that exceptional circumstances relating to the nature of the issues to be decided by the court in the proceedings concerned (see, *mutatis mutandis*, *Miller v. Sweden*, no. 55853/00, § 29, 8 February 2005) may justify dispensing with a public hearing (see, in particular, *Göç v. Turkey* [GC], no. 36590/97, § 47, Convention 2002V). It thus considers, in particular, that social security proceedings, which are highly technical, are often better dealt with in writing than in oral submissions, and that, as systematically holding hearings may be an obstacle to the particular diligence required in social security cases, it is understandable that in this sphere the national authorities should have regard to the demands of efficiency and economy (see, for example, *Miller* and *Schuler-Zgraggen*, cited above). It should be pointed out, however, that in the majority of cases concerning proceedings before "civil" courts ruling on the merits in which it has arrived at that conclusion the applicant had had the opportunity of requesting a public hearing.

<…>

43. In the present case the law did not provide the parties with an opportunity to submit such a request, either at first instance before the regional audit office or on appeal before the Court of Audit. It is not therefore open to the Government to argue that the applicant had not requested a public hearing before the Court of Audit since such an application was bound to fail.

That said, the Court does not doubt that checking accounts rendered annually by public accountants and ensuring that the supporting documents have been properly produced in connection with every item of expenditure and every claim that has not been recovered is a highly technical exercise. It therefore accepts that it is in principle better dealt with in writing than in oral argument. It also sympathises with the Government's argument that making all hearings public might prove to be very costly for the community.

The Court consequently considers that, as long as the proceedings are limited to the scrutiny of accounts, Article 6 § 1 – assuming it to be applicable – does not prohibit the holding of private hearings from being established as an absolute principle.

Nevertheless, judicial audits of accounts can lead at first instance to a judgment levying a surcharge against a public accountant; since his financial position is thus directly – and, perhaps, significantly – affected, it is understandable that, faced with such an eventuality, the accountant in question will view the public scrutiny of his accounts as a necessary condition for the protection of the rights that he should be able to rely on, at least at the appeal stage.

In such a case the technical nature of the proceedings does not suffice to justify systematically holding private hearings, and the argument that organising public hearings is a costly exercise becomes irrelevant where it is only a question of the proceedings being public at the appeal stage and then only where the public accountant concerned requests a public hearing.

<...>

In the present case the applicant was not able to request a public hearing before the Court of Audit. Accordingly, there has been a breach of Article 6 § 1 of the Convention.

<...>

Case of N. v. The United Kingdom (Application no. 26565/05)

(Витяг)

<...>

B. The Court's assessment

1. General principles regarding Article 3 and expulsion

29. According to the Court's constant case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many other authorities, *Jalloh v. Germany* [GC], no. 54810/00, § 67, Convention 2006-IX. The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible (see *Pretty v. the United Kingdom*, no. 2346/02, § 52, Convention 2002-III; *Kudła v. Poland* [GC], no. 30210/96, § 94, Convention 2000-XI; *Keenan v. the United Kingdom*, no. 27229/95, § 116, ECHR 2001-III; and *Price v. the United Kingdom*, no. 33394/96, § 30, Convention 2001-VII).

30. It is the Court's settled case-law that as a matter of well-established international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens. However, expulsion by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have

been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country (see *Saadi v. Italy* [GC], no. 37201/06, §§ 124-25, Convention 2008).

31. Article 3 principally applies to prevent a deportation or expulsion where the risk of ill-treatment in the receiving country emanates from intentionally inflicted acts of the public authorities there or from non-State bodies when the authorities are unable to afford the applicant appropriate protection (see *H.L.R. v. France*, 29 April 1997, § 32, *Reports* 1997-III, and *Ahmed v. Austria*, 17 December 1996, § 44, *Reports* 1996-VI).

2. The Court's case-law in respect of Article 3 and the expulsion of the seriously ill

32. In addition, aside from these situations and given the fundamental importance of Article 3 in the Convention system, the Court in the above-cited *D. v. the United Kingdom* case (§ 49) reserved to itself sufficient flexibility to address the application of Article 3 in other contexts which might arise, where the source of the risk of proscribed treatment in the receiving country stemmed from factors which could not engage either directly or indirectly the responsibility of the public authorities of that country, or which, taken alone, did not in themselves infringe the standards of Article 3.

33. The applicant in *D. v. the United Kingdom* was a national of St Kitts who had been convicted and sentenced in the United Kingdom in connection with a drugs offence. When he had completed his sentence of imprisonment the United Kingdom authorities sought to deport him to St Kitts. He was, however, by that time in the advanced stages of Aids. When the Court examined the case, his CD4 cell count was below 10, he had suffered severe and irreparable damage to his immune system and his prognosis was very poor; it appeared that he was close to death. He had been counselled about dying and had formed bonds with his carers. There was evidence before the Court that the medical facilities in St Kitts did not have the capacity to provide the applicant with the treatment he needed and he had no family home or close relatives able to look after him there. The Court held (§§ 53-54) as follows:

"In view of these exceptional circumstances and bearing in mind the critical stage now reached in the applicant's fatal illness, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3.

<...> *[T]he respondent State has assumed responsibility for treating the applicant's condition since August 1994. He has become reliant on the medical and palliative care which he is at present receiving and is no doubt psychologically prepared for death in an environment which is both familiar and compassionate. Although it cannot be said that the conditions which would confront him in the receiving country are themselves a breach of the standards of Article 3, his removal would expose him to a real risk of dying under most distressing circumstances and would thus amount to inhuman treatment.*

<...>

Against this background the Court emphasises that aliens who have served their prison sentences and are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison.

However, in the very exceptional circumstances of this case and given the compelling humanitarian considerations at stake, it must be concluded that the implementation of the decision to remove the applicant would be a violation of Article 3."

34. Since the judgment in *D. v. the United Kingdom*, the Court has never found a proposed removal of an alien from a Contracting State to give rise to a violation of Article 3 on grounds of the applicant's ill health.

35. In *B.B. v. France* (7 September 1998, *Reports* 1998-VI), the applicant, who had been serving a period of imprisonment in France, was suffering from Aids with acute immunosuppression. His condition had reached an advanced stage, requiring repeated hospital stays, but had stabilised as a result of antiretroviral treatment which he claimed would not be available to him in his home country, the Democratic Republic of the Congo. The Commission, in its report on the case, had found that it was highly probable that if the applicant were to be deported he would not have access to treatment designed to inhibit the spread of the virus and that the numerous epidemics raging in his country would increase the risk of infection. To expect him to confront his illness alone, without any support from family members, was likely to make it impossible for him to maintain human dignity as the disease ran its course. It concluded that deporting him would amount to a violation of Article 3. The case was referred to the Court, but before it could examine it the French Government gave an undertaking that the applicant would not be deported and the case was therefore struck out of the Court's list.

36. In *Karara v. Finland* (no. 40900/98, Commission decision of 29 May 1998, unreported), the applicant, a citizen of Uganda, had been treated in Finland for an HIV infection since 1992. The Commission distinguished the case from *D. v. the United Kingdom* and *B.B. v. France* on the ground that the applicant's illness had not yet reached such an advanced stage that his deportation would amount to treatment proscribed by Article 3 and it declared the application inadmissible.

37. The applicant in *S.C.C. v. Sweden* ((dec.), no. 46553/99, 15 February 2000), was a Zambian national who had been refused leave to enter Sweden, where she had previously lived and where she had been treated for HIV. The applicant submitted medical evidence to the effect that life-prolonging treatment would have a much better success rate if she was given the chance to continue it in Sweden since the standard of care and monitoring possibilities in Zambia were reduced in comparison. The Court declared the application inadmissible, on the basis that, according to a report from the Swedish embassy in Zambia, the same type of Aids treatment was available there, although at considerable cost, and that the applicant's children as well as other family members lived there. Taking into account the applicant's present state of health, her removal to Zambia would not amount to treatment proscribed by Article 3.

38. The following year the Court delivered judgment in *Bensaid v. the United Kingdom* (no. 44599/98, Convention 2001-I). The applicant, an Algerian national, was a schizophrenic who had been treated for this illness for some years in the United Kingdom. The Court unanimously rejected the complaint under Article 3 and held as follows (§§ 36-40):

"In the present case, the applicant is suffering from a long-term mental illness, schizophrenia. He is currently receiving medication, olanzapine, which assists him in managing his symptoms. If he returns to Algeria, this drug will no longer be available to him free as an outpatient. He does not subscribe to any social insurance fund and cannot claim any reimbursement. It is, however, the case that the drug would be available to him if he was admitted as an inpatient and that it would be potentially available on payment as an outpatient. It is also the case that other medication, used in the management of mental illness, is likely to be available. The nearest hospital for providing treatment is at Blida, some 75 to 80 km from the village where his family live.

The difficulties in obtaining medication and the stress inherent in returning to that part of Algeria, where there is violence and active terrorism, would, according to the applicant, seriously endanger his health. Deterioration in his already existing mental illness could involve relapse into hallucinations and psychotic delusions involving self-harm and harm to others, as well as restrictions in social functioning (such as withdrawal and lack of motivation). The Court considers that the suffering associated with such a relapse could, in principle, fall within the scope of Article 3.

The Court observes, however, that the applicant faces the risk of relapse even if he stays in the United Kingdom as his illness is long term and requires constant management. Removal will arguably increase the risk, as will the differences in available

personal support and accessibility of treatment. The applicant has argued, in particular, that other drugs are less likely to be of benefit to his condition, and also that the option of becoming an inpatient should be a last resort. Nonetheless, medical treatment is available to the applicant in Algeria. The fact that the applicant's circumstances in Algeria would be less favourable than those enjoyed by him in the United Kingdom is not decisive from the point of view of Article 3 of the Convention.

The Court finds that the risk that the applicant would suffer a deterioration in his condition if he were returned to Algeria and that, if he did, he would not receive adequate support or care is to a large extent speculative. The arguments concerning the attitude of his family as devout Muslims, the difficulty of travelling to Blida and the effects on his health of these factors are also speculative. The information provided by the parties does not indicate that travel to the hospital is effectively prevented by the situation in the region. The applicant is not himself a likely target of terrorist activity. Even if his family does not have a car, this does not exclude the possibility of other arrangements being made.

The Court accepts the seriousness of the applicant's medical condition. Having regard, however, to the high threshold set by Article 3, particularly where the case does not concern the direct responsibility of the Contracting State for the infliction of harm, the Court does not find that there is a sufficiently real risk that the applicant's removal in these circumstances would be contrary to the standards of Article 3. The case does not disclose the exceptional circumstances of D. v. the United Kingdom (cited above), where the applicant was in the final stages of a terminal illness, Aids, and had no prospect of medical care or family support on expulsion to St Kitts."

39. In *Arcila Henao v. the Netherlands* ((dec.), no. 13669/03, 24 June 2003), the applicant was a national of Colombia who, while serving a prison sentence for drug trafficking, was found to be HIV-positive and was thus treated using antiretroviral medication. The Court found that the applicant's present condition was reasonable, but that he might relapse if treatment were discontinued. It noted that the required treatment was "in principle" available in Colombia, where the applicant's father and six siblings resided. The Court distinguished the case from *D. v. the United Kingdom* and *B.B. v. France* (both cited above), on the ground that the applicant's illness had not reached an advanced or terminal stage and that he had a prospect of medical care and family support in his country of origin. It did not, therefore, find that the circumstances of the applicant's situation were of such an exceptional nature that his expulsion would amount to treatment proscribed by the Convention and it therefore declared the application inadmissible.

40. The applicant in *Ndangoya v. Sweden* ((dec.), no. 17868/03, 22 June 2004), was a Tanzanian national who had been treated with antiretroviral medication which been successful in reducing his HIV levels to the point where they were no longer detectable. It was said that the prospects of his receiving that treatment in Tanzania were very slim and that its interruption would lead to a relatively rapid deterioration of his immune system, to the development of Aids within one to two years and death within three to four years. The application was declared inadmissible, on the grounds that the applicant's illness had not reached an advanced or terminal stage; adequate treatment was to be had in Tanzania, albeit at considerable cost and with limited availability in the rural area from whence the applicant came; and that he maintained some links with relatives who might be able to help him.

41. A similar conclusion was reached in *Amegnigan v. the Netherlands* ((dec.), no. 25629/04, 25 November 2004), where the applicant, who came from Togo, had been treated with antiretroviral treatment in the Netherlands. Medical evidence indicated that as soon as the therapy was stopped he would relapse to the advanced stage of the disease which, given its incurable nature, would entail a direct threat to life. A report on local conditions in Togo indicated that, while the treatment was available there, a person who did not have health insurance would find it difficult to afford it if relatives were unable to provide financial support. The application under Article 3 was declared manifestly ill-founded, on the grounds that the applicant had not reached the stage of full-blown Aids and was not suffering from any HIV-related illness. While acknowledging the assessment of the applicant's treating specialist doctor that the applicant's health condition would relapse if treatment would be discontinued, the Court noted that adequate treatment was in principle available in Togo, albeit at a possibly considerable cost.

3. The principles to be drawn from the case-law

42. In summary, the Court observes that since *D. v. the United Kingdom* it has consistently applied the following principles.

Aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling State. The fact that the applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to breach of Article 3. The decision to remove an alien who is suffering from a serious mental or physical illness to a country where the facilities for the treatment of that illness are inferior to those available in the Contracting State may raise an issue under Article 3, but only in a very exceptional case, where the humanitarian grounds against the removal are compelling. In the *D. v. the United Kingdom* case the very exceptional circumstances were that the applicant was critically ill and appeared to be close to death, could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support.

43. The Court does not exclude that there may be other very exceptional cases where the humanitarian considerations are equally compelling. However, it considers that it should maintain the high threshold set in *D. v. the United Kingdom* and applied in its subsequent case-law, which it regards as correct in principle, given that in such cases the alleged future harm would emanate not from the intentional acts or omissions of public authorities or non-State bodies, but instead from a naturally occurring illness and the lack of sufficient resources to deal with it in the receiving country.

<...>

Case of Öneryildiz v. Turkey (Application no. 48939/99)

(Extract)

<...>

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

63. The applicant complained that the death of nine of his close relatives in the accident of 28 April 1993 and the flaws in the ensuing proceedings had constituted a violation of Article 2 of the Convention, the relevant part of which provides:

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law..."

<...>

3. The Court's assessment

(a) General principles applicable in the present case

(i) Principles relating to the prevention of infringements of the right to life as a result of dangerous activities: the substantive aspect of Article 2 of the Convention

89. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 (see paragraph 71 above) entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (see, for example, *mutatis mutandis*, *Osman*, cited above, p. 3159, § 115; *Paul and Audrey Edwards*, cited above, § 54; *İlhan v. Turkey* [GC], no. 22277/93, § 91, Convention 2000-VII; *Kılıç v. Turkey*, no. 22492/93, § 62, Convention 2000-III; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 85, Convention 2000-III).

90. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.

Among these preventive measures, particular emphasis should be placed on the public's right to information, as established in the case-law of the Convention institutions. The Grand Chamber agrees with the Chamber (see paragraph 84 of the Chamber judgment) that this right, which has already been recognised under Article 8 (see *Guerra and Others*, cited above, p. 228, § 60), may also, in principle, be relied on for the protection of the right to life, particularly as this interpretation is supported by current developments in European standards (see paragraph 62 above).

In any event, the relevant regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels.

(ii) Principles relating to the judicial response required in the event of alleged infringements of the right to life: the procedural aspect of Article 2 of the Convention

91. The obligations deriving from Article 2 do not end there. Where lives have been lost in circumstances potentially engaging the responsibility of the State, that provision entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see, *mutatis mutandis*, *Osman*, cited above, p. 3159, § 115, and *Paul and Audrey Edwards*, cited above, § 54).

92. In this connection, the Court has held that if the infringement of the right to life or to physical integrity is not caused intentionally, the positive obligation to set up an "effective judicial system" does not necessarily require criminal proceedings to be brought in every case and may be satisfied if civil, administrative or even disciplinary remedies were available to the victims (see, for example, *Vo v. France* [GC], no. 53924/00, § 90, Convention 2004-VIII; *Calvelli and Ciglio*, cited above, § 51; and *Mastromatteo*, cited above, §§ 90 and 94-95).

93. However, in areas such as that in issue in the instant case, the applicable principles are rather to be found in those the Court has already had occasion to develop in relation notably to the use of lethal force, principles which lend themselves to application in other categories of cases.

In this connection, it should be pointed out that in cases of homicide the interpretation of Article 2 as entailing an obligation to conduct an official investigation is justified not only because any allegations of such an offence normally give rise to criminal liability (see *Caraher v. the United Kingdom* (dec.), no. 24520/94, Convention 2000-I), but also because often, in practice, the true circumstances of the death are, or may be, largely confined within the knowledge of State officials or authorities (see *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, pp. 4749, §§ 157-64, and *İlhan*, cited above, § 91).

In the Court's view, such considerations are indisputably valid in the context of dangerous activities, when lives have been lost as a result of events occurring under the responsibility of the public authorities, which are often the only entities to have sufficient relevant knowledge to identify and establish the complex phenomena that might have caused such incidents.

Where it is established that the negligence attributable to State officials or bodies on that account goes beyond an error of judgment or carelessness, in that the authorities in question, fully realising the likely consequences and disregarding the powers vested in them, failed to take measures that were necessary and sufficient to avert the risks inherent in a dangerous activity (see, *mutatis mutandis*, *Osman*, cited above, pp. 3159-60, § 116), the fact that those responsible for endangering life have not been charged with a criminal offence or prosecuted may amount to a violation of Article 2, irrespective of any other types of remedy which individuals may exercise on their own initiative (see paragraphs 48-50 above); this is amply evidenced by developments in the relevant European standards (see paragraph 61 above).

94. To sum up, the judicial system required by Article 2 must make provision for an independent and impartial official investigation procedure that satisfies certain minimum standards as to effectiveness and is capable of ensuring that criminal penalties are applied where lives are lost as a result of a dangerous activity if and to the extent that this is justified by the findings of the investigation (see, *mutatis mutandis*, *Hugh Jordan v. the United Kingdom*, no. 24746/94, §§ 105-09, 4 May 2001, and *Paul and Audrey Edwards*, cited above, §§ 69-73). In such cases, the competent authorities must act with exemplary diligence and promptness and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved in whatever capacity in the chain of events in issue.

95. That said, the requirements of Article 2 go beyond the stage of the official investigation, where this has led to the institution of proceedings in the national courts: the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law.

96. It should in no way be inferred from the foregoing that Article 2 may entail the right for an applicant to have third parties prosecuted or sentenced for a criminal offence (see, *mutatis mutandis*, *Perez v. France* [GC], no. 47287/99, § 70, Convention 2004-I) or an absolute obligation for all prosecutions to result in conviction, or indeed in a particular sentence (see, *mutatis mutandis*, *Tanlı v. Turkey*, no. 26129/95, § 111, Convention 2001-III).

On the other hand, the national courts should not under any circumstances be prepared to allow life-endangering offences to go unpunished. This is essential for maintaining public confidence and ensuring adherence to the rule of law and for preventing any appearance of tolerance of or collusion in unlawful acts (see, *mutatis mutandis*, *Hugh Jordan*, cited above, §§ 108 and 136-40). The Court's task therefore consists in reviewing whether and to what extent the courts, in reaching their conclusion, may be deemed to have submitted the case to the careful scrutiny required by Article 2 of the Convention, so that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the right to life are not undermined.

<...>

V. EU documents

The regulatory framework for the functioning of public authorities in the European Union has a rather complicated structure, principles and mechanisms for ensuring the functioning of this intergovernmental organization. In this section only extracts from a small number of normative acts regulating the functioning of public administration bodies are provided. However, even such a relatively small amount of normative material will make it possible to recognize the value benchmarks and the most commonly used tools for achieving them.

The Commission Communication from the Commission to the European Parliament and the Council on a new framework program for the consolidation of the rule of law (COM (2014) 158) states that the rule of law has gradually become the dominant organizational model of contemporary constitutional law and international organizations (including the United Nations and Council of Europe), and now regulates the exercise of state authority. He guarantees that all government powers operate within the constraints established by law in accordance with the values of democracy and fundamental rights and under the control of independent and objective courts. The European Court and the European Court of Human Rights have confirmed that such principles are not purely formal and procedural requirements. They are an instrument for ensuring respect for and respect for democracy and human rights. Therefore, the rule of law is the constitutional principle of both formal and functional constituents. This means that respect for the rule of law is inextricably linked with respect for democracy and fundamental rights: democracy and respect for fundamental rights cannot exist without respect for the rule of law, and vice versa. Fundamental rights are effective only if they are lawful.

The Charter of Fundamental Rights of the European Union in the system of human rights guarantees places a very significant place in the regulation of the relationship between the individual and the public authorities. Moreover, the human right to good governance is one of the most fundamental in this document.

Thus, Article 41 of the Charter gives not only the definition of such a right, but also its constituent elements. Everyone has the right to an objective fair hearing of her case within a reasonable time by the institutions and bodies of the European Union. This right includes: the right of every person to be heard before taking any individual measures that may adversely affect it; the right of every person to access his or her business with respect for legitimate interests regarding confidentiality, as well as professional and commercial secrecy; The duty of the government to explain their decisions.

As one of the institutional safeguards to ensure the implementation and protection of rules and procedures, Article 43 of the Charter provides for the institution of the European Ombudsman, to which any citizen of the Union may apply, as well as a resident natural person or legal entity with a seat in a Member State concerning unlawful acts of the institutions, bodies, departments and agencies of the Union, with the exception of the European Court, acting in the judicial function.

It is very important to note that even very practical procedural legal acts of the EU "red thread" carry out actualization in each sphere of their own values and priorities. For example, the Resolution of the European Parliament of February 27, 2014 "On the Status of Basic Human Rights in the European Union" (2012) (2013/2078 (INI)), covering a number of issues of institutional development and formation, material is presented through the prism of such values as dignity, freedom , equality and unity. In this case, it is not about declarative consolidation of the principle, but rather a very concrete understanding of it. Thus, in relation to equality it is stated that the principles of human dignity, equality before the law and the prohibition of discrimination on any grounds are the basis of a democratic society; Believes that the EU and its member states should improve measures to promote equality, combat discrimination and protect cultural, religious and linguistic diversity, as well as measures related to gender equality, the rights of children, the rights of older people, the rights of people with disabilities, rights lesbians, gays, bisexuals and transgender people, and the rights of national minorities.

At the same time, special acts in the field of public administration are even more systematic and informative. For example, the Administrative Procedural Law of the EU (approved by the European Parliament Resolution on January 15, 2013 (2012/2024 (INL)) explicitly states unambiguously that citizens have the right to rely on the high level of transparency, efficiency and speed of response of the Union's administrative bodies. There are a number of specific provisions of this Act, for example, one of the annexes provides a rather comprehensive and well-founded list of principles for the implementation of public administration in the EU. In particular, the following principles and standards are called: legality, non-discrimination and the application of equal treatment, proportionality, objectivity, consistency and legitimate expectations, respect and privacy, transparency, fairness, efficiency and service. In fact, the principle of consistency and legitimate expectations, for example, means that the management of the Union should be consistent in their behavior and adhere to the normal administrative practice that should be disclosed to the public. If there are legitimate reasons to deviate from such a normal administrative practice in individual cases, for such a retreat a compelling reason must be given.

A slightly different formally list of principles for public administration was prepared and promulgated by the European Ombudsman in 2012. In particular, there are: professional ethics, integrity, objectivity, respect for others and transparency. With regard to the first two of these principles, they presuppose that public servants should be guided by the principles of decency and behave as if they are always at the center of public attention. To perform this duty, it is not enough simply to adhere to the law. Public officials should not take any financial or any other obligation that may affect their performance of their duties, including not taking gifts. They must immediately report the existence of personal interest that is associated with the performance of their functions.

Each of these principles has a rather broad and systematic reflection on a number of implementing acts. For a demonstration of the approximate level of detail, consider, for example, the principle of transparency in its information aspect.

The Charter of Fundamental Rights of the European Union mentioned in Article 42 guarantees the right of access to documents - any citizen of the EU, as well as a resident individual or legal entity with a seat in a Member State, has the right to access documents in institutions, bodies, departments and EU agencies, regardless of the media on which such documents are located. One of the procedural limitations of the exercise of this right is the security of the processing of information with restricted access. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the institutions and bodies of the Community and on the free movement of such data provides for common criteria (frameworks).

