

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON ADMINISTRATIVE SANCTIONS

*(Adopted by the Committee of Ministers on 13 February 1991
at the 452nd meeting of the Ministers' Deputies)*

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

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

Considering that administrative authorities enjoy considerable powers of sanction as a result of the growth of the administrative state as well as a result of a marked tendency towards decriminalisation ;

Considering that it is desirable, from the point of view of protection of the individual, to contain the proliferation of administrative sanctions by submitting them to a set of principles ;

Recalling the general principles governing 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 ;

Considering that administrative acts imposing an administrative sanction should be subjected to additional guarantees,

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 imposition 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 paragraph 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.