

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

Report rap  
 dossier 14163

RECOMMENDATION No. R (80) 2

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

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

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

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

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

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

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

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

Recommends the governments of member states :

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

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

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

Appendix to Recommendation No. R (80) 2

#### **Principles applicable to the exercise discretionary powers by administrative authorities**

##### *I. Scope and definitions*

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

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

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

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

## II. *Basic principles*

An administrative authority, when exercising a discretionary power :

1. does not pursue a purpose other than that for which the power has been conferred ;
2. observes objectivity and impartiality, taking into account only the factors relevant to the particular case ;
3. observes the principle of equality before the law by avoiding unfair discrimination ;
4. maintains a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purpose which it pursues ;
5. takes its decision within a time which is reasonable having regard to the matter at stake ;
6. applies any general administrative guidelines in a consistent manner while at the same time taking account of the particular circumstances of each case.

## III. *Procedure*

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

7. Any general administrative guidelines which govern the exercise of a discretionary power are :
  - i. made public, or
  - ii. communicated in an appropriate manner and to the extent that is necessary to the person concerned, at his request, be it before or after the taking of the act concerning him.
8. Where an administrative authority, in exercising a discretionary power, departs from a general administrative guideline in such a manner as to affect adversely the rights, liberties or interests of a person concerned, the latter is informed of the reasons for this decision.

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

## IV. *Control*

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

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

10. Where no time-limit for the taking of a decision in the exercise of a discretionary power has been set by law and the administrative authority does not take its decision within a reasonable time, its failure to do so may be submitted to control by an authority competent for the purpose.
11. A court or other independent body which controls the exercise of a discretionary power has such powers of obtaining information as are necessary for the exercise of its function.