First of all, personal data must be processed legally and fairly; collected for specified, clear and legitimate purposes, and should not be subjected to further processing in a way incompatible with these purposes; be adequate, relevant and not excessive in relation to the purposes for which they are collected and / or further processed; be accurate and relevant when relevant; all reasonable steps should be taken to ensure that inaccurate or incomplete data that corresponds to the purposes for which they were collected or which are undergoing further processing have been erased or fixed; stored in a form that allows the identification of data subjects not longer than necessary for the purpose for which the personal data was collected or for which it was subsequently processed.

Another example is Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on public access to European Parliament, Council and Commission documents. The purpose of this Regulation is to facilitate the access of citizens to documents of European institutions. They may access any type of document in accordance with the conditions specified in the Regulation, as well as the exceptions set out in this document. It applies to all documents belonging to the institution, that is, to documents drawn up or received by it and which are in its possession, in all areas of EU activity.

It is clearly stated that institutions may refuse access to a document if disclosure of information destroys protection: public interest as regards public safety, defense, international relations, as well as financial, monetary or economic policies of the EU or the EU; privacy and personal integrity, in particular, in accordance with the EU legislation on the protection of personal data; commercial interests of the person; court proceedings and legal advice; objectives of inspections, investigations and audits.

The provisions of Regulation (EC) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions within the internal market and Directive of the European Parliament and of the Council of 24 February 2014/24 / EC of the European Parliament and of the Council of 26 February 2014 2014 "On Public Procurement and Cancellation of Directive 2004/18 / EC". These documents not only regulate the relevant administrative and economic procedures, but (and at least this is evident from the extracts) clearly establish clear standards for the transparency and openness of such procedures. Simultaneously with the use of the latest technologies, electronic applications and documents, electronic signatures, etc., the rights of users of services and other participants, such as in the sphere of the preservation of commercial secret or confidential information, are seriously protected.

The examples of compliance with the principle of transparency presented here, of course, cannot be accepted and implemented unconditionally. They need to be carefully analyzed in order to distinguish the main principles of the functioning of public administration in a transparent and fundamental way (transparency) of possible provision in Ukrainian realities at a qualitatively different level.

Charter of fundamental rights of the European Union

dated 7 December 2000

(Extract)

<...>

Article 41
Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43
European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44
Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

<...>

EU Administrative Procedure Law P7_TA (2013)0004

(European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INL))

(Extract)

The European Parliament,

<…>

A. whereas with the development of the competences of the European Union, citizens are increasingly directly confronted with the Union's administration, without always having the corresponding procedural rights which they could enforce against it in cases where such actions may prove necessary;

B. whereas citizens are entitled to expect a high level of transparency, efficiency, swift execution and responsiveness from the Union's administration, regardless of whether they are making a formal complaint or exercising their right of petition under the Treaty, together with information as to the possibility of their taking any further action in the matter;

C.whereas the Union's existing rules and principles on good administration are scattered across a wide variety of sources: primary law, case-law of the Court of Justice of the European Union, secondary legislation, soft law and unilateral commitments by the Union's institutions;

D.whereas the fact that the Union lacks a coherent and comprehensive set of codified rules of administrative law makes it difficult for citizens to understand their administrative rights under Union law;

E.whereas the existing internal codes of conduct of the different institutions have a limited effect, differ from one another and are not legally binding;

F.whereas in its abovementioned resolution of 6 September 2001, in the belief that the same code of good administrative behaviour should apply to all Union institutions, bodies and agencies, Parliament approved with amendments the European Code of Good Administrative Behaviour drafted by the Ombudsman;

G.whereas in the same resolution Parliament called on the Commission to submit a proposal for a regulation containing a code of Good Administrative Behaviour based on Article 308 of the Treaty establishing the European Community;

H.whereas, as emphasised by the Ombudsman, this would help eliminate the confusion currently arising from the parallel existence of different codes for most Union institutions and bodies, would ensure that the institutions and bodies apply the same basic principles in their relations with citizens and would underline, both for citizens and for officials, the importance of such principles;

I.whereas all actions of the Union must comply with the rule of law under a strict separation of powers;

J.whereas the fundamental right to good administration enshrined in Article 41 of the Charter of Fundamental

Rights of the European Union has become legally binding as primary law;

K.whereas rules on good administration promote transparency and accountability;

L.whereas a pressing problem facing the European Union today is the lack of confidence on the part of citizens, which can affect its legitimacy; whereas the European Union needs to address swift, clear and visible answers to the citizens in order to respond to their worries;

M.whereas the codification of the service principle – that is, the principle that the administration should seek to guide, help, serve and support citizens, act with appropriate courtesy and therefore avoid unnecessarily cumbersome and lengthy procedures, thus saving the time and effort both of citizens and of officials – would help to meet the legitimate expectations of citizens and benefit both citizens and the administration in terms of improved service and increased efficiency; whereas awareness of the right of Union citizens to good administration should be increased, including through the Commission's relevant information services and networks;

N.whereas, taking into account the recommendations of the Group of States against corruption (GRECO) of the Council of Europe, a clear and binding set of rules for the Union's administration would be a positive signal in the fight against corruption in public administrations;

O.whereas a core set of principles of good administration is currently widely accepted among Member States;

P.whereas the case-law of the Court of Justice has developed well-established procedural principles which apply to Member States' procedures in community matters and which should a fortiori apply to direct administration by the Union;

Q.whereas a European Law of Administrative Procedure would help the Union's administration in using its power of internal organisation to facilitate and promote the highest standards of administration;

R.whereas a European Law of Administrative Procedure would enhance the Union's legitimacy and increase the confidence of citizens in the Union's administration;

S.whereas a European Law of Administrative Procedure could strengthen a spontaneous convergence of national administrative law, with regard to general principles of procedure and the fundamental rights of citizens vis-à-vis the administration, and thus strengthen the process of integration;

T.whereas a European Law of Administrative Procedure could foster cooperation and the exchange of best practices between national administrations and the Union's administration, in order to fulfil the objectives set up by Article 298 of the Treaty on the Functioning of the European Union;

<…>

2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;

3. Considers that the requested proposal does not have financial implications;

4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council, to the European Ombudsman and to the parliaments and governments of the Member States.

ANNEX

DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED

(Extract)

Recommendation 1 (on the objective and scope of the regulation to be adopted)

The objective of the regulation should be to guarantee the right to good administration by means of an open, efficient and independent administration based on a European Law of Administrative Procedure.

<…>

The regulation should codify the following principles:

Principle of lawfulness: the Union's administration shall act in accordance with the law and apply the rules and procedures laid down in the Union's legislation. Administrative powers shall be based on, and their content shall comply with, the law.

Decisions taken or measures adopted shall never be arbitrary or driven by purposes which are not based on the law or motivated by the public interest.

Principle of non-discrimination and equal treatment: the Union's administration shall avoid any unjustified discrimination between persons based on nationality, gender, race, colour, ethnic or social origin, language, religion or beliefs, political or any other opinion, disability, age, or sexual orientation.

Persons who are in a similar situation shall be treated in the same manner. Differences in treatment shall only be justified by objective characteristics of the matter in question.

Principle of proportionality: the Union's administration shall take decisions affecting the rights and interests of persons only when necessary and to the extent required to achieve the aim pursued.

When taking decisions, officials shall ensure a fair balance between the interests of private persons and the general interest. In particular, they shall not impose administrative or economic burdens which are excessive in relation to the expected benefit.

Principle of impartiality: the Union's administration shall be impartial and independent. It shall abstain from any arbitrary action adversely affecting persons, and from any preferential treatment on any grounds.

The Union's administration shall always act in the Union's interest and for the public good. No action shall be guided by any personal (including financial), family or national interest or by political pressure. The Union's administration shall guarantee a fair balance between different types of citizens' interests (business, consumers and other).

Principle of consistency and legitimate expectations: the Union's administration shall be consistent in its own behaviour and shall follow its normal administrative practice, which shall be made public. In the event that there are legitimate grounds for departing from such normal administrative practice in individual cases, a valid statement of reasons should be given for such departure.

Legitimate and reasonable expectations that persons might have in the light of the way in which the Union's administration has acted in the past shall be respected.

Principle of respect for privacy: the Union's administration shall respect the privacy of persons in accordance with Regulation (EC) No 45/2001.

The Union's administration shall refrain from processing personal data for non-legitimate purposes or transmitting such data to unauthorised third parties.

Principle of fairness: this must be respected as a basic legal principle indispensable in creating a climate of confidence and predictability in relations between individuals and the administration;

Principle of transparency: the Union's administration shall be open. It shall document the administrative procedures and keep adequate records of incoming and outgoing mail, documents received and the decisions and measures taken. All contributions from advisory bodies and interested parties should be made available in the public domain.

Requests for access to documents shall be dealt with in accordance with the general principles and limits laid down in Regulation (EC) No 1049/2001.

Principle of efficiency and service: actions on the part of the Union's administration shall be governed by the criteria of efficiency and public service.

Members of the staff shall advise the public on the way in which a matter which comes within their remit is to be pursued.

Upon receiving a request in a matter for which they are not responsible, they shall direct the person making the request to the competent service.

Recommendation 4 (on the rules governing administrative decisions)

Recommendation 4.1: on the initiation of the administrative procedure

Administrative decisions can be taken by the Union's administration on its own initiative or at the request of an interested party.

Recommendation 4.2: on the acknowledgment of receipt

Requests for individual decisions shall be acknowledged in writing, with an indication of the time-limit for the adoption of the decision in question. The consequences of any failure to adopt the decision within that time-limit (administrative silence) shall be indicated.

In the event of a defective request, the acknowledgment shall indicate a deadline for remedying the defect or producing any missing document.

Recommendation 4.3: on the impartiality of administrative decisions

No member of staff shall take part in an administrative decision in which he or she has a financial interest.

Any conflict of interest shall be communicated by the member of staff concerned to his or her immediate superior, who may take the decision to exclude the member of staff concerned from the procedure, having regard to the particular circumstances of the case.

An interested member of the public may request that an official be excluded from taking part in any decision which will affect that person's individual interests. The request to that effect shall be submitted in writing and shall state the grounds on which it is based. The official's immediate superior shall take a decision after hearing the official concerned.

Appropriate deadlines should be set for the handling of conflicts of interest.

Recommendation 4.4: on the right to be heard

The rights of the defence must be respected at every stage of the procedure. If the Union's administration takes a decision that will directly affect the rights or interests of persons, the persons concerned shall be given the opportunity to express their views in writing or orally before that decision is taken, if necessary, or if they so choose, with the assistance of a person of their choice.

Recommendation 4.5: on the right to have access to one's file

An interested party shall be granted full access to his or her file. It should be up to the interested party to determine which non-confidential documents are relevant.

Recommendation 4.6: on time-limits

Administrative decisions shall be taken within a reasonable time-limit and without delay. Time-limits shall be fixed in the corresponding rule governing each specific procedure. Where no time-limit is established, it should not exceed three months from the date of the decision to initiate a proceeding if it was initiated ex officio or from the date of the request of the interested party.

If no decision can be taken within that time-limit for objective reasons, such as the need to provide time for the remedying of a defective request, the complexity of the matters raised, the obligation to suspend the procedure pending the decision of a third party, etc., the person concerned shall be informed thereof and the decision shall be taken in the shortest possible time.

Recommendation 4.7: on the form of administrative decisions

Administrative decisions shall be in writing and shall be worded in a clear, simple and understandable manner. They shall be drafted in the language chosen by the addressee, provided that it is one of the official languages of the Union.

Recommendation 4.8: on the duty to state reasons

Administrative decisions must clearly state the reasons on which they are based. They shall indicate the relevant facts and their legal basis.

They must contain an individual statement of reasons. If this is not possible due to the fact that a large number of persons are concerned by similar decisions, standard communications should be allowed. In that case, however, any citizen who expressly requests an individual statement of reasons should be provided with it.

Recommendation 4.9: on the notification of administrative decisions

Administrative decisions which affect the rights and interests of individuals shall be notified in writing to the person or persons concerned as soon as they are adopted.

Recommendation 4.10: on the indication of remedies available

Administrative decisions shall clearly state – where Union law so provides – that an appeal is possible, and shall describe the procedure to be followed for the submission of such appeal, as well as the name and office address of the person or department with whom the appeal must be lodged and the deadline for lodging it.

Where appropriate, administrative decisions shall refer to the possibility of starting judicial proceedings and/or lodging a complaint with the European Ombudsman.

Recommendation 5 (on the review and correction of own decisions)

The regulation should include the possibility for the Union's administration to correct a clerical, arithmetic or similar error at any time on its own initiative or following a request by the person concerned.

Provisions should be inserted regarding the rectification of administrative decisions on other grounds, clearly differentiating between the procedure to be followed for the revision of decisions adopted which affect adversely the interests of a person and those which are beneficial to that person.

Recommendation 6 (on the form and publicity to be given to the regulation)

The regulation should be drafted in a clear and concise manner, and should be easily understandable by the public.

It should be adequately publicised in the web pages of each Union institution, body, office and agency.

<...>

Public service principles for the EU civil service

European Ombudsman, 2012

(Extract)

Public service principles that should guide EU civil servants

1. Commitment to the European Union and its citizens

Civil servants should be conscious that the Union's institutions exist in order to serve the interests of the Union and of its citizens in fulfilling the objectives of the Treaties.

They should make recommendations and decisions only to serve these interests.

Civil servants should carry out their functions to the best of their abilities and strive to meet the highest professional standards at all times.

They should be mindful of their position of public trust and set a good example to others.

2. Integrity

Civil servants should be guided by a sense of propriety and conduct themselves at all times in a manner that would bear the closest public scrutiny. This obligation is not fully discharged merely by acting within the law.

Civil servants should not place themselves under any financial or other obligation that might influence them in the performance of their functions, including by the receipt of gifts. They should promptly declare any private interests relating to their functions.

Civil servants should take steps to avoid conflicts of interest and the appearance of such conflicts. They should take swift action to resolve any conflict that arises. This obligation continues after leaving office.

3. Objectivity

Civil servants should be impartial, open-minded, guided by evidence, and willing to hear different viewpoints. They should be ready to acknowledge and correct mistakes.

In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly prescribed by law.

Civil servants should not discriminate or allow the fact that they like, or dislike, a particular person to influence their professional conduct.

4. Respect for others

Civil servants should act respectfully to each other and to citizens. They should be polite, helpful, timely, and cooperative.

They should make genuine efforts to understand what others are saying and express themselves clearly, using plain language.

5. Transparency

Civil servants should be willing to explain their activities and to give reasons for their actions.

They should keep proper records and welcome public scrutiny of their conduct, including their compliance with these public service principles.

<...>

Regulation (EC) № 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the community institutions and bodies and on the free movement of such data

(Extract)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
<...>

HAVE ADOPTED THIS REGULATION:

CHAPTER I
GENERAL PROVISIONS

Article 1
Object of the Regulation

1. In accordance with this Regulation, the institutions and bodies set up by, or on the basis of, the Treaties establishing the European Communities, hereinafter referred to as 'Community institutions or bodies', shall protect the fundamental rights and freedoms of natural persons, and in particular their right to privacy with respect to the processing of personal data and shall neither restrict nor prohibit the free flow of personal data between themselves or to recipients subject to the national law of the Member States implementing Directive 95/46/EC.

2. The independent supervisory authority established by this Regulation, hereinafter referred to as the European Data Protection Supervisor, shall monitor the application of the provisions of this Regulation to all processing operations carried out by a Community institution or body.

Article 2
Definitions

For the purposes of this Regulation:

(a) ‘personal data’ shall mean any information relating to an identified or identifiable natural person hereinafter referred to as ‘data subject’; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;

(b) ‘processing of personal data’ hereinafter referred to as ‘processing’ shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

(c) ‘personal data filing system’ hereinafter referred to as ‘filing system’ shall mean any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;

(d) ‘controller’ shall mean the Community institution or body, the Directorate-General, the unit or any other organisational entity which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by a specific Community act, the controller or the specific criteria for its nomination may be designated by such Community act;

(e) ‘processor’ shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(f) ‘third party’ shall mean a natural or legal person, public authority, agency or body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorised to process the data;

(g) ‘recipient’ shall mean a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not; however, authorities which may receive data in the framework of a particular inquiry shall not be regarded as recipients;

(h) ‘the data subject’s consent’ shall mean any freely given specific and informed indication of his or her wishes by which the data subject signifies his or her agreement to personal data relating to him or her being processed.

Article 3
Scope

1. This Regulation shall apply to the processing of personal data by all Community institutions and bodies insofar as such processing is carried out in the exercise of activities all or part of which fall within the scope of Community law.

2. This Regulation shall apply to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system.

CHAPTERII

GENERAL RULES ON THE LAWFULNESS OF THE PROCESSING OF PERSONAL DATA

SECTION 1
PRINCIPLES RELATING TO DATA QUALITY

Article 4
Data quality

1. Personal data must be:

(a) processed fairly and lawfully;

(b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that the controller provides appropriate safeguards, in particular to ensure that the data are not processed for any other purposes or used in support of measures or decisions regarding any particular individual;

(c) adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed;

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Community institution or body shall lay down that personal data which are to be stored for longer periods for historical, statistical or scientific use should be kept either in anonymous form only or, if that is not possible, only with the identity of the data subjects encrypted. In any event, the data shall not be used for any purpose other than for historical, statistical or scientific purposes.

2. It shall be for the controller to ensure that paragraph 1 is complied with.

SECTION 2
CRITERIA FOR MAKING DATA PROCESSING LEGITIMATE

Article 5
Lawfulness of processing

Personal data may be processed only if:

(a) processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in the Community institution or body or in a third party to whom the data are disclosed, or

(b) processing is necessary for compliance with a legal obligation to which the controller is subject, or

(c) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or

(d) the data subject has unambiguously given his or her consent, or

(e) processing is necessary in order to protect the vital interests of the data subject.

Article 6
Change of purpose

Without prejudice to Articles 4, 5 and 10:

1. Personal data shall only be processed for purposes other than those for which they have been collected if the change of purpose is expressly permitted by the internal rules of the Community institution or body.

2. Personal data collected exclusively for ensuring the security or the control of the processing systems or operations shall not be used for any other purpose, with the exception of the prevention, investigation, detection and prosecution of serious criminal offences.

Article 7
Transfer of personal data within or between Community institutions or bodies

Without prejudice to Articles 4, 5, 6 and 10:

1. Personal data shall only be transferred within or to other Community institutions or bodies if the data are necessary for the legitimate performance of tasks covered by the competence of the recipient.

2. Where the data are transferred following a request from the recipient, both the controller and the recipient shall bear the responsibility for the legitimacy of this transfer.

The controller shall be required to verify the competence of the recipient and to make a provisional evaluation of the necessity for the transfer of the data. If doubts arise as to this necessity, the controller shall seek further information from the recipient.

The recipient shall ensure that the necessity for the transfer of the data can be subsequently verified.

3. The recipient shall process the personal data only for the purposes for which they were transmitted.

<...>

SECTION 6
EXEMPTIONS AND RESTRICTIONS

Article 20
Exemptions and restrictions

1. The Community institutions and bodies may restrict the application of Article 4(1), Article 11, Article 12(1), Articles 13 to 17 and Article 37(1) where such restriction constitutes a necessary measure to safeguard:

(a) the prevention, investigation, detection and prosecution of criminal offences;

(b) an important economic or financial interest of a Member State or of the European Communities, including monetary, budgetary and taxation matters;

(c) the protection of the data subject or of the rights and freedoms of others;

(d) the national security, public security or defence of the Member States;

(e) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in (a) and (b).

2. Articles 13 to 16 shall not apply when data are processed solely for purposes of scientific research or are kept in personal form for a period which does not exceed the period necessary for the sole purpose of compiling statistics, provided that there is clearly no risk of breaching the privacy of the data subject and that the controller provides adequate legal safeguards, in particular to ensure that the data are not used for taking measures or decisions regarding particular individuals.

3. If a restriction provided for by paragraph 1 is imposed, the data subject shall be informed, in accordance with Community law, of the principal reasons on which the application of the restriction is based and of his or her right to have recourse to the European Data Protection Supervisor.

4. If a restriction provided for by paragraph 1 is relied upon to deny access to the data subject, the European Data Protection Supervisor shall, when investigating the complaint, only inform him or her of whether the data have been processed correctly and, if not, whether any necessary corrections have been made.

5. Provision of the information referred to under paragraphs 3 and 4 may be deferred for as long as such information would deprive the restriction imposed by paragraph 1 of its effect.

SECTION 7
CONFIDENTIALITY AND SECURITY OF PROCESSING

Article 21
Confidentiality of processing

A person employed with a Community institution or body and any Community institution or body itself acting as processor, with access to personal data, shall not process them except on instructions from the controller, unless required to do so by national or Community law.

Article 22
Security of processing

1. Having regard to the state of the art and the cost of their implementation, the controller shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks represented by the processing and the nature of the personal data to be protected. Such measures shall be taken in particular to prevent any unauthorised disclosure or access, accidental or unlawful destruction or accidental loss, or alteration, and to prevent all other unlawful forms of processing.

2. Where personal data are processed by automated means, measures shall be taken as appropriate in view of the risks in particular with the aim of:

(a) preventing any unauthorised person from gaining access to computer systems processing personal data;

(b) preventing any unauthorised reading, copying, alteration or removal of storage media;

(c) preventing any unauthorised memory inputs as well as any unauthorised disclosure, alteration or erasure of stored personal data;

(d) preventing unauthorised persons from using data-processing systems by means of data transmission facilities;

(e) ensuring that authorised users of a data-processing system can access no personal data other than those to which their access right refers;

(f) recording which personal data have been communicated, at what times and to whom;

(g) ensuring that it will subsequently be possible to check which personal data have been processed, at what times and by whom;

(h) ensuring that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the contracting institution or body;

(i) ensuring that, during communication of personal data and during transport of storage media, the data cannot be read, copied or erased without authorisation;

(j) designing the organisational structure within an institution or body in such a way that it will meet the special requirements of data protection.
<...>

Regulation (EC) № 1049/2001 of the European Parliament and of the Council of 30 May 2001 on access to European Parliament, Council and Commission documents

(Extract)

The purpose of this Regulation is to set out the principles, conditions and limits governing the right of access to European Parliament, Council and Commission documents provided for in Article 255 of the Treaty establishing the European Community (EC). It also aims to establish rules ensuring the exercise of this right and to promote good administrative practices on access to documents.

ACT

Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

SUMMARY

The purpose of this Regulation is to make access to the documents of the European institutions easier for citizens. They may access any type of documents, subject to the conditions defined in the Regulation and the exceptions laid out therein. It applies to all documents held by an institution, that is to say, documents drawn up or received by it and in its possession, in all areas of European Union (EU) activity.

Beneficiaries are any EU citizens and any natural or legal persons residing or having their headquarters in an EU country.

Exceptions and rights of third parties

The institutions can refuse access to a document where disclosure would undermine the protection of:

- the public interest as regards public security, defence, international relations, and the financial, monetary or economic policy of the EU or an EU country;
- privacy and the integrity of an individual, in particular in accordance with EU legislation regarding the protection of personal data;
- a person’s commercial interests;
- court proceedings and legal advice;
- the purpose of inspections, investigations and audits.
- The European institutions may refuse to disclose a particular document if this is justified by an overriding public interest.

Access to an internal document drawn up by an institution may be refused if there is a risk that its disclosure would seriously undermine that institution’s decision-making process, unless there is an overriding public interest in its disclosure.

As regards third-party documents , the institution must consult the third party with a view to assessing whether an exception is applicable.

Documents in the EU countries

Where an EU country receives a request for a document in its possession, originating from an institution, it must consult with the institution concerned to ensure that the disclosure is in line with, the objectives of this Regulation. The country may instead refer the request to the institution.

Applications, processing of applications and access to documents

Applications for access to a document must be made in written form, including electronic form, in one of the languages of the EU. The applicant is not obliged to state reasons for the application.

An application for access to a document must be handled promptly. An acknowledgement of receipt must be sent to the applicant. Within 15 working days from the registration of the application, the institution must either grant access to the document requested, or refuse access.

In the event of total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

The applicant has access to documents either by consulting them on the spot or by receiving a copy.

Treatment of sensitive documents

Sensitive documents are documents originating from the institutions or the agencies established by them, from EU countries, non-EU countries or international organisations, classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIAL. Applications for access to sensitive documents must be handled only by those persons who have a right to acquaint themselves with those documents. Sensitive documents are recorded in the register or released only with the consent of the originator.

