

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (89) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON PROVISIONAL COURT PROTECTION IN ADMINISTRATIVE MATTERS¹

*(Adopted by the Committee of Ministers on 13 September 1989
at the 428th meeting of the Ministers' Deputies)*

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

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

Considering that administrative authorities are active in numerous fields and that their activities are likely to affect individual rights, liberties and interests;

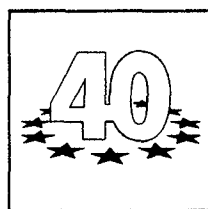
Considering that the immediate execution in full of administrative acts which have been challenged or are about to be challenged may, in certain circumstances, prejudice the interests of persons irreparably in a way which, for the sake of fairness, should be avoided as far as possible;

Considering that it is desirable to guarantee individuals, where necessary, provisional protection by the courts, without disregarding the need for effective administrative action;

Recalling the general principles on the protection of the individual in relation to acts of administrative authorities set out in its Resolution (77) 31 and the principles concerning the exercise of discretionary powers by administrative authorities contained in its Recommendation No. R (80) 2,

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

1. When this recommendation was adopted, the Representative of Denmark, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of her Government to comply with it or not.



Forty years
Council of Europe

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 suspensive 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 prejudice 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 provisional protection, the matter shall be liable to a new examination within a short time, under a procedure conforming to the preceding sub-paragraph.