

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

### **Recommendation Rec(2003)16 of the Committee of Ministers to member states 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)*

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 among its members;

Considering that it is necessary to maintain the trust of private persons in the administrative and judicial system and that, for this reason, both decisions by administrative authorities entailing obligations for private persons and judicial decisions in the field of administrative law recognising rights for private persons should be executed;

Considering that the action of the administrative authorities presumes that their decisions are efficiently implemented by private persons;

Considering that the execution of administrative decisions should have regard to the rights and interests of private persons;

Recalling in this respect 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;

Recalling also Recommendation No. R (89) 8 on provisional court protection in administrative matters, requiring the competent judicial authority, if the execution of an administrative decision may cause severe damage to the private persons to whom it is addressed, to take appropriate measures of provisional protection;

Considering that the efficiency of justice requires that judicial decisions in the field of administrative law be executed, in particular when they are addressed to administrative authorities;

Recalling in this respect the rights protected by the European Convention on Human Rights, of which the execution of court decisions within a reasonable time must be regarded as an integral part;

Recalling also Recommendation No. R (84) 15 relating to public liability, recommending that member states set up appropriate machinery to ensure that a lack of funds does not prevent obligations of public authorities in the field of public liability from being satisfied;

Recalling, finally, Resolution No. 3 of the 24th Conference of European Ministers of Justice, held in Moscow from 4 to 5 October 2001 on a "general approach and means of achieving effective enforcement of judicial decisions", inviting the Council of Europe to "identify common standards and principles at a European level for the enforcement of court decisions",

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.