Registers and administrative practice

To facilitate access to documents, each institution must provide access to a register of documents. Access to the register should be provided in electronic form.

EU countries must cooperate with the institutions in providing information to citizens. Institutions must develop good administrative practices, in order to ensure the exercise of the right of access guaranteed by this Regulation. They must establish an inter-institutional committee to examine best practice, address possible conflicts and discuss future developments on public access to documents.

<...>

Proposal for a Regulation of the European Parliament and of the Council of 30 April 2008 regarding public access to European Parliament, Council and Commission documents [COM(2008) 229 final - Not published in the Official Journal].

This proposal seeks to amend Regulation (EC) No 1049/2001 in light of the European Parliament's motion for a resolution of 4 April 2006 on access to the institutions' texts (A6-0052/2006), the Regulation (EC) No 1367/2006 of 6 September 2006 on the Aarhus Convention, and the public consultation on the review of the Regulation (EC) No 1049/2001 (SEC(2008) 29/2).

The proposal underpins amendments with regard to the following Articles:

- the purpose of the Regulation, which is to grant public access to the institutions' documents;
- the beneficiaries of the Regulation, who may be any natural or legal persons, regardless of their nationality or State of residence;
- the scope of the Regulation, which excludes documents submitted to Courts by third parties. The scope also excludes documents related to an investigation as long as the investigation has not been closed or the relevant decision has not become definitive;
- the definition of document, which indicates that the document has been formally transmitted to its recipient(s), circulated within the institutions or otherwise registered. The definition of document also applies to data contained in electronic systems, if they can be extracted in a readable form;
- the exceptions to the Regulation, which include documents that concern environmental protection, relate to court, arbitration and dispute settlement proceedings, and aim at protecting selection procedures for staff and contracting parties. The disclosure of non-professional related personal data of civil servants and interest representatives is regulated by EC legislation on processing of personal data (Regulation (EC) No 45/2001);
- the consultations with third parties, which provide for the obligation to consult the authorities of the EU country from where the document originates, unless the document is part of a procedure leading to a legislative or non-legislative act of general application;
- the applications for documents, which take into account the clarity with which the document is requested and thus identified. With regard to confirmatory applications, the time limit for handling these is extended from 15 to 30 working days. In case of even partial refusal, the applicant can bring proceedings against the institution before the Court of First Instance and/or complain to the European Ombudsman;
- access to the document following the application, which cannot derogate from specific modalities laid down in EU or national law, in particular when access is subject to a payment fee;
- the active dissemination of documents, which provides for direct access to documents that are part of a procedure leading to a legislative or non-legislative act of general application. Each institution is to define the other categories that are to be made directly accessible to the public.

<…>

Communication from the Commission to the European Parliament and the Council "A new EU framework to strengthen the rule of law"

COM(2014) 158 final

(Extract)

Introduction

The rule of law is the backbone of any modern constitutional democracy. It is one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU and, as such, one of the main values upon which the Union is based. This is recalled by Article 2 of the Treaty on European Union (TEU), as well as by the Preambles to the Treaty and to the Charter of Fundamental Rights of the EU. This is also why, under Article 49 TEU, respect for the rule of law is a precondition for EU membership. Along with democracy and human rights, the rule of law is also one of the three pillars of the Council of Europe and is endorsed in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention)[35] .

From a broader European perspective, the framework is meant to contribute to reaching the objectives of the Council of Europe, including on the basis of the expertise of the European Commission for Democracy through Law (Venice Commission)[36].

1. Why the rule of law is of fundamental importance for the EU

The principle of the rule of law has progressively become a dominant organisational model of modern constitutional law and international organisations (including the United Nations and the Council of Europe) to regulate the exercise of public powers. It makes sure that all public powers act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

The precise content of the principles and standards stemming from the rule of law may vary at national level, depending on each Member State's constitutional system. Nevertheless, case law of the Court of Justice of the European Union ("the Court of Justice") and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the Venice Commission, provide a non-exhaustive list of these principles and hence define the core meaning of the rule of law as a common value of the EU in accordance with Article 2 TEU.

Those principles include **legality**, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; **legal certainty**; **prohibition of arbitrariness of the executive powers**; **independent and impartial courts; effective judicial review including respect for fundamental rights**; **and equality before the law**[37].

35 See the Preamble of the Convention and Article 3 of the Statute of the Council of Europe (http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm).

36 The Venice Commission, officially named the European Commission for Democracy through Law, is the Council of Europe's advisory body on constitutional matters (see http://www.venice.coe.int/WebForms/pages/?p=01_Presentation).

37 For an overview of the relevant case law on the rule of law and the principles which the rule of law entails see Annex I.

Both the Court of Justice and the European Court of Human Rights confirmed that those principles are not purely formal and procedural requirements. They are the vehicle for ensuring compliance with and respect for democracy and human rights. The rule of law is therefore a constitutional principle with both formal and substantive components[38].

This means that respect for the rule of law is intrinsically linked to respect for democracy and for fundamental rights: there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa. Fundamental rights are effective only if they are justiciable. Democracy is protected if the fundamental role of the judiciary, including constitutional courts, can ensure freedom of expression, freedom of assembly and respect of the rules governing the political and electoral process.

Within the EU, the rule of law is of particular importance. Compliance with the rule of law is not only a prerequisite for the protection of all fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and from international law. The confidence of all EU citizens and national authorities in the legal systems of all other Member States is vital for the functioning of the whole EU as "an area of freedom, security and justice without internal frontiers". Today, a judgment in civil and commercial matters of a national court must be automatically recognised and enforced in another Member State and a European Arrest Warrant against an alleged criminal issued in one Member State must be executed as such in another Member State[39]. Those are clear examples of why all Member States need to be concerned if the rule of law principle is not fully respected in one Member State. This is why the EU has a strong interest in safeguarding and strengthening the rule of law threats across the Union.

2. Why a new EU Framework to strengthen the rule of law

In cases where the mechanisms established at national level to secure the rule of law cease to operate effectively, there is a systemic threat to the rule of law and, hence, to the functioning of the EU as an area of freedom, security and justice without internal frontiers. In such situations, the EU needs to act to protect the rule of law as a common value of the Union.

However, experience has shown that a systemic threat to the rule of law in Member States cannot, in all circumstances, be effectively addressed by the instruments currently existing at the level of the Union.

Action taken by the Commission to launch **infringement procedures**, based on **Article 258 TFEU**, has proven to be an important instrument in addressing certain rule of law concerns[40]. But infringement procedures can be launched by the Commission only where these concerns constitute, at the same time, a breach of a specific provision of EU law.[41]

There are situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law. For these situations, the **preventive and sanctioning mechanisms provided for in Article 7 TEU** may apply. The Commission is among the actors which are empowered by the Treaty to issue a reasoned proposal in order to activate those mechanisms. Article 7 TEU aims at ensuring that all Member States respect the common values of the EU, including the rule of law. Its scope is not confined to areas covered by EU law, but empowers the EU to intervene with the purpose of

38 The Court of Justice does not refer to the rule of law as simply a formal and procedural requirement, but also highlights its substantive value by specifying that a "Union based on the rule of law" means that the EU institutions are subject to judicial review of the compatibility of their acts not only with the Treaty but "with the general principles of law which include fundamental rights" (see ex pluribus, Case C-50/00 P, Unión de Pequeños Agricultores [2002] ECR I-06677, para 38 and 39; Joined Cases C-402/05 P and C-415/05 P, Kadi, [2008], ECR I-06351, para 316).This has been also confirmed by the European Court of Human Rights which gives the rule of law a substantive nature by establishing that it is a concept inherent in all articles of the ECHR (see for example Convention Stafford v United Kingdom, 28 May 2001, para 63). It must be highlighted that in the French version the Court does not use only the terms "pre-eminence du droit" but also "Etat de droit".

39 See Case C-168/13, Jeremy F v Premier Ministre, not yet published, para 35 and 36.

40 See, for example, cases C-286/12 Commission v Hungary, not yet published (equal treatment as regards the compulsory retirement of judges and public prosecutors); C-518/07 Commission v Germany [2010] ECR I-01885 and C-614/10 Commission v Austria, not yet published (independence of data protection authorities).

41 The Commission's action to ensure compliance with the Charter of Fundamental Rights illustrates this legal limitation stemming from the Treaty itself. As explained in its Communication "Strategy for the effective implementation of the Charter of Fundamental rights" of 19 October 2010 (COM(2010) 573 final), the Commission is determined to use all the means at its disposal to ensure that the Charter is fully respected by the Member States. This concerns in particular Article 47 of the Charter which provides that everyone whose rights guaranteed by EU law are violated has the right to an effective remedy before an independent tribunal. However, this can be done by the Commission vis-à-vis Member States "only when they are implementing Union law", as set out explicitly in Article 51 of the Charter. See for example Case C-87/12, Kreshnik Ymeraga and Others v Ministre du Travail, de l'Emploi et de l'Immigration, not yet published, C-370/12 Thomas Pringle v Governement of Ireland, Ireland and The Attorney General, not yet published and C-617/10, Åklagaren v Hans Åkerberg Fransson, not yet published.

protecting the rule of law also in areas where Member States act autonomously. As explained in the Commission's Communication on Article 7 TEU, this is justified by the fact that "if a Member State breaches the fundamental values in a manner sufficiently serious to be caught by Article 7, this is likely to undermine the very foundation of the EU and the trust between its members, whatever the field in which the breach occurs"[42].

Nevertheless, the preventive mechanism of Article 7(1) TEU can be activated only in case of a "clear risk of a serious breach" and the sanctioning mechanism of Article 7(2) TEU only in case of a "serious and persistent breach by a Member State" of the values set out in Article 2 TEU. The thresholds for activating both mechanisms of Article 7 TEU are very high and underline the nature of these mechanisms as a last resort.

Recent developments in some Member States have shown that these mechanisms are not always appropriate to quickly respond to threats to the rule of law in a Member State.

There are therefore situations where threats relating to the rule of law cannot be effectively addressed by existing instruments[43]. A **new EU Framework to strengthen the Rule of Law** as a key common value of the EU is needed in addition to infringement procedures and Article 7 TEU mechanisms. The Framework will be complementary to all the existing mechanisms already in place at the level of the Council of Europe to protect the rule of law[44]. It reflects both the objectives of the EU to protect its founding values and to reach a further degree of mutual trust and integration in the area of freedom, security and justice without internal frontiers.

By setting up a new Framework to strengthen the Rule of Law the Commission seeks to provide clarity and enhance predictability as to the actions it may be called upon to take in the future, whilst ensuring that all Member States are treated equally. On the basis of this Communication, the Commission is willing to engage in further discussions with the Member States, the Council and the European Parliament on these issues.

3. How the new EU Rule of Law Framework will work

The purpose of the Framework is to enable the Commission to find a solution with the Member State concerned in order to prevent the emerging of a systemic threat to the rule of law in that Member State that could develop into a "clear risk of a serious breach" within the meaning of Article 7 TEU, which would require the mechanisms provided for in that Article to be launched.

In order to ensure the equality of Member States, the Framework will apply in the same way to all Member States and will operate on the basis of the same benchmarks as to what is a systemic threat to the rule of law.

<…>

Conclusion

This Communication sets out a new EU Framework for the Rule of Law as the Commission's contribution to strengthening the capacity of the EU to ensure effective and equal protection of the rule of law in all Member States. It thereby responds to requests from the European Parliament and the Council. While not excluding future developments of the Treaties in this area – which will have to be discussed as part of the broader reflections on the future of Europe –, it is based on Commission competences as provided for by existing Treaties. In addition to the action of the Commission, the role of the European Parliament and the Council will be crucial in reinforcing the EU's determination to uphold the rule of law.

<…>

42 Communication from the Commission of 15 October 2003: Respect for and promotion of the values on which the Union is based, COM(2003) 606 final.

43 In some cases, systemic deficiencies related to the rule of law may be tackled using the Cooperation and Verification Mechanisms (CVM) based on the Acts of Accession for Romania and Bulgaria. However, these mechanisms, which have their basis directly in primary EU law, address pre-accession-related and therefore transitional situations. They are therefore not suitable for addressing a threat to the rule of law in *all* EU Member States.

44 Article 8 of the Statute of the Council of Europe provides that a Member State that has "seriously violated" the principles of the rule of law and human rights may be suspended from its rights of representation and even be expelled from the Council of Europe. Like the mechanisms set out in Article 7 TEU, this mechanism has never been activated.

European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI))

(Extract)

The European Parliament,

<…>

A. whereas European integration is a political project born out of the ashes of the Second World War and the persecution and repression of individuals by totalitarian regimes, and whereas its aim has been to anchor European states to democracy and the rule of law in order to respect and promote human rights, fundamental rights, equality and the protection of minorities, on the basis of the Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (Convention) and other instruments on human rights and fundamental freedoms, and avoid a return to any kind of authoritarian regime;

B. whereas the individual, citizen or resident, must be at the centre of the European Union, and whereas fundamental rights protect any individual against possible interference, abuse and violence by authorities – at all levels – with respect to their private life and their rights and freedoms; and whereas respect for and promotion of human rights, fundamental freedoms, democracy and the values and principles enshrined in the EU treaties and international human rights instruments (UDHR, Convention, ICCPR, ICESCR, etc.) must be at the centre of European integration;

C. whereas the European Union has developed a fundamental acquis, which aims to ensure that fundamental rights are respected, protected and promoted, including through the development of the 'Copenhagen criteria', the inclusion of Articles 2, 6 and 7 in the EU Treaty, the Charter of Fundamental Rights, the obligation to accede to the European Convention on Human Rights and the corresponding national legislative provisions of the Member States;

D. whereas, with the entry into force of the Treaty of Lisbon, the Charter has transformed values and principles into tangible and enforceable rights and whereas, having the same value as the Treaty of Lisbon, it has become legally binding on the institutions, bodies and agencies of the EU, as well as the Member States when implementing EU law;

E. whereas a genuine culture of fundamental rights must be developed, promoted and reinforced in the institutions of the Union but also in Member States, especially in applying and implementing Union law, both internally and in relations with third countries; whereas the implementation of these values and principles must also be based on effective monitoring of respect for the fundamental rights guaranteed in the Charter, for example when legislative proposals are being drawn up; whereas other considerations may not take precedence over respecting and guaranteeing those fundamental rights, since this would risk discrediting the role and image of the European Union regarding human rights, particularly in its relations with third countries;

F. whereas the European Union operates on the basis of the presumption and mutual trust that EU Member States conform with democracy, the rule of law and fundamental rights, as enshrined in the Convention and the Charter of Fundamental Rights, notably in relation to the development of an Area of Freedom, Security and Justice and the operation of the mutual recognition principle;

G. whereas the mutual recognition principle leads to a situation where people can be transferred from one jurisdiction to another, without any prior human rights scrutiny of the respective decisions;

H. whereas the Court of Justice of the European Union underlined in joined cases C-411/10 and C-493/10 that such a presumption of compliance with fundamental rights must be rebuttable and that judges must therefore check whether there are substantial grounds for believing that there are systemic flaws in the judicial system of the other Member States;

I. whereas it is consequently necessary to make sure that national authorities have sufficient evidence available in order to take an informed decision as to whether or not there are systemic flaws in the judicial systems of other Member States;

J. whereas corruption causes social harm and violations of fundamental rights, as organised crime groups use it to commit other serious crimes, such as trafficking in human beings; whereas an efficient, independent and impartial judicial system is essential for the rule of law and to ensure the protection of the fundamental rights and civil liberties of citizens in Europe;

K. whereas the European Union is going through a period of economic and financial crisis, and also a democratic and constitutional crisis, as demonstrated by recent events in certain Member States, and whereas these tensions have highlighted the lack of appropriate instruments to cope with this crisis, as well as the lack of political will and the difficulties in applying the monitoring, evaluation and sanctioning mechanisms provided for in the existing treaties, in particular the requirements under Articles 2 and Article 7 of the EU Treaty;

L. whereas Parliament has repeatedly called for a strengthening of the mechanisms to ensure that the values of the Union set out in Article 2 of the EU Treaty are respected, protected and promoted, and for crisis situations in the Union and in the Member States to be addressed, and whereas a debate is under way on the creation of a 'new mechanism', in which the Commission, the Council and Member States are joining Parliament and NGOs;

M. whereas the FRA underlined in the focus section of its Annual Report on 2012 dedicated to 'The European Union as a Community of values: safeguarding fundamental rights in times of crisis' the fact that a common understanding of the Article 2 values and the legal obligations deriving therefrom is an aspiration that calls for the establishment of a regular dialogue within the EU;

N. whereas the Commission has indicated its desire to strengthen the rule of law in the European Union and whereas it could propose the use of letters of formal notice under Article 7(1) of the existing EU Treaty; whereas it has also spoken of the need to amend the treaties and has announced that it might propose amendments before the end of 2013, or in early 2014, with a view to holding a debate during elections (including on Article 7) and seeking a consensus on these proposals, the aim of which should be to ensure that the EU policy on fundamental rights in the EU is based on clear rules and mechanisms, objective indicators, data and evidence which are transparent, fair and predictable and provide strong protection for individual rights, democracy and the rule of law;

O. whereas any decision on the matter should guarantee, as soon as possible, the proper application of Articles 2, 6 and 7 of the EU Treaty and ensure that every decision is taken on the basis of objective criteria and an objective evaluation, in order to address criticisms of a lack of indicators and evaluation criteria, of differential treatment and of political bias;

P. whereas numerous fundamental rights violations are still occurring in the European Union and in the Member States, as detailed in (annual and special) reports by the Commission, the FRA, the Council of Europe (annual reports and judgments of the European Court of Human Rights, documents and reports of the Commissioner for Human Rights, CoE Parliamentary Assembly documents), UN documents (including the documents and reports of the UN Human Rights Council, of the ***UN High Commissioner for Human Rights*** , of the Special Rapporteurs, etc.),

documents produced by NGOs (such as Human Rights Watch, Amnesty International, the Open Society Institute, ILGA-Europe, ECRE, Reporters without Borders, Freedom House, FIDH, etc.), etc.; whereas such violations require appropriate responses from the Commission, the Council and Member States, given their gravity and recurrence;

Q. whereas these organisations have expressed and recorded their concerns, particularly with regard to the situation of Roma, migrants, asylum seekers, refugees, minorities, members of LGBT communities, the media and journalists, the actions of the security forces, police and secret services, the investigations necessary to prosecute and punish those responsible for human rights violations, state involvement in acts of torture and ill-treatment committed in third countries, the use of evidence thus obtained, conditions of detention and the ill-treatment of detainees;

R. whereas the preamble of the Treaty on European Union, Articles 8, 9, 10, 19 and 21 of the EU Charter of Fundamental Rights and the case law established by the EU Court of Justice acknowledge the importance of fundamental social rights through their embodiment in cross-cutting principles of Community law, thus making it clear that the EU must guarantee fundamental rights and freedoms, such as trade union rights, the right to strike, and the right of association, assembly, etc., as defined in the European Social Charter, and whereas Article 151 of the Treaty on the Functioning of the European Union contains an explicit reference to fundamental social rights such as those set out in the European Social Charter;

S. whereas Articles 2 and 3 of the Charter of Fundamental Rights recognise the right to life and the right to the integrity of the person;

T. whereas there are about 100 million children in the European Union and about 80 million European persons with disabilities; whereas persons with disabilities, especially children, are still suffering from a lack of assistance and support as regards their inclusion in schools, and are experiencing difficulties in accessing buildings or services and trouble in being heard and participating in decisions affecting their lives; whereas the EU, as a party to the UN Convention on the Rights of Persons with Disabilities, has the obligation to promote, protect and respect the rights of persons with disabilities as enshrined in the Convention, to adopt a strategy to implement the Convention and to ensure that policies and existing and future primary and secondary law comply with the provisions of the Convention;

U. whereas women and girls are the main victims of gender-based violence, given that, according to estimates in the EU, 20-25 % of women have suffered physical violence at least once during their lives; whereas hundreds of thousands of women living in Europe have been subjected to genital mutilation and thousands of girls are at risk;

V. whereas women in the EU earn around 16 % less per hour than men;

W. whereas poverty, gender inequality and gender stereotypes increase the risk of violence and other forms of exploitation, including trafficking in women and prostitution, and hamper the full participation of women in all areas of life;

X. whereas fundamental freedoms, human rights and equal opportunities should be guaranteed for all citizens of the European Union; whereas, however, the protection of national minorities and regional and minority languages in an enlarged EU is a major issue, which cannot be resolved simply by combating xenophobia and discrimination, but by adopting specific legal, linguistic, cultural, social, etc. regimes and treatments;

1. Stresses, that as a political, historical and ethical project, the European Union endeavours to bring together countries which share and together promote common European values, such as those laid down in Article 2 TEU and in the Charter of Fundamental Rights, as well as the Convention, including respect for human dignity, democracy, the rule of law, fundamental rights, equality, freedom, non-discrimination and protection of minorities,

which are closely linked and are mutual preconditions, and believes therefore that a fundamental pillar of the European identity is, and must be, the internal and external promotion of human rights, fundamental freedoms and democracy, which are European values;

2. Recommends that Parliament, the Commission and the Council recognise the existence of positive obligations to protect and promote human rights; emphasises that respect for fundamental rights and freedoms implies actions at various levels; highlights the role played in this area by regional and local authorities, NGOs and civil society, and asks the Commission and the Council to improve their cooperation with these actors;

3. Reminds the Union institutions and the Member States of the need to comply with their obligations to respect fundamental freedoms and rights; notes that participation in international treaties for the protection and promotion of human rights can only serve to strengthen the protection of fundamental rights within the EU;

4. Condemns the worrying trends with regard to breaches of human rights within the European Union, particularly in the fields of immigration and asylum, and with regard to discrimination and intolerance – especially affecting certain population groups (minorities and migrants) – security and terrorism, freedom of the press, freedom of movement within the Union and social and trade union rights; observes more and more frequently that Member States are adopting obstructive attitudes towards respect for these fundamental rights and freedoms, particularly with regard to Roma, women, LGBT people, asylum-seekers, migrants and other vulnerable population groups;

Institutional questions

5. Points out that it is essential for the European Union, its institutions and the Member States to guarantee respect for the common European values set out in Article 2 TEU, that all the instruments currently provided for in the treaties in this regard urgently need to be applied and implemented, and that where necessary amendments to the treaties should be prepared; stresses that the obligation to fulfil the Copenhagen criteria does not lapse after accession but remains incumbent on the Member States, that fundamental rights are part of Union primary law and that they must be respected when Union law is applied by any court or authority, be it at Union or national level; in this connection, regrets in particular the length of time taken by Convention accession negotiations and the fact that EU accession to the Convention has not already been completed;

6. Reminds the European institutions and the Member States that any policy relating to fundamental rights must first of all prevent any violations from occurring, particularly by means of accessible procedures for prevention and redress before a decision or measure is taken, to enable particular cases to be considered and judged as quickly as possible and in an effective, just and equitable manner, without discrimination;

7. Considers that the general public are increasingly concerned about respect for fundamental rights and about their protection and promotion, as demonstrated by the mobilisation in relation to, and greater attention devoted to, cases of violations, abuses or inequalities, both in everyday life and in symbolic or well-known cases, thanks in part to the better circulation of information with the aid of new technologies, social networks and the media; recalls that any violation, abuse or inequality is detrimental to democracy and the rule of law, as well as to the confidence of citizens in institutions and their representatives, particularly political decision-makers; stresses that institutions and political decision-makers must note and support this democratic trend by establishing new procedures for dialogue with citizens and by enhancing scrutiny of State authorities by members of the public, parliaments, courts and the media, while those authorities must be more open and transparent in order to serve the interests of citizens better;

8. Believes that in order to make full use of the potential of the treaties, there is a need to:

- complete the process of acceding to the European Convention on Human Rights and immediately put in place the necessary instruments to fully accomplish this obligation, which is enshrined the treaties, as it will provide an additional mechanism for enforcing the human rights of its citizens, inter alia with a view to ensuring the application by the Member States of the judgments given by the European Court of Human Rights, particularly 'pilot judgments; accede, as called for by the Council of Europe, to the European Social Charter, signed in Turin on 18 October 1961 and revised in Strasbourg on 3 May 1996; and for Member States to accede to and ratify the human rights conventions of the Council of Europe, to implement the already existing instruments of the acquis communautaire and to reconsider the opt-outs, which might risk affecting the rights of their citizens;

- ensure that legislative proposals and policies comply with the Charter and respect fundamental rights, by taking tangible steps towards ensuring that they are verified against the Charter in all phases of the drafting of legislation and that the impact on fundamental rights of EU legislation and its implementation by the Member States is systematically examined in the evaluation reports on the implementation of such legislation, as well as in the annual report on the monitoring of the application of EU law;

- ensure that the Commission – and the Council, where it initiates legislation – where appropriate, make use of the external independent expertise of the FRA;

- intensify the cooperation between the Commission and the Member States, as well as with the European Parliament and the national parliaments, in order to improve the implementation of existing EU human rights legislation;

- ensure that the drafting and transposition of EU law which affects and develops fundamental rights are strengthened and are carried out correctly, by following a rigorous policy of evaluation and monitoring and by bringing violations before the Court of Justice, particularly in areas within the competence of the EU, such as non-discrimination, equality, gender, disability, data protection, asylum and immigration;

- ensure the promotion of a substantial rule of law approach which takes into account how fundamental rights are protected in practice;

- acknowledge that a strong political will is required to address these issues, especially in times of economic and financial crisis;

- strengthen and ensure transparency in the interinstitutional dialogue on fundamental rights or when European citizens' interests are at stake;

- ensure that the Commission makes full use of the existing mechanisms and that it launches objective evaluations and investigations and initiates infringement proceedings if a case is well grounded, thus avoiding double standards, wherever a Member State violates the rights enshrined in the Charter when implementing EU law;

- plan ambitious, efficient and far-reaching policies and action programmes relating to fundamental rights and common European values, particularly in order to comply proactively and systematically with the EU's obligations with regard to combating discrimination and promoting equality, as referred to in Articles 8 and 10 TFEU and Article 21 of the Charter;

- cooperate in a more systematic and coordinated fashion at all levels, in particular with the Council of Europe and other international institutions, according to their specific expertise, in order to avoid any duplication;

- streamline the multiplicity of mechanisms already available to prevent violations of fundamental rights in the EU, tackle breaches of fundamental rights and avoid forum shopping, and to step up the role which can be played by regional and local authorities, together with human rights organisations;

- prepare comparative and summary country-by-country tables, on the basis of which the Commission should issue country-specific recommendations on fundamental rights policy, as it does for EU27 economic policy; the Council could endorse or amend these recommendations and the Commission‘s proposals regarding blatant fundamental rights violations, by the next European Council summit;

- develop a peer review mechanism, with the participation of national human rights bodies, similar to the OECD’s Development Assistance Committee (DAC): each Member State would be peer-reviewed once every three or four years, the main objectives being to help the country concerned understand in what ways it could improve its fundamental rights strategy and structures; and to identify and share good practice in human rights policy and strategy within the EU;

- establish a ‘new Copenhagen mechanism‘ to ensure that the fundamental rights and values of the Union referred to in Article 2 of the EU Treaty and in the Charter of Fundamental Rights are respected, protected and promoted;

9. Stresses that this ‘new Copenhagen mechanism‘, aimed at monitoring compliance with the Copenhagen criteria by every Member State in an effective and binding manner, could be activated immediately, on the basis of a Commission decision, with the full involvement of Parliament, and that it should:

- set indicators – on the basis of existing or already developed and recognised fundamental rights standards – such as those developed at UN and Council of Europe level, taking into account the advice of NGOs working in the area of human rights and fundamental freedoms (FRA and Commission);

- be based on objective and reliable data and information structured around such indicators, which would be further developed through a transparent and credible process (FRA, Commission);

- monitor the situation in the EU and in the individual Member States through a regular and objective process (FRA, Commission, Council, European Parliament and national parliaments);

- carry out objective, comparative and regular assessments, for each of the fundamental rights and/or subject areas and for each institution and Member State individually – while striving for maximum comparability - also on the basis of the findings and recommendations issued by existing monitoring mechanisms of the Council of Europe, the United Nations and the EU institutions and bodies, in addition to information submitted by civil society organisations (FRA reports, Commission annual reports, Parliament annual reports, Council annual reports) and on this basis issue recommendations;

- establish a European policy cycle on the application of Article 2 of the EU Treaty (democracy, rule of law, fundamental rights, equality) to provide an annual and multiannual framework, and an open annual interinstitutional forum on these European values, in particular the protection of fundamental rights;

- bring all existing data and analysis from national, European and international bodies together in order to ensure that existing information that is relevant for the protection of fundamental rights, the rule of law, democracy and equality is more accessible and visible;

- ensure that DG Justice and the FREMP working party in the Council work with Parliament's Committee on Civil Liberties, Justice and Home Affairs to establish a regular structured dialogue between these institutions and civil society organisations on fundamental rights issues inside the EU;

- develop and adopt a set of recommendations along with effective and proportionate penalties which act as an effective deterrent (e.g. the temporary suspension of Fund commitments, the application of certain acts, etc.) to deal with violations of Articles 2 and 7 of the EU Treaty and to ensure that the rights enshrined therein are successfully upheld;

- incorporate an early-warning system, political and technical dialogue, letters of formal notice and a 'freezing procedure', as already called for by Parliament, to ensure that Member States, at the request of EU institutions, suspend the adoption of laws that might disregard or breach fundamental rights or the EU legal order; the Commission should hold meetings at technical level with the services of the Member State concerned but not conclude any negotiations in policy areas other than those relating to Article 2 TEU until full compliance with Article 2 TEU has been ensured;

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Specific rights based on the Charter of Fundamental Rights

Dignity

16. Expresses its alarm at the persistence of instances of violation of human dignity in the Union and in its Member States, whose victims include minorities, Roma in particular, asylum-seekers, migrants, people suspected of having links with terrorism and people who are deprived of their freedom, as well as vulnerable groups and poor people; stresses that public authorities must abide by the absolute prohibition on torture and cruel, inhuman or degrading treatment, carry out swift, effective and independent in-depth investigations into any breach and prosecute those responsible;

17. Expresses its concern about the numerous instances of ill-treatment by police and the forces of law and order, particularly in relation to the disproportionate use of force against peaceful participants and journalists in connection with demonstrations, and the excessive use of nonlethal weapons, such as batons, rubber bullets and tasers; calls on the Member States to ensure that the uniforms of law enforcement personnel bear a means of identifying the wearer and that such personnel are always held to account for their actions; calls for an end to police checks that are based on ethnic and racial profiling; expresses concern at the increasing number of restrictions on freedom of assembly and peaceful demonstration and points out that the rights of assembly, association and freedom of expression form the basis to the right to demonstrate; calls on the Member States not to take measures that would undermine or criminalise people's exercise of their fundamental freedoms and rights, urges them to take measures to ensure that force is used only in exceptional cases duly justified by a real and serious threat to public order and recalls that the primary role of the police forces is to guarantee people's safety and protection*;*

18. Reiterates its support for a European initiative to ensure that the fundamental rights of persons deprived of their freedom are upheld and that persons who are imprisoned can be reintegrated into society upon their release; expresses concern at the disastrous level of prison overcrowding in many Member States, and at bad prison conditions and treatment of inmates, and calls for a European initiative to be launched to ensure that the recommendations of the European Committee for the Prevention of Torture and the judgments of the European Court of Human Rights are implemented, including by the police and in immigration centres and psychiatric hospitals; recommends that measures be taken to reduce prison overcrowding, such as avoiding excessive use of pretrial detention, providing alternatives to custodial sentences, considering the decriminalisation of certain offences and/or shortening the periods for which people can be held without charge;

<...>

Freedoms

25. Stresses that democracy and the rule of law are based on respect for fundamental rights and freedoms and that any action or measure against terrorism or organised crime, and international cooperation with this aim, must not breach European fundamental rights standards but must strictly comply with them, notably in relation to the presumption of innocence, due process, rights of the defence, protection of privacy and personal data, etc.; underlines the need for stronger democratic scrutiny, and protection of and respect for fundamental rights in the context of crossborder cooperation in these fields, in particular in the light of ever greater collection and use by authorities of personal data; calls, therefore, for measures to be taken to guarantee privacy and the protection of personal data in this field;

<…>

36. Regrets the fact that young people in some Member States are still being prosecuted and sentenced to imprisonment because the right to conscientious objection to military service is still not adequately recognised, and calls on the Member States to stop the persecution of and discrimination against conscientious objectors;

37. Recalls that freedom of expression, information and the media are fundamental with a view to ensuring democracy and the rule of law, and reiterates its call for the Commission to review and amend the audiovisual media services directive along the lines indicated by Parliament in its report on the subject; strongly condemns violence, pressure or threats against journalists and the media, including in relation to the disclosure of their sources and information about breaches of fundamental rights by governments and states; calls on the Union institutions and the Member States to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, and hence to refrain from exerting or developing mechanisms to impede those freedoms;

38. Is concerned at the impact of the economic crisis in Europe on the ownership of media outlets and the prospect of privatisation of public service media in some Member States; calls on the Member States to safeguard the independence of public service media and comply with their institutional duty to safeguard media pluralism and provide high-quality, diversified, accurate and reliable information; believes that media ownership and management should always be transparent and not concentrated; stresses that transparency of media ownership is crucial for the monitoring of intra-EU media investments and non-European investors exerting an increasing influence in the information that is provided in Member States;

39. Stresses the importance of respecting and protecting the rights of refugees and migrants, and underlines the fact that special attention should be paid to women and children migrants; expresses its concern about the numerous breaches of the right to asylum and of the obligation to ensure protection in the event of removal, expulsion and extradition of any migrant; stresses the obligation to comply with international human rights conventions, particularly the UN Convention relating to the Status of Refugees and the principle of non-refoulement, and the obligation to come to the assistance of people at sea who are risking their lives to reach the EU, and to arrange for reception conditions and procedures which respect their dignity and fundamental rights; calls on the EU and the Member States to amend or review any legislation sanctioning people assisting migrants in distress at sea; calls on the Commission to review Council Directive 2002/90/EC defining the sanctions in case of facilitation of unauthorised entry, transit and residence in order to clarify that providing humanitarian assistance to migrants at sea who are in distress is to be welcomed and not an action which should ever lead to any form of sanctions;

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Equality

47. Stresses that the principles of human dignity, equality before the law and the prohibition of discrimination on any grounds are among the foundations of democratic society; considers that the Union and the Member States should step up their measures to promote equality, combat discrimination and protect cultural, religious and linguistic diversity, and their measures relating to gender equality, the rights of the child, the rights of older persons, the rights of persons with disabilities, the rights of LGBT persons and the rights of persons belonging to national minorities;

48. Calls on the Member States to adopt a national legislative framework to address all forms of discrimination and guarantee the effective implementation of the existing EU legal framework, including by launching infringement proceedings; deplores the deadlock in the Council negotiations on the proposal for a directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age and sexual orientation and reiterates yet again its call for the Council to adopt the proposal; welcomes the position taken by the Lithuanian Council Presidency to back the proposal and calls on other Member States to follow this example; welcomes, in this connection, the FRA's Opinion 1/2013 on the situation of equality in the European Union 10 years on from initial implementation of the equality directives; considers that discrimination on linguistic grounds should also be tackled;

49. Recalls its resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 , calling for full respect for the Charter of Fundamental Rights of the European Union;

50. Expresses its concern at the fact that persons with disabilities continue to face discrimination and exclusion, which hinders their ability to enjoy their fundamental rights on an equal basis with others; calls on the EU institutions and EU Member States to continue implementing the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in their respective fields of competence; notes that the further development of EU law and policy in the area of non-discrimination could play a role in the process of harmonising legislation with the CRPD across the EU, for example regarding equality before the law; encourages the Member states to develop adequately resourced policies to better integrate persons with disabilities and facilitate their access to housing, education, labour market, public transport and facilities, and participation in the political process, notably by abolishing legal and practical discrimination and restrictions to their right to vote and stand for election; deplores the fact that certain persons with disabilities have no choice but to live in special homes, given the lack of community-based alternatives, and calls on the Member States to champion arrangements which enable more persons with disabilities to live independently;

51. Calls on the Commission to carry out a comprehensive review of EU legislation and policies in order to assess their compliance with the UN Convention on the Rights of Persons with Disabilities; believes that EU legislative procedures and policy making should be adapted so as to ensure respect, and provide for the implementation, of the CRPD; calls on the Commission to adopt specific impact assessment guidelines to this end and to submit the draft EU progress report on the implementation of the CRPD in the EU to Parliament; believes that Parliament should hold regular debates and formulate recommendations through a resolution on the progress achieved in the enjoyment by persons with disabilities of their rights enshrined in the CRPD, including on the basis of the Commission report; supports the ongoing initiatives to set up a cross-committee task force in Parliament on the implementation of the CRPD in order to ensure that Parliament‘s actions in monitoring and supporting the implementation of the Convention are comprehensive and consistent;

52. Calls on the Member States and the Commission to protect, promote and enforce children's rights in all internal and external actions and policies having an impact on them; expresses its concern about children who suffer violence and sexual exploitation and calls on the Member States to complete the transposition of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography; calls on

the Member States, the Commission and the FRA to continue their efforts to assess the way in which children are treated during judicial proceedings; considers that, when parents separate or divorce, the best interests of the children should always be taken into consideration and that every child ought to be able to be in regular and direct contact with both parents;

53. Expresses its concern about the situation of Roma in the EU and the numerous instances of persecution, violence, stigmatisation, discrimination, evictions, relocations and unlawful forced evictions, unlawful registration and ethnic profiling by law enforcement authorities, which are contrary to fundamental rights and European Union law; reiterates its position stated in its resolution of 12 December 2013 on the progress made in the implementation of the National Roma Integration Strategies and calls once more for the effective implementation of strategies to foster real inclusion and for strengthened and pertinent action to promote integration, particularly in the field of fundamental rights, education, employment, housing and healthcare, and to combat violence, hate speech and discrimination of Roma; calls for an end to unlawful forced evictions, to the dismantling of settlements without alternative housing being provided, and to segregation of Roma children in schools and their illicit placement in special schools; calls on the Member States to make greater use of the EU funds placed at their disposal to implement integration projects in cooperation with local authorities, on the front line managing daily new arrivals on their territory;

54. Calls on the Commission and the Member States to provide an effective response to Roma exclusion by developing integrated policies and implementing the measures set out in the strategies focusing on anti-discrimination measures and measures aiming to increase their employability and access to the labour market in cooperation with representatives of the Roma population, while also ensuring their full participation in the management, monitoring and evaluation of projects affecting their communities, and to allocate sufficient budget resources to this end and ensure the efficiency of spending; calls also on the Commission and the FRA to present common, comparable and reliable indicators to monitor progress in Member States;

55. Believes that the Commission should take strong action in cases of violation of the fundamental rights of Roma in Member States, especially by opening infringement proceedings in the event of failure to allow them access to and the exercise of their economic and social rights, the right to freedom of movement and of residence, the right to equality and non-discrimination and the right to the protection of personal data; calls on the Commission to set up a monitoring mechanism on hate crime against Roma, and calls on the Commission and the Member States to address the lack of birth registration and birth certificates for Roma residing in the EU; reiterates its call for a targeted approach to the social inclusion of Roma women in order to avoid multiple discrimination; calls for the European Framework for National Roma Integration Strategies to be developed into a fully-fledged European Strategy;

56. Stresses that it is essential that the fundamental rights and freedoms of persons belonging to national or ethnic, religious or linguistic minorities are respected; expresses its concern at the fact that, in everyday life, people belonging to these minority communities encounter obstacles in justice, health and social services, as well as in education and culture, and that this undermines their rights and dignity as human beings and citizens of the Union and leads to situations in which they are treated as second-class citizens by the national authorities of their own Member States; considers that such minorities have specific needs that are different from those of other minority groups, that public policies should be more focused and that the Union itself must address these needs in a more appropriate way;

57. Considers that no single solution exists for improving the situation of such minorities in all the Member States, but that some common and minimum objectives for public authorities in the EU should be developed, taking account the relevant international legal standards and existing good practices; calls on the Member States to ensure that their legal systems guarantee that persons belonging to a recognised national minority will not be discriminated against, and to adopt adequate measures to promote effective equality, based on the relevant international norms and good practice, inter alia the Council of Europe Framework Convention for the Protec-

tion of National Minorities; calls on the Commission to establish a policy standard for the protection of national minorities, including indigenous, traditional ethnic and linguistic minority communities, bearing in mind that they comprise more than 10 % of the total population of the EU, in order to avoid applying double standards that differentiate between candidate countries and Member States; stresses the need for a comprehensive EU protection system for traditional national minorities, regional linguistic groups and constitutional regions accompanied by a functioning monitoring mechanism, following the example of the EU Framework for National Roma Integration Strategies; calls on the Member States to provide comprehensive data on violations of the fundamental rights of minorities, so as to allow the FRA and the EU to ensure data collection and reporting;

58. Points out that positive measures implemented for the purpose of protecting minority persons and groups, fostering their appropriate development and ensuring that they are granted equal rights and treatment with respect to the rest of the population in the administrative, political, economic, social and cultural fields and in other spheres should not be considered as discrimination;

59. Condemns racist, anti-Semitic, homophobic/transphobic and xenophobic violence and violence against migrants, religious minorities and ethnic groups, which have reached alarming levels, in particular on the internet, in the absence of strong action by the authorities to combat these types of violence; calls on the Member States to implement Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, to address discrimination, to ensure that hate speech and hate crimes are investigated, to adopt criminal legislation prohibiting incitement to hatred on any grounds including sexual orientation, and to ensure that there is effective protection against racism, anti-Semitism, anti-gypsyism, xenophobia and homophobia and that victims are offered proper assistance; calls on the Commission to launch infringement proceedings against Member States that fail to implement the framework decision correctly from 1 December 2014; calls for the revision of the framework decision to ensure that it also covers hate speech and acts of anti-Semitism, Islamophobia and religious intolerance, antiGypsyism, homophobia and transphobia, and strengthen its application; fully supports the initiative launched under the Irish Presidency of the Council to strengthen the fight against intolerance and calls the Council to continue such constructive work;

60. Calls on the Commission and the Member States to launch a coordinated and comprehensive action to combat and prevent hate crime systematically in the EU and to make hate crime visible through data, ensuring that such data is comparable so as to allow an EU overview of the situation, by working together with the FRA to improve hate crime data collection and harmonisation; condemns hate speech stigmatising groups of people on account of their social, cultural, religious or foreign origins and incitement to racial hatred, notably when made by public figures; points to FRA Opinion 2/2013 on the Framework Decision on Racism and Xenophobia and stresses the need to ensure respect for the rights of victims of crime, and in particular in cases of hate crime;

61. Calls on the Member States, recognising that education is vital in the fight against discrimination, to ensure that their integration strategies focus on reforming national curriculums to include xenophobia, racism and anti-gypsyism within syllabuses and to establish this as a form of discrimination in public discourse from a young age;

62. Urges the EU and the Member States to:

– ensure equality between women and men and prevent, combat and prosecute all forms of violence against women as a fundamental rights violation, while ensuring support and protection for victims;
– sign and ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and set up a data collection system to support the parties to the Convention by providing accurate and comparable data on the extent, forms and consequences of violence against women;

– step up their efforts to achieve the objectives of the European Pact for Equality between women and men (2011-2020), and to take adequate measures to tackle all forms of direct and indirect discrimination against women, in particular the gender pay gap, occupational segregation, stereotyping, and all forms of violence against women, since women continue to suffer multiple discrimination in various areas of everyday life in spite of the legislation in force on combating discrimination;
– promote gender equality education, gender mainstreaming and sufficient monitoring mechanisms for the implementation of EU gender policy;
– step up their efforts to combat human trafficking, in a bid to end sexual exploitation which affects women in particular, and forced labour;
– ensure the proper implementation of the existing gender equality directives including by initiating infringement proceedings;
– bring forward a European strategy on combating violence against women which will follow on from its previous commitments in this field and will meet the many demands made by Parliament; welcomes, in this connection, the Commission's 'Zero tolerance of violence against women'; calls, however, for more action, including an EU-wide strategy to end violence against women, as announced in the Council conclusions of March 2010, comprising legally binding instruments and awareness-raising actions;
– keep the issue of violence against women – including violence in close relationships, sexual violence (rape, sexual assault and harassment), sexual exploitation and harmful traditional practices, such as forced marriage and 'honour crimes' – high on the agenda as gender-based violence is both a consequence of the inequalities between women and men and an obstacle to equality and. Therefore, should not be tolerated;
– apply a zero tolerance policy to female genital mutilation;
– take measures and launch projects for better reconciliation of family and working life for all generations of women, welcoming the decision to declare 2014 as the European Year of Work and Family Life Balance;

<…>

Solidarity

77. Stresses that the financial and economic crisis and the measures taken to tackle it have had a greater impact on the poorest and most deprived sections of the population, often affecting them very seriously, as reflected in the issue paper by the Council of Europe's Commissioner for Human Rights entitled 'Safeguarding human rights in times of economic crisis', in which reference is made to groups at risk of social marginalisation such as migrants, asylum seekers, Roma, women and children; points out that in 2012 a quarter of the population in EU 28 was at risk of poverty or social exclusion; calls for particular attention to be paid and appropriate, more incisive and effective measures to be taken to remedy this situation and fight inequalities and poverty; condemns remarks by politicians which aim to make scapegoats of these groups; expresses its concern at the fact that economic and social crises put fundamental rights, the rule of law and democratic values under strain, at both national and supranational level;

78. Underlines the fact that social rights are fundamental rights, as recognised by international treaties, the Convention, the EU Charter of Fundamental Rights and the European Social Charter; highlights that these rights must be protected both in law and in practice to ensure social justice, notably in periods of economic crisis and austerity measures; underlines the importance of the right to dignity, occupational freedom and the right to work, the right to nondiscrimination, including on the basis of nationality, protection in the event of unjustified dismissal, the right to health and safety at work, social security and social assistance, the right to health care, freedom of movement and of residence, the right to protection against poverty and social exclusion, through the provision of effective access to employment, adequate housing, training, education, culture and social and medical assistance, and in relation to remuneration and social benefits, guaranteeing a decent standard of living for workers and the members of their families, as well as of other conditions of employment and working conditions, autonomy of social partners, and freedom to join national and international associations for the protection of workers' economic and social interests and to bargain collectively;

79. Underlines the fact that unemployment, poverty or social marginalisation makes it much more difficult, if not practically impossible, for people to exercise the rights and freedoms enshrined in the Charter of Fundamental Rights of the European Union; points out that the following rights and freedoms are particularly under threat: the right to human dignity (Article 1), the freedom to choose an occupation and the right to engage in work (Article 15), non-discrimination (Article 21), protection in the event of unjustified dismissal (Article 30), the right to social security and social assistance (Article 34), the right to health care (Article 35) and freedom of movement and of residence (Article 45); highlights, further, the fact that being unemployed, poor or socially marginalised can also make it more difficult for people to gain access to basic social, financial and other services;

80. Stresses that systems which recognise social justice as an important principle which must be underpinned by robust legislation form the best buffer against the social consequences of the economic and financial crisis;

<...>

Council Conclusions on fundamental rights and rule of law and on the Commission 2012 report on the application of the Charter of fundamental rights of the European Union

(Justice and Home Affairs Council meeting Luxembourg, 6 and 7 June 2013)

(Extract)

<...>

8. The Council looks forward to receiving the forthcoming report pursuant to Article 10(2) of the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law for assessing the effectiveness of the existing EU legal norms on fighting hate crimes.

c) Rule of law

9. Considering that respecting the rule of law is a pre-requisite for the protection of fundamental rights, the Council calls on the Commission to take forward the debate in line with the Treaties on the possible need for and shape of a collaborative and systematic method to tackle these issues. Therefore it is of critical importance to:

i. ensure that EU institutions and agencies; Member States and relevant institutions at national level, including judicial authorities, human rights institutions, equality bodies, ombudsmen and civil society; and relevant international institutions can contribute to the public debate or otherwise fulfil their relevant functions;

ii. develop an agreed understanding of what any initiative in this area would entail, including of the problems to be addressed, as well as questions of methodology and indicators;

iii. make full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its key role in relation to promotion and protection of human rights, democracy and the rule of law, in order to avoid overlaps;

iv. focus on shared universal values and identify the added value of EU action and coordination;

v. consider the full range of possible models, stressing the need for approaches that could be accepted by all Member States by consensus;

vi. ensure that any future initiative in this area that might be agreed would apply in a transparent manner, on the basis of evidence objectively compiled, compared and analysed and on the basis of equality of treatment as between all Member States; and

vii. ensure that any initiative in this area would have a real positive impact on the lives of ordinary persons over the medium term.

10. The Council calls on the Commission to take forward in 2013 a process of inclusive dialogue, debate and engagement with all Member States, EU institutions as well as all relevant stakeholders on the basis, in particular, of the considerations and suggested approach set out in these conclusions, following the previous discussions by JHA Ministers and General Affairs Ministers.

11. The Council looks forward to receiving the Commission's reflection in due course on the completion of this process of dialogue, to working with the Commission in this process, and to giving further consideration at its forthcoming meetings to the possible need for and possible shape of methods or initiatives to better safeguard fundamental values, in particular the rule of law and the fundamental rights of persons in the Union and to counter extreme forms of intolerance, such as racism, anti-Semitism, xenophobia and homophobia.

<...>

European Governance – A White Paper. COM(2001) 428 (2001/C 287/01)

(Extract)

<...>

PROPOSALS FOR CHANGE

The Union must renew the Community method by following a less top-down approach and complementing its policy tools more effectively with non-legislative instruments.

Better involvement and more openness

No matter how EU policy is prepared and adopted, the way this is done must be more open and easier to follow and understand. The Commission will provide:

- Up-to-date, on-line information on preparation of policy through all stages of decision-making.
- There needs to be a stronger interaction with regional and local governments and civil society. Member States bear the principal responsibility for achieving this. But the Commission for its part will:

– Establish a more systematic dialogue with representatives of regional and local governments through national and European associations at an early stage in shaping policy.
– Bring greater flexibility into how Community legislation can be implemented in a way which takes account of regional and local conditions.
– Establish and publish minimum standards for consultation on EU policy.
– Establish partnership arrangements going beyond the minimum standards in selected areas committing the Commission to additional consultation in return for more guarantees of the openness and representativity of the organisations consulted.

<...>

II. PRINCIPLES OF GOOD GOVERNANCE

Five principles underpin good governance and the changes proposed in this White Paper: openness, participation, accountability, effectiveness and coherence. Each principle is important for establishing more democratic governance. They underpin democracy and the rule of law in the Member States, but they apply to all levels of government - global, European, national, regional and local. They are particularly important for the Union in order to respond to the challenges highlighted in the preceding chapter.

Openness. The Institutions should work in a more open manner. Together with the Member States, they should actively communicate about what the EU does and the decisions it takes. They should use language that is accessible and understandable for the general public. This is of particular importance in order to improve the confidence in complex institutions.

Participation. The quality, relevance and effectiveness of EU policies depend on ensuring wide participation throughout the policy chain - from conception to implementation. Improved participation is likely create more confidence in the end result and in the Institutions which deliver policies. Participation crucially depends on central governments following an inclusive approach when developing and implementing EU policies.

Accountability. Roles in the legislative and executive processes need to be clearer. Each of the EU Institutions must explain and take responsibility for what it does in Europe. But there is also a need for greater clarity and responsibility from Member States and all those involved in developing and implementing EU policy at whatever level.

Effectiveness. Policies must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level.

Coherence. Policies and action must be coherent and easily understood. The need for coherence in the Union is increasing: the range of tasks has grown; enlargement will increase diversity; challenges such as climate and demographic change cross the boundaries of the sectoral policies on which the Union has been built; regional and local authorities are increasingly involved in EU policies. Coherence requires political leadership and a strong responsibility on the part of the Institutions to ensure a consistent approach within a complex system.

Each principle is important by itself. But they cannot be achieved through separate actions. Policies can no longer be effective unless they are prepared, implemented and enforced in a more inclusive way.

The application of these five principles reinforces those of proportionality and subsidiarity. From the conception of policy to its implementation, the choice of the level at which action is taken (from EU to local) and the selection of the instruments used must be in proportion to the objectives pursued. This means that before launching an initiative, it is essential to check systematically (a) if public action is really necessary, (b) if the European level is the most appropriate one, and (c) if the measures chosen are proportionate to those objectives.

The Union is changing as well. Its agenda extends to foreign policy and defence, migration and the fight against crime. It is expanding to include new members. It will no longer be judged solely by its ability to remove barriers to trade or to complete an internal market; its legitimacy today depends on involvement and participation. This means that the linear model of dispensing policies from above must be replaced by a virtuous circle, based on feedback, networks and involvement from policy creation to implementation at all levels.

III. PROPOSALS FOR CHANGE

The proposals for change are divided into four sections. A first section focuses on improving involvement in shaping and implementing EU policy. A second section aims at improving the quality and enforcement of EU policies. A third section calls for a stronger link between European governance and the role of the Union in the world. Finally, a fourth section examines the role of the Institutions.

3.1. Better involvement

Making the way the Union works more open

<...>

Democracy depends on people being able to take part in public debate. To do this, they must have access to reliable information on European issues and be able to scrutinise the policy process in its various stages. Major progress has been made in 2001 with the adoption of new rules giving citizens greater access to Community documents.

But the Institutions and Member States also need to communicate more actively with the general public on European issues. The communication policy of the Commission and the other Institutions will promote efforts to deliver information at national and local level, where possible making use of networks, grassroots organisations and national, regional and local authorities. Information should be presented in a way adapted to local needs and concerns, and be available in all official languages if the Union is not to exclude a vast proportion of its population - a challenge which will become more acute in the context of enlargement.

<...>

Involving civil society

Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people's needs [9]. Churches and religious communities have a particular contribution to make. The organisations which make up civil society mobilise people and support, for instance, those suffering from exclusion or discrimination. The Union has encouraged the development of civil society in the applicant countries, as part of their preparation for membership. Non governmental organisations play an important role at global level in development policy. They often act as an early warning system for the direction of political debate.

<...>

Directive № 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive № 2004/18/EC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[45],

Having regard to the opinion of the Committee of the Regions[46],

Acting in accordance with the ordinary legislative procedure[47],

Whereas:

1) The award of public contracts by or on behalf of Member States' authorities has to comply with the principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency. However, for public contracts above a certain value, provisions should be drawn up coordinating national procurement procedures so as to ensure that those principles are given practical effect and public procurement is opened up to competition.

<...>

45 OJ C 191, 29.6.2012, p. 84.
46 OJ C 391, 18.12.2012, p. 49.
47 Position of the European Parliament of 15 January 2014 (not yet published in the Official Journal), and decision of the Council of 11 February 2014.

TITLE I

SCOPE, DEFINITIONS AND GENERAL PRINCIPLES

CHAPTER I

Scope and definitions

Section 1
Subject-matter and definitions

Article 1
Subject-matter and scope

1. This Directive establishes rules on the procedures for procurement by contracting authorities with respect to public contracts as well as design contests, whose value is estimated to be not less than the thresholds laid down in Article 4.

2. Procurement within the meaning of this Directive is the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose.

3. The application of this Directive is subject to Article 346 TFEU.

4. This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.

5. This Directive does not affect the way in which the Member States organise their social security systems.

6. Agreements, decisions or other legal instruments that organise the transfer of powers and responsibilities for the performance of public tasks between contracting authorities or groupings of contracting authorities and do not provide for remuneration to be given for contractual performance, are considered to be a matter of internal organisation of the Member State concerned and, as such, are not affected in any way by this Directive.

<...>

Article 3
Mixed procurement

1. Paragraph 2 shall apply to mixed contracts which have as their subject-matter different types of procurement all of which are covered by this Directive.

Paragraphs 3 to 5 shall apply to mixed contracts which have as their subject-matter procurement covered by this Directive and procurement covered by other legal regimes.

2. Contracts which have as their subject two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting partly of services within the meaning of Chapter I of Title III and partly of other services or of mixed contracts consisting partly of services and partly of supplies, the main subject shall be determined in accordance with which of the estimated values of the respective services or supplies is the highest.

<...>

Section 2
Thresholds

Article 4
Threshold amounts

This Directive shall apply to procurements with a value net of value-added tax (VAT) estimated to be equal to or greater than the following thresholds:

(a) EUR 5 186 000 for public works contracts;

(b) EUR 134 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities; where public supply contracts are awarded by contracting authorities operating in the field of defence, that threshold shall apply only to contracts concerning products covered by Annex III;

(c) EUR 207 000 for public supply and service contracts awarded by sub-central contracting authorities and design contests organised by such authorities; that threshold shall also apply to public supply contracts awarded by central government authorities that operate in the field of defence, where those contracts involve products not covered by Annex III;

(d)EUR 750 000 for public service contracts for social and other specific services listed in Annex XIV.

<...>

CHAPTER II
General rules

Article 18
Principles of procurement

1. Contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.

The design of the procurement shall not be made with the intention of excluding it from the scope of this Directive or of artificially narrowing competition. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

2. Member States shall take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X.

<...>

Article 20
Reserved contracts

1. Member States may reserve the right to participate in public procurement procedures to sheltered workshops and economic operators whose main aim is the social and professional integration of disabled or disadvantaged persons or may provide for such contracts to be performed in the context of sheltered employment programmes, provided that at least 30 % of the employees of those workshops, economic operators or programmes are disabled or disadvantaged workers.

2. The call for competition shall make reference to this Article.

Article 21
Confidentiality

1. Unless otherwise provided in this Directive or in the national law to which the contracting authority is subject, in particular legislation concerning access to information, and without prejudice to the obligations relating to the advertising of awarded contracts and to the information to candidates and tenderers set out in Articles 50 and 55, the contracting authority shall not disclose information forwarded to it by economic operators which they have designated as confidential, including, but not limited to, technical or trade secrets and the confidential aspects of tenders.

2. Contracting authorities may impose on economic operators requirements aimed at protecting the confidential nature of information which the contracting authorities make available throughout the procurement procedure.

<...>

Section 2
Publication and transparency

Article 48
Prior information notices

1. Contracting authorities may make known their intentions of planned procurements through the publication of a prior information notice. Those notices shall contain the information set out in Annex V part B section I. They shall be published either by the Publications Office of the European Union or by the contracting authorities on their buyer profiles in accordance with point 2(b) of Annex VIII. Where the prior information notice is published by the contracting authorities on their buyer profile, they shall send a notice of the publication on their buyer profile to the Publications Office of the European Union in accordance with Annex VIII. Those notices shall contain the information set out in Annex V part A.

2. For restricted procedures and competitive procedures with negotiation, sub-central contracting authorities may use a prior information notice as a call for competition pursuant to Article 26(5), provided that the notice fulfils all of the following conditions:

(a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;

(b) it indicates that the contract will be awarded by restricted procedure or competitive procedure with negotiation without further publication of a call for competition and invites interested economic operators to express their interest;

(c) it contains, in addition to the information set out in Annex V part B section I, the information set out in Annex V part B section II;

(d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation referred to in Article 54(1) is sent.

Such notices shall not be published on a buyer profile. However, the additional publication at national level pursuant to Article 52, if any, may be made on a buyer profile.

The period covered by the prior information notice shall be a maximum of 12 months from the date the notice is transmitted for publication. However, in the case of public contracts for social and other specific services, the prior information notice referred to in point (b) of Article 75(1) may cover a period which is longer than 12 months.

Article 49
Contract notices

Contract notices shall be used as a means of calling for competition in respect of all procedures, without prejudice to the second subparagraph of Article 26(5) and Article 32. Contract notices shall contain the information set out in Annex V part C and shall be published in accordance with Article 51.

Article 50
Contract award notices

1. Not later than 30 days after the conclusion of a contract or of a framework agreement, following the decision to award or conclude it, contracting authorities shall send a contract award notice on the results of the procurement procedure.

Such notices shall contain the information set out in Annex V part D and shall be published in accordance with Article 51.

2. Where the call for competition for the contract concerned has been made in the form of a prior information notice and the contracting authority has decided that it will not award further contracts during the period covered by the prior information notice, the contract award notice shall contain a specific indication to that effect.

In the case of framework agreements concluded in accordance with Article 33, contracting authorities shall not be bound to send a notice of the results of the procurement procedure for each contract based on that agreement. Member States may provide that contracting authorities shall group notices of the results of the procurement procedure for contracts based on the framework agreement on a quarterly basis. In that case, contracting authorities shall send the grouped notices within 30 days of the end of each quarter.

3. Contracting authorities shall send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system. They may, however, group such notices on a quarterly basis. In that case, they shall send the grouped notices within 30 days of the end of each quarter.

4. Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of a particular economic operator, public or private, or might prejudice fair competition between economic operators.

<...>

Regulation (EU) № 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive № 1999/93/EC

(Extract)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[48],

Acting in accordance with the ordinary legislative procedure[49],

Whereas:

1) Building trust in the online environment is key to economic and social development. Lack of trust, in particular because of a perceived lack of legal certainty, makes consumers, businesses and public authorities hesitate to carry out transactions electronically and to adopt new services.

2) This Regulation seeks to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services, electronic business and electronic commerce in the Union.

3) Directive 1999/93/EC of the European Parliament and of the Council[50], dealt with electronic signatures without delivering a comprehensive cross-border and cross-sector framework for secure, trustworthy and easy-to-use electronic transactions. This Regulation enhances and expands the acquis of that Directive.

<...>

48 OJ C 351, 15.11.2012, p. 73.
49 Position of the European Parliament of 3 April 2014 (not yet published in the Official Journal) and decision of the Council of 23 July 2014.
50 Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1
Subject matter

With a view to ensuring the proper functioning of the internal market while aiming at an adequate level of security of electronic identification means and trust services this Regulation:

a) lays down the conditions under which Member States recognise electronic identification means of natural and legal persons falling under a notified electronic identification scheme of another Member State;

b) lays down rules for trust services, in particular for electronic transactions; and

c) establishes a legal framework for electronic signatures, electronic seals, electronic time stamps, electronic documents, electronic registered delivery services and certificate services for website authentication.

Article 2
Scope

1. This Regulation applies to electronic identification schemes that have been notified by a Member State, and to trust service providers that are established in the Union.

2. This Regulation does not apply to the provision of trust services that are used exclusively within closed systems resulting from national law or from agreements between a defined set of participants.

3. This Regulation does not affect national or Union law related to the conclusion and validity of contracts or other legal or procedural obligations relating to form.

<...>

CHAPTER II

ELECTRONIC IDENTIFICATION

Article 6
Mutual recognition

1. When an electronic identification using an electronic identification means and authentication is required under national law or by administrative practice to access a service provided by a public sector body online in one Member State, the electronic identification means issued in another Member State shall be recognised in the first Member State for the purposes of cross-border authentication for that service online, provided that the following conditions are met:

a) the electronic identification means is issued under an electronic identification scheme that is included in the list published by the Commission pursuant to Article 9;

b) the assurance level of the electronic identification means corresponds to an assurance level equal to or higher than the assurance level required by the relevant public sector body to access that service online in the first Member State, provided that the assurance level of that electronic identification means corresponds to the assurance level substantial or high;

c) the relevant public sector body uses the assurance level substantial or high in relation to accessing that service online.

Such recognition shall take place no later than 12 months after the Commission publishes the list referred to in point (a) of the first subparagraph.

2. An electronic identification means which is issued under an electronic identification scheme included in the list published by the Commission pursuant to Article 9 and which corresponds to the assurance level low may be recognised by public sector bodies for the purposes of cross-border authentication for the service provided online by those bodies.

Article 7
Eligibility for notification of electronic identification schemes

An electronic identification scheme shall be eligible for notification pursuant to Article 9(1) provided that all of the following conditions are met:

a) the electronic identification means under the electronic identification scheme are issued:

(i) by the notifying Member State;

(ii) under a mandate from the notifying Member State; or

(iii) independently of the notifying Member State and are recognised by that Member State;

b) the electronic identification means under the electronic identification scheme can be used to access at least one service which is provided by a public sector body and which requires electronic identification in the notifying Member State;

c) the electronic identification scheme and the electronic identification means issued thereunder meet the requirements of at least one of the assurance levels set out in the implementing act referred to in Article 8(3);

d) the notifying Member State ensures that the person identification data uniquely representing the person in question is attributed, in accordance with the technical specifications, standards and procedures for the relevant assurance level set out in the implementing act referred to in Article 8(3), to the natural or legal person referred to in point 1 of Article 3 at the time the electronic identification means under that scheme is issued;

e) the party issuing the electronic identification means under that scheme ensures that the electronic identification means is attributed to the person referred to in point (d) of this Article in accordance with the technical specifications, standards and procedures for the relevant assurance level set out in the implementing act referred to in Article 8(3);

f) the notifying Member State ensures the availability of authentication online, so that any relying party established in the territory of another Member State is able to confirm the person identification data received in electronic form.

For relying parties other than public sector bodies the notifying Member State may define terms of access to that authentication. The cross-border authentication shall be provided free of charge when it is carried out in relation to a service online provided by a public sector body.

Member States shall not impose any specific disproportionate technical requirements on relying parties intending to carry out such authentication, where such requirements prevent or significantly impede the interoperability of the notified electronic identification schemes;

g) at least six months prior to the notification pursuant to Article 9(1), the notifying Member State provides the other Member States for the purposes of the obligation under Article 12(5) a description of that scheme in accordance with the procedural arrangements established by the implementing acts referred to in Article 12(7);

h) the electronic identification scheme meets the requirements set out in the implementing act referred to in Article 12(8).

Article 8
Assurance levels of electronic identification schemes

1. An electronic identification scheme notified pursuant to Article 9(1) shall specify assurance levels low, substantial and/or high for electronic identification means issued under that scheme.

2. The assurance levels low, substantial and high shall meet respectively the following criteria:

a) assurance level low shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a limited degree of confidence in the claimed or asserted identity of a person, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to decrease the risk of misuse or alteration of the identity;

b) assurance level substantial shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a substantial degree of confidence in the claimed or asserted identity of a person, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to decrease substantially the risk of misuse or alteration of the identity;

c) assurance level high shall refer to an electronic identification means in the context of an electronic identification scheme, which provides a higher degree of confidence in the claimed or asserted identity of a person than electronic identification means with the assurance level substantial, and is characterised with reference to technical specifications, standards and procedures related thereto, including technical controls, the purpose of which is to prevent misuse or alteration of the identity.

3. By 18 September 2015, taking into account relevant international standards and subject to paragraph 2, the Commission shall, by means of implementing acts, set out minimum technical specifications, standards and procedures with reference to which assurance levels low, substantial and high are specified for electronic identification means for the purposes of paragraph 1.

Those minimum technical specifications, standards and procedures shall be set out by reference to the reliability and quality of the following elements:

a) the procedure to prove and verify the identity of natural or legal persons applying for the issuance of electronic identification means;

b) the procedure for the issuance of the requested electronic identification means;

c) the authentication mechanism, through which the natural or legal person uses the electronic identification means to confirm its identity to a relying party;

d) the entity issuing the electronic identification means;

e) any other body involved in the application for the issuance of the electronic identification means; and

f) the technical and security specifications of the issued electronic identification means.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

<…>

Article 24
Requirements for qualified trust service providers

1. When issuing a qualified certificate for a trust service, a qualified trust service provider shall verify, by appropriate means and in accordance with national law, the identity and, if applicable, any specific attributes of the natural or legal person to whom the qualified certificate is issued.

The information referred to in the first subparagraph shall be verified by the qualified trust service provider either directly or by relying on a third party in accordance with national law:

a) by the physical presence of the natural person or of an authorised representative of the legal person; or

b) remotely, using electronic identification means, for which prior to the issuance of the qualified certificate, a physical presence of the natural person or of an authorised representative of the legal person was ensured and which meets the requirements set out in Article 8 with regard to the assurance levels 'substantial' or 'high'; or

c) by means of a certificate of a qualified electronic signature or of a qualified electronic seal issued in compliance with point (a) or (b); or

d) by using other identification methods recognised at national level which provide equivalent assurance in terms of reliability to physical presence. The equivalent assurance shall be confirmed by a conformity assessment body.

2. A qualified trust service provider providing qualified trust services shall:

a) inform the supervisory body of any change in the provision of its qualified trust services and an intention to cease those activities;

b) employ staff and, if applicable, subcontractors who possess the necessary expertise, reliability, experience, and qualifications and who have received appropriate training regarding security and personal data protection rules and shall apply administrative and management procedures which correspond to European or international standards;

c) with regard to the risk of liability for damages in accordance with Article 13, maintain sufficient financial resources and/or obtain appropriate liability insurance, in accordance with national law;

d) before entering into a contractual relationship, inform, in a clear and comprehensive manner, any person seeking to use a qualified trust service of the precise terms and conditions regarding the use of that service, including any limitations on its use;

e) use trustworthy systems and products that are protected against modification and ensure the technical security and reliability of the processes supported by them;

f) use trustworthy systems to store data provided to it, in a verifiable form so that:

(i) they are publicly available for retrieval only where the consent of the person to whom the data relates has been obtained,

(ii) only authorised persons can make entries and changes to the stored data,

(iii) the data can be checked for authenticity;

g) take appropriate measures against forgery and theft of data;

h) record and keep accessible for an appropriate period of time, including after the activities of the qualified trust service provider have ceased, all relevant information concerning data issued and received by the qualified trust service provider, in particular, for the purpose of providing evidence in legal proceedings and for

the purpose of ensuring continuity of the service. Such recording may be done electronically;

i) have an up-to-date termination plan to ensure continuity of service in accordance with provisions verified by the supervisory body under point (i) of Article 17(4);

j) ensure lawful processing of personal data in accordance with Directive 95/46/EC;

k) in case of qualified trust service providers issuing qualified certificates, establish and keep updated a certificate database.

3. If a qualified trust service provider issuing qualified certificates decides to revoke a certificate, it shall register such revocation in its certificate database and publish the revocation status of the certificate in a timely manner, and in any event within 24 hours after the receipt of the request. The revocation shall become effective immediately upon its publication.

4. With regard to paragraph 3, qualified trust service providers issuing qualified certificates shall provide to any relying party information on the validity or revocation status of qualified certificates issued by them. This information shall be made available at least on a per certificate basis at any time and beyond the validity period of the certificate in an automated manner that is reliable, free of charge and efficient.

5. The Commission may, by means of implementing acts, establish reference numbers of standards for trustworthy systems and products, which comply with the requirements under points (e) and (f) of paragraph 2 of this Article. Compliance with the requirements laid down in this Article shall be presumed where trustworthy systems and products meet those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 4
Electronic signatures

Article 25
Legal effects of electronic signatures

1. An electronic signature shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements for qualified electronic signatures.

2. A qualified electronic signature shall have the equivalent legal effect of a handwritten signature.

3. A qualified electronic signature based on a qualified certificate issued in one Member State shall be recognised as a qualified electronic signature in all other Member States.

Article 26
Requirements for advanced electronic signatures

An advanced electronic signature shall meet the following requirements:

a) it is uniquely linked to the signatory;

b) it is capable of identifying the signatory;

c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and

d) it is linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

Article 27
Electronic signatures in public services

1. If a Member State requires an advanced electronic signature to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic signatures, advanced electronic signatures based on a qualified certificate for electronic signatures, and qualified electronic signatures in at least the formats or using methods defined in the implementing acts referred to in paragraph 5.

2. If a Member State requires an advanced electronic signature based on a qualified certificate to use an online service offered by, or on behalf of, a public sector body, that Member State shall recognise advanced electronic signatures based on a qualified certificate and qualified electronic signatures in at least the formats or using methods defined in the implementing acts referred to in paragraph 5.

3. Member States shall not request for cross-border use in an online service offered by a public sector body an electronic signature at a higher security level than the qualified electronic signature.

4. The Commission may, by means of implementing acts, establish reference numbers of standards for advanced electronic signatures. Compliance with the requirements for advanced electronic signatures referred to in paragraphs 1 and 2 of this Article and in Article 26 shall be presumed when an advanced electronic signature meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

5. By 18 September 2015, and taking into account existing practices, standards and Union legal acts, the Commission shall, by means of implementing acts, define reference formats of advanced electronic signatures or reference methods where alternative formats are used. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

<…>

Article 41
Legal effect of electronic time stamps

1. An electronic time stamp shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic time stamp.

2. A qualified electronic time stamp shall enjoy the presumption of the accuracy of the date and the time it indicates and the integrity of the data to which the date and time are bound.

3. A qualified electronic time stamp issued in one Member State shall be recognised as a qualified electronic time stamp in all Member States.

Article 42
Requirements for qualified electronic time stamps

1) A qualified electronic time stamp shall meet the following requirements:

a) it binds the date and time to data in such a manner as to reasonably preclude the possibility of the data being changed undetectably;

b) it is based on an accurate time source linked to Coordinated Universal Time; and

c) it is signed using an advanced electronic signature or sealed with an advanced electronic seal of the qualified trust service provider, or by some equivalent method.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for the binding of date and time to data and for accurate time sources. Compliance with the requirements laid down in paragraph 1 shall be presumed where the binding of date and time to data and the accurate time source meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 7
Electronic registered delivery services

Article 43
Legal effect of an electronic registered delivery service

1. Data sent and received using an electronic registered delivery service shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in an electronic form or that it does not meet the requirements of the qualified electronic registered delivery service.

2. Data sent and received using a qualified electronic registered delivery service shall enjoy the presumption of the integrity of the data, the sending of that data by the identified sender, its receipt by the identified addressee and the accuracy of the date and time of sending and receipt indicated by the qualified electronic registered delivery service.

Article 44
Requirements for qualified electronic registered delivery services

1. Qualified electronic registered delivery services shall meet the following requirements:

a) they are provided by one or more qualified trust service provider(s);

b) they ensure with a high level of confidence the identification of the sender;

c) they ensure the identification of the addressee before the delivery of the data;

d) the sending and receiving of data is secured by an advanced electronic signature or an advanced electronic seal of a qualified trust service provider in such a manner as to preclude the possibility of the data being changed undetectably;

e) any change of the data needed for the purpose of sending or receiving the data is clearly indicated to the sender and addressee of the data;

f) the date and time of sending, receiving and any change of data are indicated by a qualified electronic time stamp.

In the event of the data being transferred between two or more qualified trust service providers, the requirements in points (a) to (f) shall apply to all the qualified trust service providers.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for processes for sending and receiving data. Compliance with the requirements laid down in paragraph 1 shall be presumed where the process for sending and receiving data meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

SECTION 8
Website authentication

Article 45
Requirements for qualified certificates for website authentication

1. Qualified certificates for website authentication shall meet the requirements laid down in Annex IV.

2. The Commission may, by means of implementing acts, establish reference numbers of standards for qualified certificates for website authentication. Compliance with the requirements laid down in Annex IV shall be presumed where a qualified certificate for website authentication meets those standards. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER IV
ELECTRONIC DOCUMENTS

Article 46
Legal effects of electronic documents

An electronic document shall not be denied legal effect and admissibility as evidence in legal proceedings solely on the grounds that it is in electronic form.

<...>

2016 report on the application of the EU Charter of fundamental rights. Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions COM(2017) 239

(Extract)

<...>

1. Introduction

Fundamental rights and the values on which the European Union is founded were put to the test in 2016. Developments in the Member States showed that respect for the values and rights enshrined in the EU Charter for Fundamental Rights should not be taken for granted.

The EU faced multiple challenges: the consequences of an unprecedented arrival of refugees at its external borders, economic imbalances and a series of terrorist attacks. People hit by multiple crises are not confident that their children will be better off than themselves. They question whether institutions are still able to protect them from the challenges and threats of migration, financial turmoil and terrorism. In this context, nationalism, populism and intolerance find a fertile ground to prosper and to advocate exclusion and isolationism as the only way to overcome the current challenges.

In a context of rising intolerance, it is also important that the EU strongly reaffirms and promotes equal rights for all. The third Annual Colloquium on Fundamental Rights in 2017 will be devoted to the promotion of women's rights and gender equality. This will be an opportunity to address the economic and political empowerment of women, women's rights in public and private spheres of life and the fight against violence against women in all its forms, the latter being also the topic of focused actions throughout the year.

The overall landscape impacts on fundamental rights in the EU. The EU must make a determined effort to defend its common values of democracy, fundamental rights and the rule of law against the forces that seek to polarise our societies and jeopardise our model of openness and solidarity. European and national institutions must regain people's trust by showing that they are able to guarantee freedom, security and prosperity. Success in protecting and promoting people's fundamental rights and the EU's common values will be central in this endeavour and the EU Institutions should lead by example. The Charter is an invaluable tool in this respect and should be used to its full potential.

2. Application of the Charter of the EU

2.1 Promoting and protecting fundamental rights

Delivering fundamental rights for all in the European Union

In 2016, the EU took several initiatives to give substance to Charter rights for the benefit of people in the EU. A number of those aimed at ensuring fairness and social justice. The Commission engaged, for instance, in a public consultation for the development of a European 'pillar of social rights'.

Drawing on the social rights under the Charter, the pillar will support well-functioning and fair labour markets and welfare systems. It will address issues of key importance for individuals such as equal opportunities and access to the labour market, fair working conditions and adequate and sustainable social protection.

<…>

Protecting peoples' personal data in the EU and elsewhere

A further key area of focus in 2016 was the protection of personal data (Article 8 of the Charter). The adoption of the General Data Protection Regulation (GDPR)9 and the Data Protection Directive for Police and Criminal Justice Authorities10 was a big step forward in this respect.

The GDPR strengthens and modernises the existing rules: people will have easier access to their own personal data, a right to data portability, a clarified "right to be forgotten" and certain rights applicable in case of personal data breach. The GDPR also obliges companies and organisations to swiftly notify the national supervisory authority about serious data breaches, so that users can take appropriate measures. The GDPR, furthermore, as a single EU legal instrument establishes one single set of rules so that individuals will have the same protection, no matter where they are in the EU.

Directive (EU) 2016/680 aims to establish efficient information exchange between national enforcement authorities and ensure that the data of victims, witnesses, and suspects of crimes are duly protected in the context of a criminal investigation or a law enforcement action. All law enforcement processing in the EU will have to comply with the principles of necessity, proportionality and legality, and offer appropriate safeguards for the individuals.

Along this reinforced protection within the EU, the Commission also ensured adequate data protection outside the EU. In July 2016, it adopted the EU-US Privacy Shield adequacy decision, which ensures the free flow of personal data for commercial purposes between the EU and U.S. companies certified under the Privacy Shield, while securing the fundamental right to the protection of the data.

Another milestone was the conclusion, in December, of the Umbrella Agreement11 between the EU and the US, which provides for a high level of data protection for any transfer of personal data between the EU and the United States in the context of police or judicial cooperation in criminal matters.

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3. Charter application in and by Member States

3.1 Fundamental rights and rule of law developments

The Charter applies to Member States only when they are implementing EU law. Infringement procedures against Member States regarding breaches of the Charter can therefore only be triggered when a sufficient link to EU law is established.

However, even when acting outside the implementation of the EU law, Member States are obliged to respect the values on which the Union is founded. In particular, the rule of law is a preconditionn for the protection of fundamental rights. In 2014, the Commission introduced a Framework aimed at addressing situations of emerging systemic threats to the rule of law which cannot be effectively tackled by safeguards at national level or existing instruments (in particular infringement procedures) at EU level.

<…>

In October 2016, the European Parliament adopted a Resolution on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights. The Commission welcomed the overall objective of the resolution, which is to ensure that the EU common values are respected and enforced. The Commission considers however that the best possible use should be made of existing instruments, while avoiding duplication. A range of existing tools and actors already provide a set of complementary and effective means to promote and uphold common values. The Commission will continue to value and build upon these means. One of the Parliament's underlying ideas was to make the variety of existing data and reports on the situation of fundamental rights in the Member States more accessible and visible, also at national level. The Commission welcomed this, as numerous other actors -including the Council of Europe and its Venice Commission, the EU Agency for Fundamental Rights (FRA) and NGOs - collect information on the rule of law, democracy and fundamental rights in the Member States

<…>

VI. Practice of the EU Court

The case law presented in the section is the result of the work of the highest judicial part of the European Union judiciary (hereinafter the EU), namely the European Court of Justice or, as it is called, the European Court of Justice (hereinafter - the Court). It deals with cases related to the application and interpretation of EU law; as the supreme court examines cases of national courts, in particular: disputes in the field of trade, agriculture, subsidies and privileges, public service, intellectual property, etc. First of all, it should be noted that respect for fundamental human rights is an integral part of the general principles of law protected by the Court. The protection of these rights is a common constitutional tradition of the EU member states, which passes through the majority of judgments of the Court and literally reflects them, as well as the principle according to which the right of the EU takes precedence over the national legislation of the member states.

The Court's rulings in this section were selected on the basis of the presence in the motive of references to the constituent elements of the rule of law as criteria for which the lawfulness of the actions or decisions of the public authorities of the EU countries was verified. An additional argument in favor of the selection of these decisions is that the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (hereinafter referred to as the Association Agreement), provides that disputes between the parties must be considered precisely in this Court, and, accordingly, his decisions are of a precedent nature for Ukraine. In addition, the Court is the authority that, in case of need, is authorized to interpret the rules of the Association Agreement and EU legislation. Thus, the prospects of further integration of Ukraine into the European economic and political space necessitate knowledge of the EU legislation, the peculiarities of its application in practice and acquire for the employees of the public authorities of Ukraine no less importance than the acquisition of national legislation. The methods of judicial analysis of the Court are similar to those used by the ECtHR and which have already been commented on in Section IV, but they have many peculiarities. In particular, this is due to the normative framework used by the Court. The ECtHR verifies the final decisions of national courts on their compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention). The court has a broad regulatory framework that is used in the legal process. Firstly, these are interstate agreements: on the establishment of the European Community, on the European Union, on social policy agreements and many others, including the Charter of Fundamental Rights of the European Union (the Charter) and the Convention. Secondly, these legal acts, both normative and non-normative, are adopted directly by the administrative authorities of the EU. Given the large volume of legal and management acts, the Court has developed a number of unified algorithms for dealing with a category of cases that can be traced in the proposed extracts from cases.

Thus, the first proceedings before the Court, the motivational part of which is presented as an example of the application of the constituent elements of the rule of law, is the case of confectionery manufacturers against the Commission in disputing the results of tenders for the grant of subsidies to butter producers (Case Société française des Biscuits Delacre ea v Commission of the European Communities) It should be noted that the EU policy in the field of agriculture, which includes appropriate processing, is one of the most regulated ones. The largest costs of the EU Consolidated Budget are aimed at supporting the farming sector of the participating countries, stimulating the production of certain types of agricultural products or preventing its overproduction. The grants awarded to producers from the budget are millions of euros, so the issue of a legitimate, transparent process of decision-making on their allocation is of paramount importance.

The reasoning part of the aforementioned judgment clearly demonstrates the applicants' application, and then the Court's elaborate, "test" for verifying the challenged decision of the Commission of the EU to respect the constituent elements of the **rule of law**, namely the **lawfulness of its adoption, proportionality, the protection of legitimate expectations and the prohibition of discrimination**. In this case, the structure of the motive part is determined by the Court in accordance with the principles, observance of which it considers. Each of these prin-

ciples has its own components, which are also explored by the Court. In fact, due to their prism, including other components of the rule of law, such as transparency, the right to be heard, the restriction of discretionary powers, the study of compliance with EU legislation on this issue in the work of the EU Commission, which is authorized to decide on the granting of subsidies, is ongoing. This applies equally to the provisions of the EEC Treaty, the relevant Regulation, the procedure for conducting the tender, from the announcement of its beginning before the publication of the result, as well as the procedure for determining the amount of the subsidy and its justification. The final conclusion in the case is based on the fact that none of the four submitted submissions to substantiate the statements regarding legality, proportionality, legitimate expectations, non-discrimination, have not been confirmed. Accordingly, the statement of possible violations by the public authority of the EU should be rejected in its entirety.

In addition to applying the aforementioned components of the rule of law, the Court's practice is illustrative of the application of the principles of law as guidelines for the lawfulness of the decisions taken. In particular, in considering a case involving an economic entity's responsibility for anticompetitive behavior (the case of Limburgse Vinyl Maatschappij NV (LVM) and others v Commission of European Communities), the Court applies the "legal principle known since the Ancient times "**Res judicata".** According to him, the final decision of the competent court is binding and can not be reviewed. This principle is a component of the other - legal certainty, which, for its part, forms an integral part of the rule of law. In addition, the Court uses another principle - **"Non bis in idem".** It means that a person can not be prosecuted twice for the same offense; is one of the manifestations of the principle of proportionality as a component of the rule of law. Although both of these principles have been formalized and detailed in many legal instruments, including the Convention and the Charter, the Court verifies the lawfulness of the actions of the EU bodies directly in line with these principles, pre-interpreting their content. This indicates the role played by the understanding of the rule of law in the administration of justice in the EU and the relevant judicial tradition of using the principles as its source of law. An additional argument in favor of the foregoing considerations may be the application of the principle of reasonableness by the Court in this case. He made conclusions about the meaning of the concepts "reasonable period" for the adoption of a lawsuit and "reasonable time" for administrative proceedings, namely: to determine the first and second time slots as reasonable, it is necessary to study the specific circumstances of the case, rather than focusing on the specified but defined abstract maximal the boundary.

The constituent of the rule of law - the right to be heard - has also been reflected in the commentary, in particular, in the Court's conclusions on the need to provide entities with access to case files on their possible offenses. This opportunity, for its part, ensures the effective exercise of the right to protection as a fundamental principle of the right of the European community.

The protection of this right, as well as the wider detail of its contents, can be traced back to Orkem v Commission of the European Communities. The court, in particular, emphasized that the right to defense was not limited to administrative proceedings, but should be ensured in the course of the preliminary investigation, in particular as regards the procedure for requesting information. If, in relation to public authorities, the right to request information is almost unconditional in terms of the obligation to provide an answer, then there is an essential feature of the entity. The public authority has the appropriate legal authority to request the information necessary to investigate a possible offense in the economic sphere, but it can not compel to provide information that can testify to the offense. At the same time, such a conclusion of the Court is not based on the generally accepted principle of law as to the possibility not to testify against itself as a component of the principle of innocence, otherwise the actions of the authorities as to the request for information could be considered unlawful, but the Court deduces from the component of the rule of law - the right to protection. The following components of this right are the need to inform the person or entity, firstly, the evidence presented against him to justify measures that adversely affect him, and secondly, that the person or entity concerned should give an opportunity to effectively present their point of view on this evidence. The Court describes the implementation of these requirements as the implementation of the principle of respect for the right to protection. This position is highlighted in the "Central Bank of Iran v. The European Union".

A similar position was put forward by the Court in the Al-Chaby v. Council case. It referred to the fact that the observance of the rights to protection, enshrined in Art. 41 of the Charter, includes the right to be heard and the right to access the materials of the case in accordance with the legitimate interests of maintaining confidentiality. Find out the reasons for which a decision has been made against a person and have the opportunity to defend his rights, either by reading the decision itself, or by requesting and disclosing these reasons. The article in the Charter guarantees the right to proper management. In particular, in the case of Khaled Budlida against the Prefect of the Pyrenees of the Atlantic, it was interpreted by the Court so that the right to proper administration includes, among other things, the right of every person to be heard before any individual measure that will affect it will be applied against it in a negative way. In other words, the Charter guarantees, and the Court protects the right to be heard. As the Court points out, the recipient of this right is not the EU member states, but the EU institutions and bodies, and public authorities.

Lastly, one should pay attention to another aspect of the Court's right to good administration, which can also be translated as a prudent administration. Thus, in Crown & Crown v. The European Commission, the Court emphasized that the right in question implies compulsory diligence which requires the competent institution to thoroughly and objectively examine all aspects of a particular case. In the event of insufficient attention to the comments made by a person in the exercise of his right to be heard, the Court may find that there is a violation by the public authority of the right to proper (reasonable) management, which, as the Court has pointed out, is one of the fundamental rights of the EU.

Judgment of the Court (Second Chamber) of 14 February 1990. - Société française des Biscuits Delacre e.a. v Commission of the European Communities. – Case C-350/88, 61988J0350

(Extract)

<...>

Grounds

1. By an application lodged at the Court Registry on 2 December 1988, Société française des Biscuits Delacre, Etablissements J. Le Scao and Biscuiterie de l' Abbaye (hereinafter referred to as "the applicants ") brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the decision adopted by the Commission on 30 September 1988 in connection with invitation to tender No 8 (Official Journal 1988, C 259, p. 9) under the standing invitation to tender pursuant to Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs (Official Journal 1988, L 55, p. 31) was void.

2. The applicants, which are manufacturers of pastry products, participated in a standing invitation to tender with a view to obtaining aid for butter under Regulation No 570/88. On 23 September 1988, under individual invitation to tender No 8 for 1988, they lodged tenders with the French intervention agency for a total of 110, 80 and 10 tonnes respectively of butter at 82% without tracers, with aid of FF 1 334.44 net of tax per 100 kg.

3. By a decision of 30 September 1988 addressed to the Member States, an extract of which, in the form of a table showing only the prices and amounts of aid decided upon by the Commission, was published in the C Series of the Official Journal of the European Communities (Official Journal 1988, C 259, p. 9), the Commission fixed the maximum amount of aid for invitation to tender No 8 at ECU 154, equivalent to FF 1 151.28, per 100 kg.

4. By letters dated 3 October 1988, the French intervention agency informed the applicants that their tenders had been rejected on the ground that the aid for which they had applied was higher than the maximum amount decided upon by the Commission on 30 September 1988.

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6. In support of their application, the applicants claim that there has been a breach of an essential procedural requirement inasmuch as the contested decision did not state the reasons on which it was based and the principles of proportionality, the protection of legitimate expectations and the prohibition of discrimination have not been complied with.

7. Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The statement of the reasons on which the decision was based

8. The applicants claim that the contested decision does not comply with the requirement laid down in Article 190 of the EEC Treaty that decisions must state the reasons on which they are based inasmuch as it is not stated in the decision that it was taken after the opinion of the Management Committee had been obtained and no reasons are given for the reduction of the maximum amount of aid compared with the previous invitations to tender.

<...>

17. In the present case, the contested decision forms part of a series of measures intended to reduce butter stocks. In particular, the fixing of the minimum selling prices for butter and the maximum amounts of the aid for butter and concentrated butter pursuant to Regulation No 570/88 constitutes a uniform procedure which is repeated approximately every two weeks, in which decisions are taken on the basis of explicit criteria contained in rules with which the trade circles concerned are perfectly familiar and neither the mode of adoption nor the contents of those decisions differs to any appreciable extent.

18. Moreover, the modification of the minimum selling price and the maximum amount of the aid is an inherent aspect of the system of Regulation No 570/88. The aim of the successive decisions taken in connection with the individual invitations to tender is to provide for a flexible reaction to factual circumstances over which the Community authority has no control, since the Commission takes its decision after receiving all the tenders submitted under an individual invitation to tender, having regard to the level of available stocks and market butter prices. Moreover, in the present case, it is undisputed that butters stocks fell considerably as from late 1986.

19. In those circumstances, the reference in the contested decision to the legal base applicable to the fixing of the maximum level of aid fulfils the requirement laid down in Article 190 of the EEC Treaty that reasons must be stated, and it was not necessary to state the specific reasons for the modification of the amount of the aid compared with previous individual invitations to tender.

20. The applicants' second complaint must therefore also be rejected.

21. It follows from the foregoing that the contested decision contains a sufficient statement of the reasons on which it is based. The first submission must therefore be dismissed.

The principle of proportionality

22. In support of this submission, the applicants claim that the contested decision disregarded the principle of proportionality in so far as, contrary to the objectives of Article 39(1)(c), (d) and (e) of the EEC Treaty and Regulation No 570/88, which are to stabilize markets, assure the availability of supplies and ensure that supplies reach consumers at reasonable prices, the decision fixed the maximum amount of the aid for the butter used by biscuit manufacturers at ECU 154 per 100 kg and thereby suddenly and unforeseeably established an increase in the cost of butter of approximately 55% since the beginning of 1988.

23. The second recital in the preamble to Regulation No 570/88 makes it clear that the objective of the regulation was to promote the disposal and use of butter in order to remedy the situation on the butter market in the Community, which was encumbered by heavy stocks which could not be disposed of in the normal way.

24. It is clear from statistics produced by the Commission, which the applicants have not contested, that the stocks of butter in the Community fell appreciably during 1988 and, indeed, had started to fall as early as late 1986. In September 1988, the level of stocks in the Community had fallen to less than one third of the quantities in stock in September 1986 (439 000 tonnes and 1 473 000 tonnes respectively, source : Eurostat).

25. As far as public stocks of butter are concerned, the drop was even more significant. According to the information provided by the Commission' s Directorate-General for Agriculture, public reserves fell by more than five-sixths from 1 323 000 tonnes in September 1986 to 206 000 tonnes in September 1988. That constant downward trend in butter stock levels continued, moreover, after September 1988. As stock levels fell, the prices for butter and concentrated butter have increased steadily since early 1988.

26. In view of those circumstances, the Commission, which was under an obligation to manage existing butter stocks and dispose of them on the most favourable terms, had to adjust its policy of aid for butter consumption by biscuit manufacturers to meet market developments.

27. Since the Commission was thus entitled to consider that the drop in the level of butter stocks made it less necessary to use subsidies to encourage purchases of market butter, the contested decision did not clearly depart from the purpose of the rules which the Commission had to implement.

28. Furthermore, the applicants have no grounds for describing the reduction of the maximum amount of aid established by the contested decision as sudden and unforeseeable. The amount of aid fell steadily after individual invitation to tender No 5 (Commission Decision of 12 August 1988) and even continued in invitation to tender No 9 (Commission Decision of 17 October 1988). On each occasion, moreover, the reduction was between 1 and 5 ecus per 100 kg of butter.

29. Even after the reduction during 1988, as a result of the downward trend in the level of butter stocks, aid for the purchase of market butter still represented 50% of its intervention price, so that the applicants were not made to suffer a disadvantage but only received a lesser advantage under the very favourable system set up by Regulation No 570/88.

30. It follows that the submission alleging a breach of the principle of proportionality must be dismissed.

The principle of the protection of legitimate expectations

31. According to the applicants, the contested decision disregarded the principle of the protection of legitimate expectations inasmuch as it suddenly and unforeseeably departed from a consistent previous practice on the basis of which they had planned their production. The applicants claim that they based their development policy on the manufacture of butter-based products as a result of the system of sales at reduced prices and Community aid, inferring from the Commission' s attitude that the Community rules concerning the grant of aid for butter for the manufacture of pastry products would be maintained in effect without any sudden changes.

32. In order to determine whether this submission is well founded it must be borne in mind that, as the Court has held, the Community institutions have a wide discretionary power in regard to the common agricultural policy which reflects the responsibilities which the Treaty imposes on them (paragraph 34 of the judgment of 11 March 1987 in Joined Cases 279, 280, 285 and 286/84 Walter Rau Lebensmittelwerke and Others v Commission ((1987)) ECR 1069). In particular, the Commission must be recognized as having such a margin of discretion in choosing the means necessary for carrying out its policy in its capacity as authority responsible for the management of butter stocks, in which it has to adjust its policy of aid for butter consumption to meet fluctuating market conditions.

33. The Court has consistently held that whilst the principle of the protection of legitimate expectations is one of the fundamental principles of the Community, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained (see paragraph 27 of the judgment of 15 July 1982 in Case 245/81 Edeka Zentrale AG v Germany ((1982)) ECR 2745, paragraph 27 of the judgment of 28 October 1982 in Case 52/81 Offene Handelsgesellschaft in Firma Werner Faust v Commission ((1982)) ECR 3745, and paragraph 33 of the judgment of 17 June 1987 in Joined Cases 424 and 425/85 Cooeperative Melkproducentenbedrijven Noord-Nederland BA (Frico) and Others v Voedselvoorzienings In - en Verkoopbureau ((1987)) ECR 2755). This is particularly true in an area such as the common organization of the markets whose purpose involves constant adjustments to meet changes in the economic situation (see paragraph 22 of the judgment of 16 May 1979 in Case 84/78 Angelo Tomadini v Amministrazione delle finanze dello Stato ((1979)) ECR 1801, paragraph 48 of the judgment of 5 May 1981 in Case 112/80 Firma Anton Duerbeck v Hauptzollamt Frankfurt am Main/Flughafen ((1981)) ECR 1095, and paragraph 33 of the judgment in Frico, cited above).

34. It follows that traders cannot claim a vested right to the maintenance of an advantage which they derive from the establishment of the common organization of the markets and which they enjoyed at a given time (see paragraph 22 of the judgment of 27 September 1979 in Case 230/78 Eridiana-Zuccherifici Nazionali and Another v Minister for Agriculture and Forestry and Others ((1979)) ECR 2749, and paragraph 18 of the judgment of 21 May 1987 in Joined Cases 133 to 136/85 Walter Rau Lebensmittelwerke v Bundesanstalt fuer landwirtschaftliche Marktordnung ((1987)) ECR 2289).

35. That conclusion is even more inescapable in a case such as the present one.

36. It must be observed in the first place that Regulation No 570/88 is a special measure whose purpose is to dispose of butter on particularly favourable terms in order to deal with an exceptional situation in which the market is encumbered by heavy stocks which cannot be disposed of in the normal way. As soon as the state of the market returns to normal, the Commission must in its management take account of the new situation and the obligation to make adjustments to exceptional arrangements which depart from the normal rules of the market. In those circumstances, the adjustment of the amount of aid to the state of the market is inherent in the scheme of Regulation No 570/88, and the applicants may not claim a vested right to the maintenance of advantages which they have derived over a certain period from the system set up to promote the disposal of surplus butter. This applies all the more forcefully in the present case since the system of aid was maintained and only the amount was modified.

37. Secondly, in view of the downward trend in stock levels which began in late 1986 and accelerated considerably during 1988, the applicants, as prudent and well-informed traders, should have foreseen the progressive increase in the selling price of butter and the concomitant reduction of the amount of aid, which are the inevitable consequences of a fall in stock levels. They are not therefore entitled to claim that they had a legitimate expectation that the amount of the aid would be maintained (see paragraph 6 of the judgment of 1 February 1978 in Case 78/77 Firma Johann Luehrs v Hauptzollamt Hamburg-Jonas ((1978)) ECR 169, and paragraph 13 of the judgment in Amylum, cited above).

38. It follows from the foregoing reasoning that the submission alleging a breach of the principle of the protection of legitimate expectations must also be dismissed.

The prohibition of discrimination

39. The applicants contend further that the contested decision failed in two respects to comply with the prohibition of discrimination. First, French legislation provides that only butter may be used in the manufacture of products marketed under the designation "made with butter", while the rules in other Member States also allow the use of other types of fat. Secondly, the applicants discern unequal treatment in the fact that, as undertakings established in France, they were informed of the state of butter stocks only in France. They claim that, unlike undertakings in other Member States, they were unable to obtain supplies of butter at reduced prices in other Member States at the appropriate time because they were inadequately informed.

40. With regard to the first complaint, it is sufficient to point out that the particular situation of French manufacturers of butter biscuits cannot be attributed to the contested decision; it is the result of differences between the laws of the Member States concerning the rules governing the designation of foodstuffs. As it stands at present, Community law does not preclude a Member State from imposing on its own traders stricter rules in that regard than those in force in other Member States.

41. With regard to the second complaint, it must be borne in mind that Articles 13(2) and 15(1) of Regulation No 570/88 require all intervention agencies to specify, in notices of invitations to tender, the quantity of butter for sale in each store, and to make the list of those stores, updated and published at regular intervals, available to prospective tenderers.

42. In those circumstances, the applicants could have enquired with intervention agencies in other Member States as to the levels of butter stocks available with a view, if need be, to obtaining supplies of stock butter from those sources.

43. The extra expense which may be entailed in such a procedure applies in the same way to any Community trader submitting tenders in a Member State other than that in which he is established, so that there is no breach of the prohibition of discrimination.

44. The applicants' fourth submission is therefore also unfounded.

45. Since none of the submissions put forward by the applicants can be upheld, the application must be dismissed in its entirety.

<...>

Judgment of the Court of 15 October 2002. - Limburgse Vinyl Maatschappij NV (LVM) (C-238/99 P), DSM NV and DSM Kunststoffen BV (C-244/99 P), Montedison SpA (C-245/99 P), Elf Atochem SA (C-247/99 P), Degussa AG (C-250/99 P), Enichem SpA (C-251/99 P), Wacker-Chemie GmbH and Hoechst AG (C-252/99 P) and Imperial Chemical Industries plc (ICI) (C-254/99 P) v Commission of the European Communities

Joined cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P., 61999J0238

(Extract)

Summary

1. For the purpose of the application of the rules laid down in Article 15 of the Statute of the Court of Justice and Articles 10(1) and 32(1) of the Rules of Procedure of the Court of First Instance, which relate to the composition of the chambers of the Court First Instance hearing a case, it is not the permanent or temporary nature of the inability of a judge to attend which is decisive. If a temporary absence or inability to attend justifies the change in the composition to allow an uneven number of members to sit, the same must apply, a fortiori, to the case of a permanent inability to attend as a result of, for example, the expiry of a member's term of office.

2. Where the Court of Justice itself gives final judgment on the dispute in accordance with Article 54 of the Statute of the Court of Justice by accepting one or more pleas raised by an applicant, it does not automatically settle all the points of fact and law raised by that applicant.

The authority of res judicata attaching to a judicial decision which itself limits the obligations imposed under Article 176 of the EC Treaty (now Article 233 EC) on an institution whose act has been declared void extends only to matters of fact and law actually or necessarily settled by that judicial decision.

3. The principle of non bis in idem, which is a fundamental principle of Community law also enshrined in Article 4(1) of Protocol No 7 to the European Convention on Human Rights, precludes, in competition matters, an undertaking from being found guilty or proceedings from being brought against it a second time on the grounds of anti-competitive conduct in respect of which it has been penalised or declared not liable by a previous unappealable decision.

The application of that principle therefore presupposes that a ruling has been given on the question whether an offence has in fact been committed or that the legality of the assessment thereof has been reviewed.

Thus, the principle of non bis in idem merely prohibits a fresh assessment in depth of the alleged commission of an offence which would result in the imposition of either a second penalty, in addition to the first, in the event that liability is established a second time, or a first penalty in the event that liability not established by the first decision is established by the second.

On the other hand, it does not in itself preclude the resumption of proceedings in respect of the same anti-competitive conduct where the first decision was annulled for procedural reasons without any ruling having been given on the substance of the facts alleged, since the annulment decision cannot in such circumstances be regarded as an acquittal' within the meaning given to that expression in penal matters. In such a case, the penalties imposed by the new decision are not added to those imposed by the annulled decision but replace them.

4. Annulment of a Community measure does not necessarily affect the preparatory acts preceding it since the procedure for replacing such a measure may, in principle, be resumed at the very point at which the penalised illegality occurred.

5. In all proceedings in which sanctions, especially fines or penalty payments, may be imposed, observance of the rights of the defence is a fundamental principle of Community law which must be complied with, even if the proceedings in question are administrative proceedings.

Article 19(1) of Regulation No 17 and Article 4 of Regulation No 99/63, which apply that principle, require the Commission to deal in its final decision only with those objections on which the undertakings and associations of undertakings concerned have had the opportunity to put their case.

<...>

8. In competition matters, the general principle that action must be taken within a reasonable period must be observed both in administrative proceedings conducted pursuant to Regulation No 17 which may lead to the penalties provided for therein and in judicial proceedings in the event of an action against the Commission's decision. The examination of whether observance of that principle was guaranteed in the administrative procedure may be divided into two successive stages, the first covering the period in which the Commission takes measures involving a complaint that an infringement has been committed and having a significant impact on the situation of the suspected undertakings and the second covering the period from notification of the statement of objections up to adoption of the final decision.

The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the applicant and of the competent authorities.

However, that list of criteria is not exhaustive and the assessment of the reasonableness of the period in question does not require a systematic examination of the circumstances of the case in the light of each of them where the duration of the proceedings appears justified in the light of one of them. The purpose of those criteria is to determine whether the time taken in the handling of a case is justified. Thus, the complexity of the case or the dilatory conduct of the applicant may be deemed to justify a duration which is prima facie too long. Conversely, the time taken may be regarded as longer than is reasonable in the light of just one criterion, in particular where its duration is the result of the conduct of the competent authorities. Where appropriate, the duration of a procedural stage may be regarded as reasonable from the outset if it appears to be consistent with the average time taken in handling a case of its type.

9. The reasonableness of a period in an administrative procedure cannot be assessed by reference to a precise maximum limit determined in an abstract manner but, rather, must be appraised in the light of the specific circumstances of each case.

An initial general examination is carried out to determine whether the period in question is prima facie too long having regard to the procedure being conducted. If it is, a more specific examination is required as to whether there have been any actual delays which cannot be justified by the circumstances of the case.

As regards an administrative procedure relating to competition law, the Court of First Instance has exclusive jurisdiction to establish and assess the relevant facts except where those facts are clearly distorted and then, subject to review by the Court of Justice, to define their legal nature with regard to observance of the principle that decisions should be adopted within a reasonable time.

10. It is apparent from Article 14(2) of Regulation No 17 that, in contrast to those ordered by a decision pursuant to Article 14(3) of that regulation, investigations carried out on a simple authorisation are based on the voluntary cooperation of the undertakings. Where an undertaking has in fact cooperated in an investigation carried out on authorisation, a complaint of undue interference by the public authority in the sphere of its private activities is unfounded if it is not substantiated by evidence showing that the Commission went beyond the cooperation offered by the undertaking.

11. Infringement of the privilege against self-incrimination presupposes the exercise of coercion against the person suspected of committing a breach in order to obtain information from him and an actual interference with the right in question.

An undertaking is not obliged to reply to requests for information under Article 11(2) of Regulation No 17.

With respect to decisions requiring information adopted under Article 11(5) of Regulation No 17, the assessment of an interference with the privilege against self-incrimination requires an appraisal of the facts at the level of both the content of the decisions and the information provided in response, which does not constitute, save where the clear sense of the evidence is distorted, a question of law which is subject, as such, to review by the Court of Justice.

12. Under Articles 20(1) and 14(2) and (3) of Regulation No 17, information obtained during investigations must not be used for purposes other than those indicated in the order or decision pursuant to which the investigation is carried out.

That requirement is intended to protect, in addition to the professional secrecy expressly referred to in Article 20(1) of Regulation No 17, the undertakings' defence rights, which not only form part of the fundamental principles of Community law but are also enshrined in Article 6 of the European Convention on Human Rights, the interpretation of which by the European Court of Human Rights must be taken into account by the Community judicature.

Those rights would be seriously endangered if the Commission were able to rely on evidence against undertakings which was obtained during an investigation but was not related to the subject-matter or purpose thereof.

On the other hand, it cannot be concluded that the Commission is precluded from initiating an inquiry in order to verify or supplement information which it happened to obtain during a previous investigation if that information indicates the existence of conduct contrary to the competition rules in the Treaty.

First, undertakings are in no way deprived of the protection afforded by Article 20 of Regulation No 17 if the Commission makes a new request for a document. From the point of view of the defence of their rights, they are in the same position as where the Commission no longer has the document, since it is forbidden to make direct use as evidence in a second proceeding of a document obtained in a previous proceeding. Secondly, the fact that the Commission has obtained documents in a given matter for the first time does not confer such absolute protection that those documents cannot be requested under statutory powers in another matter and used as evidence.

<...>

Judgment of the Court of 18 October 1989. - Orkem v Commission of the European Communities. – Competition – Commission's investigative powers - Rights of the defence. - Case 374/87, 61987J0374

(Extract)

Summary

1.A decision is properly notified if it reaches the addressee and the latter is in a position to take cognizance of it.

Accordingly, a company notified of a decision requiring information to be provided pursuant to Article 11(5) of Regulation No 17 cannot challenge the legality of the decision on the ground that the prior request for information provided for in Article 11(1) was addressed to its subsidiary if it had full knowledge of that request, as evidenced by the fact that throughout the procedure conducted by the Commission both companies, each of which has its registered office at the same address, replied to requests addressed by the Commission to one or the other of them, without their at any time mentioning any problem resulting from the existence of two distinct legal persons.

2.Articles 11 and 14 of Regulation No 17 establish two entirely independent procedures. The fact that an investigation under Article 14 has already taken place cannot in any way diminish the powers of investigation available to the Commission under Article 11. No consideration of a procedural nature inherent in Regulation No 17 thus prevents the Commission from requiring, for the purposes of a request for information, the disclosure of documents of which it was unable to take a copy or extract when carrying out a previous investigation.

It is for the Commission to decide whether particular information is necessary to enable it to bring to light an infringement of the competition rules. Even if it already has evidence, or indeed proof, of the existence of an infringement, the Commission may legitimately take the view that it is necessary to request further information to enable it better to define the scope of the infringement, to determine its duration or to identify the circle of undertakings involved.

3.The rights of the defence, as a fundamental principle, must be observed, not only in administrative procedures which may lead to the imposition of penalties, but also during preliminary inquiry procedures, such as requests for information under Article 11 of Regulation No 17, which may be decisive in providing evidence of the unlawful nature of conduct engaged in by undertakings and for which they may be liable.

Accordingly, whilst the Commission is entitled, in the course of a request for information under Article 11 of Regulation No 17, to compel an undertaking to provide all necessary information concerning such facts as may be known to it and to disclose to it, if necessary, such documents relating thereto as are in its possession, even if the latter may be used to establish, against it or another undertaking, the existence of anti-competitive conduct, it may not, by means of a decision calling for information, undermine the rights of the defence.

It follows that, although in the case of infringements in the economic sphere, in particular of competition law, an undertaking cannot be said to have the right not to give evidence against itself by virtue of a principle common to the laws of the Member States or by virtue of the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms or by the International Covenant on Civil and Political Rights, the Commission may not compel an undertaking to provide it with answers which might involve an admission on its part of the existence of an infringement which it is incumbent upon the Commission to prove.

<...>

Judgment of the Court of 17 December 1970. - Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel. - Case 11-70, 61970J0011

(Extract)

<...>

Summary

1. The validity of measures adopted by the institutions of the community can only be judged in the light of community law. The law stemming from the treaty, an independent source of law, cannot because of its very nature be overridden by rules of national law, however framed, without being deprived of its character as community law and without the legal basis of the community itself being called in question. Therefore the validity of a community measure or its effct within a member state cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that state or the principles of its constitutional structure.

2. Respect for fundamental rights forms an integral part of the general principles of law protected by the court of justice. The protection of such rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the community.

3. The requirement by the agricultural regulations of the community of import and export licences involving for the licensees an undertaking to effect the proposed transactions under the guarantee of a deposit constitutes a method which is both necessary and appropriate, for the purposes of articles 40 (3) and 43 of the eec treaty, to enable the competent authorities to determine in the most effective manner their interventions on the market in cereals. The system of deposits violates no fundamental right.

4. The concept of force majeure adopted by the agricultural regulations is not limited to absolute impossibility but must be understood in the sense of unusual circumstances, outside the control of the importer or exporter, the consequences of which, in spite of the exercise of all due care, could not have been avoided except at the cost of excessive sacrifice.

5. By limiting the cancellation of the undertaking to export and the release of the deposit to cases of force majeure the community legislature adopted a provision which, without imposing an undue burden on importers or exporters, is appropriate for ensuring the normal functioning of the organization of the market in cereals, in the general interest as defined in article 39 of the treaty.

<...>

Judgment of the Court (First Chamber) of 25 March 2015 – CENTRAL BANK OF IRAN V COUNCIL OF THE EUROPEAN UNION - CJEU-T 563/12

(Extract)

<…>

92. It must be recalled that the fundamental right to observance of the rights of defence during a procedure preceding the adoption of restrictive measures is expressly affirmed in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, recognised by Article 6(1) TEU as having the same legal value as the Treaties (see judgment in Makhlouf v Council, paragraph 56 above, EU:T:2013:431, paragraph 31 and the case-law cited).

93. The principle of respect for the rights of the defence requires, first, that the person or entity concerned must be informed of the evidence adduced against it to justify the measure adversely affecting it and, secondly, that the person or entity concerned must be afforded the opportunity effectively to make known its view on that evidence (see, by analogy, judgment of 12 December 2006 in Organisation des Modjahedines du peuple d'Iran v Council, T228/02, EU:T:2006:384, paragraph 93).

94. In the context of the adoption of a decision maintaining a person's or entity's name on a list of persons or entities subject to restrictive measures, the Council must respect the right of that person or entity to a prior hearing where new evidence, namely evidence which was not included in the initial listing decision, is admitted against it in the decision maintaining its name on the list (see, to that effect, judgments of 21 December 2011 in France v People's Mojahedin Organization of Iran, C27/09 P, ECR, EU:C:2011:853, paragraph 62, and Makhlouf v Council, paragraph 56 above, EU:T:2013:431, paragraphs 42 and 43).

95. In the present case, on 2 August 2012, the Council communicated to the applicant individually the statement of reasons for the contested acts, namely that it '[p]rovid[ed] financial support to the Government of Iran'. The legality of the contested acts must be assessed in the light of that statement of reasons which was used by the Council, and not that which appears in the Council's cover note under reference 17576/12, which is not reproduced in the contested acts.

96. It follows from paragraph 87 above that that statement of reasons could be regarded as sufficient, in the light of the requirements of the case-law, so far as concerns the criterion of support to the Government of Iran.

97. Furthermore, the Council did not in this instance have to communicate to the applicant the documentary evidence on which that statement of reasons was based, since that evidence, which related to the financial services specifically provided to the Government of Iran by the applicant, as the central bank of the Islamic Republic of Iran, could be presumed to be known to all and to be implicitly included in the statement of reasons for the contested acts so far as concerns the criterion of support to the Government of Iran (see paragraph 85 above). In other words, the Council did not have to provide the applicant with the actual documents specifying the applicant's functions and powers as the central bank of the Islamic Republic of Iran.

98. The applicant was able to challenge that statement of reasons and the underlying evidence even before the adoption of the contested acts. In the letter of 7 October 2012, it accordingly denied providing financial support to any institution (including the Government of Iran) in order to fund nuclear proliferation. It was also able effectively to exercise its right of appeal by objecting in the present action that it '[did] not support the Government financially any more than any other central bank in the world' and that '[s]till less [did] it provide the kind of support to which the contested [acts] relate, namely support for nuclear proliferation activities'.

99. Consequently, the applicant's rights of defence and its right to effective judicial review were respected when the contested acts were adopted.

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Judgment of the Court (Fifth Chamber) of 11 December 2014 – KHALED BOUDJLIDA V PRÉFET DES PYRÉNÉES-ATLANTIQUES - CJEU-C 249/13

(Extract)

<...>

29. It must first be observed that in Chapter III of Directive 2008/115, headed 'Procedural safeguards', that directive lays down the formal requirements which apply to return decisions, which must, inter alia, be issued in writing and must give reasons, and obliges the Member States to put in place effective remedies against those decisions. However, that directive does not specify whether, and under what conditions, observance of the right of third-country nationals to be heard must be ensured before the adoption of a return decision concerning them (see, to that effect, the judgment in Mukarubega, C166/13, EU:C:2014:2336, paragraphs 40 and 41).

30. Since the referring court referred in its first question to the right to be heard in relation to Article 41 of the Charter, it must be recalled that, in accordance with the Court's settled case-law, observance of the rights of the defence is a fundamental principle of EU law, in which the right to be heard in all proceedings is inherent (the judgments in Kamino International Logistics, C129/13, EU:C:2014:2041, paragraph 28, and Mukarubega, EU:C:2014:2336, paragraph 42).

31. The right to be heard in all proceedings is now affirmed not only in Articles 47 and 48 of the Charter, which ensure respect for both the rights of the defence and the right to fair legal process in all judicial proceedings, but also in Article 41 of the Charter, which guarantees the right to good administration. Article 41(2) of the Charter provides that the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him adversely is taken (the judgments in Kamino International Logistics, EU:C:2014:2041, paragraph 29, and Mukarubega, EU:C:2014:2336, paragraph 43).

32. As the Court stated in paragraph 67 of the judgment in YS and Others (C141/12 and C372/12, EU:C:2014:2081), it is clear from the wording of Article 41 of the Charter that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union (see, to that effect, the judgment in Cicala, C482/10, EU:C:2011:868, paragraph 28).

33. Consequently, an applicant for a resident permit cannot derive from Article 41(2)(a) of the Charter a right to be heard in all proceedings relating to his application (the judgment in Mukarubega, EU:C:2014:2336, paragraph 44).

34. Such a right is however inherent in respect for the rights of the defence, which is a general principle of EU law (the judgment in Mukarubega, EU:C:2014:2336, paragraph 45).

<…>

73. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

The right to be heard in all proceedings, as it applies in the context of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, and, in particular, Article 6 of that directive, must be interpreted as extending to the right of an illegally staying third-country national to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Articles 5 and 6(2) to (5) of that directive and on the detailed arrangements for his return.

However, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that it does not require a competent national authority to warn the third-country national, prior to the interview arranged with a view to that adoption, that it is contemplating adopting a return decision with respect to him, or to disclose to him the information on which it intends to rely as justification for that decision, or to allow him a period of reflection before seeking his observations, provided that the third-country national has the opportunity effectively to present his point of view on the subject of the illegality of his stay and the reasons which might, under national law, justify that authority refraining from adopting a return decision.

The right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that an illegally staying third-country national may have recourse, prior to the adoption by the competent national authority of a return decision concerning him, to a legal adviser in order to have the benefit of the latter's assistance when he is heard by that authority, provided that the exercise of that right does not affect the due progress of the return procedure and does not undermine the effective implementation of Directive 2008/115.

However, the right to be heard in all proceedings, as it applies in the context of Directive 2008/115, and, in particular, Article 6 of that directive, must be interpreted as meaning that it does not require Member States to bear the costs of that assistance by providing free legal aid.

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Judgment of the Court (Fourth Chamber) of 12 December 2014 (publication by extracts) Crown Equipment (Suzhou) and Crown Gabelstapler v Council, CJEU - T 643/11

(Excerpt)

<…>

45. In so far as the applicants submit that their right to a fair hearing has been infringed, it must be borne in mind that, although the Commission or the Council cannot be described as a 'court or tribunal' within the meaning of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (see, to that effect, judgments of 29 October 1980 in van Landewyck and Others v Commission, 209/78 to 215/78 and 218/78, EU:C:1980:248, paragraph 81, and of 7 June 1983 in Musique diffusion française and Others v Commission, 100/80 to 103/80, ECR, EU:C:1983:158, paragraph 7), the Commission and the Council are nevertheless required during the administrative procedure to respect the fundamental rights of the European Union, which include the right to sound administration enshrined in Article 41 of the Charter of Fundamental Rights. In particular, it is Article 41, not Article 47 of that Charter, which governs the administrative procedure before the Commission and the Council in the matter of defence against dumped imports from non-EU countries (see, by analogy, judgment of 11 July 2013 in Ziegler v Commission, C439/11 P, ECR, EU:C:2013:513, paragraph 154 and the case-law cited).

46. The applicants' complaint must therefore be understood as meaning that the right to sound administration has been infringed because of a failure to take sufficient account of their comments in their letter of 25 July 2011. That right presupposes a duty of diligence which requires the competent institution to examine carefully and impartially all the relevant aspects of the individual case (see, to that effect, judgments of 21 November 1991 in Technische Universität München, C269/90, ECR, EU:C:1991:438, paragraph 14; of 6 November 2008 in Netherlands v Commission, C405/07 P, ECR, EU:C:2008:613, paragraph 56; and of 16 September 2013 in ATC and Others v Commission, T333/10, ECR, EU:T:2013:451, paragraph 84).

<…>

VII. OSCE Documents

This section presents some documents created within the framework of the Organization for Security and Cooperation in Europe (OSCE), which until 1995 was called the Conference on Security and Cooperation in Europe (hereinafter referred to as CSCE). It was launched in 1975, as the political advisory body of the states of Europe, Asia and North America and today has 55 participating countries. Such a wide representation of countries that have essential features in their legal systems, but share common values and priorities for Europe, makes the work of the OSCE, and in particular the decisions made within it, an important factor in building and strengthening democracy, freedom and the rule of law, not to only on the European continent. During the existence of the organization considerable attention of the participating countries was paid to the issues of the establishment and development of the constituent elements of the rule of law both at the level of standardization and at the level of legalization. A large segment of the projects currently implemented with the support of the OSCE Project Co-ordinator in Ukraine are devoted to the issues of the rule of law.

The first section presents the document produced at the CSCE Human Dimension Conference in Copenhagen in June 1990. The notion of "human dimension" was not accidentally reached the sphere of the organization's interest at that time. It is worth paying attention to the fact that this event occurred in the period when the process of destruction of the ruling regimes in the countries of Eastern Europe began. Those regimes which a person has never considered a real purpose of the state's existence, but rather was a means of achieving the political and ideological interests of the ruling elite. The concept of "human dimension" in the system of conceptual apparatus of the elites of Western Europe and not only, on the contrary, gives the person, with all its needs, interests and contradictions, the status of the highest value. It is from a person that begins to depend on the policy of the state, determine the essence of its functions, the organization and activities of public authorities to ensure its rights.

The outcome document of the meeting set up for the participating countries, including for the then socialist countries, including the USSR, to promote and protect human rights as the main objectives of governments. In addition, the notion of the rule of law was supplemented by a sign of justice. It is based on the recognition and conscious acceptance of the highest value of the human person, which must be guaranteed and ensured by the policies and activities of public authorities.

Also, their constituent elements of the rule of law, such as lawfulness, equality, the right to appeal, the right to be heard, accountability, etc., were recognized and consolidated. Lawfulness contained in itself not only the duty of state authorities to comply with the norms of the constitution and act in accordance with the law, but also the obligation to publish legislation and norms as a condition for their application.

The right of a person to appeal was developed in the document as an element of justice, which is necessary for ensuring the natural dignity and equal and inalienable rights of all people.

Even for the current realities of political and legal life, which undoubtedly undergone progressive, dynamic changes towards convergence with European standards in comparison with the 90s of the twentieth century, such elements of justice as free elections, representative forms of government, separation of state and political parties, publicity of the discussion of legislation before adoption, the accountability of the police and the military, etc., are perceived with a sufficient amount of skepticism. However, these components, together with the guarantee of the law of fundamental human rights, equality before the law, the possibility of correcting administrative decisions, presumption of innocence, etc., constituted and form the basis not only of justice, but also of the activities of the entire system of public administration in Europe, which also reflected in the named document.

The following presented CSCE document on human dimension was already adopted in Moscow in 1991, in the presence of countries that at that time restored their independence, namely Lithuania, Latvia and Estonia. The participating countries reaffirmed their commitment to the rule of law, in particular its elements such as democracy and pluralism, which are important for a political organization. Given the socio-political situation in many countries of the OSCE at that time, the focus of the document was on the requirements for the activities of law enforcement agencies for the purpose of humane treatment of persons deprived of their liberty, the prevention of human rights violations, the prevention of the use of excessive force, etc.

In addition, countries have agreed to protect human rights during emergencies, which can only be introduced in exceptional cases and only with the involvement of the legislature within clearly defined territorial boundaries. In this case, legal guarantees of the rule of law must be provided.

In 1995, the name of the organization was changed, taking into account the real status it had acquired over the past decade, turning from the Consultative and Political Body to the Organization for Security and Cooperation in Europe. This required the organization of a new level of legal capacity, privileges and immunities, as indicated in the decision "On further strengthening the rule of law in the area of responsibility of the OSCE". This document also calls on participating countries to fulfill their obligations to rule of law both internationally and nationally in the areas of legislation, governance and justice. In particular, this concerns the independence of the judiciary, access to the courts, the responsibility of state institutions and officials, respect for the rule of law in public administration, and so on. He secured this newest at that time in the field of respect for the rule of law, as the protection of the environment; proclaimed the need to raise awareness of issues related to the rule of law not only in the courts, but also in law enforcement, police and penitentiary systems.

Separately, the documents adopted by the international institutions with the participation of the OSCE should be mentioned, in particular, the Recommendations for the Improvement of Local Self-Government, produced during the regional conference "Good Governance, Transparency and Ethics at the Municipal Level" in June 2010 in Montenegro.

The main emphasis in this document is on measures to combat corruption, which absorbs resources, distract citizens from political life, discredit the authorities and destroy the very foundations of democracy. One of the ways to counteract this phenomenon is the practical implementation of the principle of accountability of local self-government bodies. In particular, it is achieved by ensuring conditions for active participation of citizens in public control over the work of local authorities, the creation of a system of internal audit of ethical conduct and an anti-corruption monitoring system, cooperation with non-governmental organizations and mass media, etc.

Recommendations for expanding inter-municipal cooperation at the level of local authorities, produced at a conference in Croatia in 2010, is the final document of this section. His problems are caused by the processes of association of territorial communities, which almost simultaneously began in different countries - the OSCE participating countries, in particular in Ukraine. An alternative to such associations may be the cooperation of territorial communities, which can also substantially improve the quality of local government services, which will ultimately serve to realize the principle of the availability of these services as a component of the rule of law. However, in order to establish successful cooperation, support is needed both from the supreme bodies of state power and at the local level. The types and methods of such support are dedicated to this document.

Document of the Copenhagen Meeting of the conference on the human dimension of the CSCE

29 June 1990

(Excerpt)

The representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE), Austria, Belgium, Bulgaria, Canada, Cyprus, Czechoslovakia, Denmark, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the Union of Soviet Socialist Republics, the United Kingdom, the United States of America and Yugoslavia, met in Copenhagen from 5 to 29 June 1990, in accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE.

The representative of Albania attended the Copenhagen Meeting as observer.

The first Meeting of the Conference was held in Paris from 30 May to 23 June 1989.

The Copenhagen Meeting was opened and closed by the Minister for Foreign Affairs of Denmark.

The formal opening of the Copenhagen Meeting was attended by Her Majesty the Queen of Denmark and His Royal Highness the Prince Consort.

Opening statements were made by Ministers and Deputy Ministers of the participating States.

At a special meeting of the Ministers for Foreign Affairs of the participating States of the CSCE on 5 June 1990, convened on the invitation of the Minister for Foreign Affairs of Denmark, it was agreed to convene a Preparatory Committee in Vienna on 10 July 1990 to prepare a Summit Meeting in Paris of their Heads of State or Government.

The participating States welcome with great satisfaction the fundamental political changes that have occurred in Europe since the first Meeting of the Conference on the Human Dimension of the CSCE in Paris in 1989. They note that the CSCE process has contributed significantly to bringing about these changes and that these developments in turn have greatly advanced the implementation of the provisions of the Final Act and of the other CSCE documents.

They recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character. They therefore welcome the commitment expressed by all participating States to the ideals of democracy and political pluralism as well as their common determination to build democratic societies based on free elections and the rule of law.

At the Copenhagen Meeting the participating States held a review of the implementation of their commitments in the field of the human dimension. They considered that the degree of compliance with the commitments contained in the relevant provisions of the CSCE documents had shown a fundamental improvement since the Paris Meeting. They also expressed the view, however, that further steps are required for the full realization of their commitments relating to the human dimension.

The participating States express their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. They therefore reaffirm their commitment to implement fully all provisions of the Final Act and of the other CSCE documents relating to the human dimension and undertake to build on the progress they have made.

They recognize that co-operation among themselves, as well as the active involvement of persons, groups, organizations and institutions, will be essential to ensure continuing progress towards their shared objectives.

In order to strengthen respect for, and enjoyment of, human rights and fundamental freedoms, to develop human contacts and to resolve issues of a related humanitarian character, the participating States agree on the following:

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(1) The participating States express their conviction that the protection and promotion of human rights and fundamental freedoms is one of the basic purposes of government, and reaffirm that the recognition of these rights and freedoms constitutes the foundation of freedom, justice and peace.

(2) They are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.

(3) They reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations.

(4) They confirm that they will respect each other's right freely to choose and develop, in accordance with international human rights standards, their political, social, economic and cultural systems. In exercising this right, they will ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other CSCE commitments.

(5) They solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following:

5.1. free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;

5.2. a form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate;

5.3. the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law;

5.4. a clear separation between the State and political parties; in particular, political parties will not be merged with the State;

5.5. the activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured;

5.6. military forces and the police will be under the control of, and accountable to, the civil authorities;

5.7. human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law;

5.8. legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability. Those texts will be accessible to everyone;

5.9. all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground;

5.10. everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity;

5.11. administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available;

5.12. the independence of judges and the impartial operation of the public judicial service will be ensured;

5.13. the independence of legal practitioners will be recognized and protected, in particular as regards conditions for recruitment and practice;

5.14. the rules relating to criminal procedure will contain a clear definition of powers in relation to prosecution and the measures preceding and accompanying prosecution;

5.15. any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be decided, to be brought promptly before a judge or other officer authorized by law to exercise this function;

5.16. in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone will be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

5.17. any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

5.18. no one will be charged with, tried for or convicted of any criminal offence unless the offence is provided for by a law which defines the elements of the offence with clarity and precision;

5.19. everyone will be presumed innocent until proved guilty according to law;

5.20. considering the important contribution of international instruments in the field of human rights to the rule of law at a national level, the participating States reaffirm that they will consider acceding to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments, if they have not yet done so;

5.21. in order to supplement domestic remedies and better to ensure that the participating States respect the international obligations they have undertaken, the participating States will consider acceding to a regional or global international convention concerning the protection of human rights, such as the European Convention on Human Rights or the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for procedures of individual recourse to international bodies.

(6) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes. They recognize their responsibility to defend and protect, in accordance with their laws, their international human rights obligations and their international commitments, the democratic order freely established through the will of the people against the activities of persons, groups or organizations that engage in or refuse to renounce terrorism or violence aimed at the overthrow of that order or of that of another participating State.

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

7.1. hold free elections at reasonable intervals, as established by law;

7.2. permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

7.3. guarantee universal and equal suffrage to adult citizens;

7.4. ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

7.5. respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination;

7.6. respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;

7.7. ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

7.8. provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process;

7.9. ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.

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Document of the Moscow meeting of the Conference on the human dimension of the CSCE

4 October 1991

(Excerpt)

The representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE), Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands-European Community, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the USSR, the United Kingdom, the United States of America and Yugoslavia, met in Moscow from 10 September to 4 October 1991, in accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE.

They welcomed the admission as participating States of Estonia, Latvia and Lithuania decided at an additional Meeting at ministerial level of the representatives of the participating States in Moscow on 10 September 1991, convened by the Federal Minister for Foreign Affairs of the Federal Republic of Germany, Chairman-in-Office of the CSCE Council, prior to the opening of the Moscow Meeting.

<...>

17. The participating States

17.1. condemn unreservedly forces which seek to take power from a representative government of a participating State against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order;

17.2. will support vigorously, in accordance with the Charter of the United Nations, in case of overthrow or attempted overthrow of a legitimately elected government of a participating State by undemocratic means, the legitimate organs of that State upholding human rights, democracy and the rule of law, recognizing their common commitment to countering any attempt to curb these basic values;

17.3. recognize the need to make further peaceful efforts concerning human rights, democracy and the rule of law within the context of security and co-operation in Europe, individually and collectively, to make democratic advances irreversible and prevent any falling below the standards laid down in the principles and provisions of the Final Act, the Vienna Concluding Document, the Document of the Copenhagen Meeting, the Charter of Paris for a New Europe and the present document.

18. The participating States recall their commitment to the rule of law in the Document of the Copenhagen Meeting and affirm their dedication to supporting and advancing those principles of justice which form the basis of the rule of law. In particular, they again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations.

18.1. Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives.

18.2. Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.

18.3. To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

18.4. The participating States will endeavour to provide for judicial review of such regulations and decisions.

<…>

22. The participating States will take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant international and domestic codes of conduct are included in the training of such personnel.

23. The participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees.

<…>

27. The participating States

27.1. express their intention to co-operate in the field of constitutional, administrative, commercial, civil and social welfare laws and their relevant areas, in order to develop, particularly in States where they do not yet exist, legal systems based on respect for human rights, the rule of law and democracy;

27.2. to this end, envisage the continuation and enhancement of bilateral and multilateral legal and administrative co-operation, inter alia, in the following fields:

- development of an efficient administrative system;
- assistance in formulating law and regulations;
- training of administrative and legal staff;
- exchange of legal works and periodicals.

28. The participating States consider it important to protect human rights and fundamental freedoms during a state of public emergency, to take into account the relevant provisions of the Document of the Copenhagen Meeting, and to observer the international conventions to which they are parties.

28.1. The participating States reaffirm that a state of public emergency is justified only by the most exceptional and grave circumstances, consistent with the State's international obligations and CSCE commitments. A state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms. If recourse to force cannot be avoided, its use must be reasonable and limited as far as possible.

28.2. A state of public emergency may be proclaimed only by a constitutionally lawful body, duly empowered to do so. In cases where the decision to impose a state of public emergency may be lawfully taken by the executive authorities, that decision should be subject to approval in the shortest possible time or to control by the legislature.

28.3. The decision to impose a state of public emergency will be proclaimed officially, publicly, and in accordance with provisions laid down by law. The decision will, where possible, lay down territorial limits of a state of public emergency. The State concerned will make available to its citizens information, without delay, about which measures have been taken. The state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation.

28.4. A de facto imposition or continuation of a state of public emergency not in accordance with provisions laid down by law is not permissible.

28.5. The participating States will endeavour to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.

28.6. The participating States confirm that any derogation from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation

28.7. The participating States will endeavour to refrain from making derogations from those obligations from which, according to international conventions to which they are parties, derogation is possible under a state of public emergency. Measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments. Such measures will neither go further nor remain in force longer than strictly required by the exigencies of the situation; they are by nature exceptional and should be interpreted and applied with restraint. Such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

28.8. The participating States will endeavour to ensure that the legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency. They will endeavour to provide in their law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations.

<...>

Decision № 7/08 on further strengthening the rule of law in the OSCE area

(Excerpt)

The Ministerial Council,

Reaffirming the OSCE participating States' commitments to the rule of law and to the Principles Guiding Relations between participating States in the 1975 Helsinki Final Act, as well as to the fulfilment in good faith of obligations under international law and reiterating the OSCE participating States' determination to foster strict respect for these principles.

<...>

Taking into account participating States' ongoing and envisaged bilateral activities regarding the rule of law, Underlining the importance of providing the OSCE with a legal personality, legal capacity, privileges and immunities and thus strengthening the legal framework of the OSCE,

1. Calls on the OSCE participating States to honour their obligations under international law and to observe their OSCE commitments regarding the rule of law at both international and national levels, including in all aspects of their legislation, administration and judiciary;

2. Calls on participating States to contribute, where appropriate, to OSCE projects and programmes supporting the rule of law;

3. Encourages the relevant OSCE executive structures, in accordance with their mandates and within existing resources, in cooperation with relevant international organizations, to further identify and use synergies in assisting participating States, upon their request, in strengthening of the rule of law;

4. Encourages participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law, inter alia in the following areas:

- Independence of the judiciary, effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for the rule of law in public administration, the right to legal assistance and respect for the human rights of persons in detention;
- Honouring obligations under international law as a key element of strengthening the rule of law in the OSCE area;
- Adherence to the principle of peaceful settlement of disputes;
- Respect for the rule of law and human rights in the fight against terrorism according to their obligations under international law and OSCE commitments;
- Prevention of torture and other cruel, inhuman or degrading treatment or punishment, including through co-operation with the applicable intergovernmental bodies;
- Efficient legislation and an administrative and judicial framework in order to facilitate economic activities, trade and investments in participating States and between them;
- Respect for the rule of law with regard to the protection of the natural environment in the OSCE area;
- Awareness-raising for issues related to the rule of law in courts, law enforcement agencies, police and penitentiary systems as well as in training for legal professionals;
- Education on the rule of law as well as interaction and exchange opportunities for legal professionals, academics and law students from different participating States in the OSCE region;
- The role of constitutional courts or comparable institutions of the participating States as an instrument to ensure that the principles of the rule of law, democracy and human rights are observed in all state institutions;
- The provision of effective legal remedies, where appropriate, and the access thereto;
- The observation of rule of law standards and practices in the criminal justice system;
- The fight against corruption;

5. Tasks the relevant OSCE executive structures, in close consultation and co-operation with participating States and within existing resources, to organize a seminar focussing on rule of law in 2009 which could serve as a platform for exchanging best practices between the participating States on issues related to the rule of law.

<…>

Recommendations on strengthening the quality of local governance

(Regional Conference "Good Governance, Transparency and Ethics at the Municipal Level", Budva-Becici, 2- 4 June 2010)

(Excerpt)

1. At the invitation of the Ministry of Interior and Public Administration of Montenegro, with support of the Organisation for Security and Co-operation in Europe and the Council of Europe, and in co-operation with the Union of Municipalities of Montenegro, ministers, state secretaries, senior officials, local elected representatives and their associations of South-eastern Europe have met in Budva to take stock of progress made in the action engaged at both central and local level to fight corruption and promote public ethics.

2. The participants have exchanged information and good practice, reviewed current policies and considered further measures aimed at enhancing the quality of local governance, with particular focus on the transparency and the ethical conduct of public affairs by all those involved.

3. All participants acknowledged that while significant progress has been achieved so far with a view to raising – and meeting – ethical standards in public affairs, there is still a need for sustained political commitment, appropriate legal measures and support for their implementation at all levels concerned. All agreed that fighting corruption, promoting ethical behaviour and cleaning up political life at local level is part of an overall effort aimed at the strategic goal of delivering good democratic governance at all levels. Corruption diverts resources, steers citizens away from political life, discredits institutions and erodes the very foundations of democracy.

4. It was recognised that the actions to be further undertaken should include the introduction of systems of performance management and that such actions would fit into – and benefit from being part of – the Strategy for Innovation and Good Governance at Local Level of the Council of Europe. The participants agreed to consider taking the appropriate action for the Strategy to be adopted in, and implemented by the countries of the region, with the involvement of governments and local authorities' associations and with the support of the International community.

5. The participants further agreed on the following specific recommendations:

To central authorities

6. Ensure the existence and implementation of a simple and uniform legal framework governing the rights and obligations of public officials and local elected representatives, including accountability, guarantees and protection, remuneration and working conditions, supervision, disqualification, termination of office and suspension.

7. Ensure within the system of local self-government the existence of monitoring systems that verify the establishment and efficiency of anti-corruption measures in co-operation with NGOs and media.

8. Ensure arrangements enabling active participation of citizens in public controls of the work of local level institutions.

9. Encourage the adoption by local authorities of performance management systems that would supplement and enhance anti-corruption measures.

To each municipality

10. Publicly adopt a policy of zero-tolerance on corruption as an acknowledgement that the ethics of local government has a direct impact on the provision of good governance and that this is what citizens are entitled to and legitimately expect.

11. Introduce a Code of Ethics and an Ethics Committee in order to give direction to ethical local government and to respond vigourously to failures in ethical behaviour.

12. Supplement the anti-corruption policy by performance management systems that would engage all staff and stakeholders in contributing to achieving the municipality's priorities and plans and give direction and sense of purpose to staff in their everyday work.

13. Establish an Internal Audit system to advise on the soundness of systems, processes and procedures, to carry out spot checks to determine their proper operation, particularly where functions are vulnerable to corruption, and to issue an d publish an Annual Internal Audit Report highlighting improvements made as well as risks that will need further management.

14. Develop a training policy and training programmes aimed at reinforcing in local staff and elected representatives the knowledge of, and compliance with the rules governing the rights and duties of public officials and local elected representatives.

To the Local Government Associations

15. Establish an Ethics Committee or Commission to promote ethical local government, prepare appropriate policies, oversee specific programmes and act as mediator in disputes on un-ethical behaviour at the level of municipalities.

16. Establish the professional capacity to support municipalities in delivering good local governance, particularly through capacity development programmes, performance management systems, best practice exchange, models and consultancy services.

17. Promote and facilitate the participation of local authorities in international benchmarking and sharing of best practice projects on good governance, ethics and transparency at local level.

Recommendations on extending inter-municipal co-operation throughout local government

(Conference on Inter-Municipal Co-operation, 23 – 24 September 2010, Dubrovnik)

(Excerpt)

At the invitation of the Council of Europe and the UNDP Democratic Governance Practice for Europe and CIS, with the support of the Organisation for Security and Co-operation in Europe (OSCE) and the Local Government and the Public Service Reform Initiative of the Open Society Institute (LGI-OSI) and under the auspices of the Ministry of Public Administration of Croatia, and in co-operation with the Association of Towns and the Association of Municipalities, ministers, state secretaries, senior officials, local elected representatives and their associations have met in Dubrovnik to take stock of progress made at both central and local level to encourage Inter-municipal Co-operation.

The participants have exchanged information and good practice, reviewed current policies and considered further measures aimed at enhancing the quality of local government through Inter-municipal Co-operation. They confirmed that IMC needs to play a greater role in raising the quality of public services, bringing efficiency and effectiveness in administrations and introducing sustainable local development policies. It can bring additional resources to allow local authorities to respond to climate change.

In the light of the long-term challenges coming from public fiscal deficits, climate and demographic change, there is a need for more efficient local government and better management of public expenditure. Central and local government need to work together to give a strong sense of direction and make best use of resources.

Participants recognise that IMC provides a robust alternative to the amalgamation of municipalities where amalgamation is proving particularly difficult; acknowledging at the same time that IMC can lay the foundation for later amalgamation when conditions are appropriate.

IMC is an important option available to municipalities for meeting the expectations of citizens for better services, more jobs and a cleaner environment. It brings them visibility. It helps to attract public and private investments including access to external funds such as EU grants or climate change mitigation and adaptation funds.

It is recognised that the spirit of cooperation is a foundation of IMC and is a fundamental element of in the exercise of democracy at the local level.

IMC is particularly relevant to those countries that have a large number of small municipalities that lack the capacity to provide effective local government. In some European states, IMC has evolved to become an effective mechanism for improving the quality of local government services.

All participants acknowledged that while a number of effective and sustainable IMC initiatives have been developed, the need for its further development remains significant. They recognised that IMC can best be developed within an appropriate institutional, legal and financial framework. The complexities of IMC mean that municipalities need significant support from government and local government institutions. The appropriate legal framework gives the necessary mechanisms and confidence that municipalities need to co-operate with each other. The appropriate financial framework provides the incentives that municipalities need to initiate and sustain IMC.

IMC can be one of the actions that a municipality can take to implement the Strategy for Innovation and Good Governance at Local Level of the Council of Europe. This will help individual municipalities raise their standards of performance in a way that facilitates IMC.

The participants further agreed on the following specific recommendations:

To central authorities

The Ministry responsible for local government should promote IMC as a mechanism for delivering effective public services, in co-operation with the Parliament and other central and local government bodies.

The Ministry responsible for local government should consult those ministries with a stake in local public services, together with local government associations, should review and amend as necessary the laws and regulations that govern co-operation between municipalities in order to create an institutional, legal and financial framework that positively encourages IMC.

The Ministry responsible for local finance should set up arrangements for financial support to municipalities to enable them to carry out feasibility studies into potential IMC projects and to support the early operating costs of projects to help ensure their longer term sustainability.

The Ministry responsible for local government, in consultation with local government associations and relevant ministries should encourage and support IMC initiatives in line with national priorities for public services.

The Ministry responsible for local government should encourage and support the development of IMC proposals that can make use of international funding.

The Ministry responsible for local government should establish a co-ordinating mechanism to ensure a shared approach and regular consultation between central and local government.

To each municipality

The participants recognized the critical role of municipal leadership in ensuring the foundation for a successful IMC.

To take steps to understand how IMC can help them strengthen their capacities and deliver good governance.

To introduce policies that would encourage the exploration of IMC as a mechanism for delivering public services.

To develop their capacities and expertise (including training policies for staff and elected representatives) to use IMC as a vehicle for better local government.

To review their current performance and assess how IMC can help them achieve higher standards.

To recognise that IMC requires an organisation culture in which co-operation is welcomed, review the quality of communications and transparency and take steps to create an environment in which IMC can operate successfully.

To explore with neighbouring municipalities the opportunities for co-operation and come together to develop IMC proposals.

To the Local Government Associations

Take policy responsibilities (through the appropriate committee) to encourage co-operation among municipalities, promote IMC as a mechanism for developing their capacities and delivering of good local governance and monitor its effectiveness.

Establish the professional capacity to support municipalities in using IMC to deliver good local governance, particularly through capacity development programmes, performance management systems, best practice exchange and consultancy services.

Translate and adapt the IMC toolkit and use it to promote IMC programs throughout local government.

To International organisations

International Organisations including the Council of Europe, UNDP, OSCE and LGI should support the aforementioned key stakeholders in their efforts to develop IMC. In particular they should:

- provide knowledge resources which would include but are not limited to: the provision of modern training materials, methodologies and capacity development and assessment tools, facilitating east-east and west-east exchange of best practices, and providing access to international networks of practitioners.

- organise regular events in order to facilitate further exchange of experience, expertise and information between stakeholders.

<...>

Compliers of documents and authors of comments

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