COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2001)9

of the Committee of Ministers to member states

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)

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

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

3. Recalling Recommendation No. R (81) 7 on measures facilitating access to justice, which in its appendix called for measures to encourage the use of conciliation and mediation;

4. Recalling Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts, which calls for encouraging, in appropriate cases, the use of friendly settlement of disputes, either outside the judicial system altogether or before or during legal proceedings;

5. Considering, on the one hand, that the large amount of cases and, in certain states, its constant increase can impair the ability of courts competent for administrative cases to hear cases in a reasonable time, within the meaning of Article 6.1 of the European Convention on Human Rights;

6. Considering, on the other hand, that the courts' procedures in practice may not always be the most appropriate to resolve administrative disputes;

7. Considering that the widespread use of alternative means of resolving administrative disputes can allow these problems to be dealt with and can bring administrative authorities closer to the public;

8. Considering that the principal advantages of alternative means of resolving administrative disputes may be, depending on the case, simpler and more flexible procedures, allowing for a speedier and less expensive resolution, friendly settlement, expert dispute resolution, resolving of disputes according to equitable principles and not just according to strict legal rules, and greater discretion;

9. Considering, therefore, that in appropriate cases it should be possible to resolve administrative disputes by means other than the use of courts;

10. Considering that the use of alternative means should not serve administrative authorities or private parties as a means of avoiding their obligations or the rule of law;

11. Considering that, in all cases, alternative means should allow judicial review, as this constitutes the ultimate guarantee for protecting both users' rights and the rights of the administration;

12. Considering that alternative means to litigation must respect the principles of equality and impartiality and the rights of the parties;

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.

III. Special features of each alternative means

1. Internal reviews

i. In principle, internal reviews should be possible in relation to any act. They may concern the expediency and/or legality of an administrative act.

ii. Internal reviews may, in some cases, be compulsory, as a prerequisite to legal proceedings.

iii. Internal reviews should be examined and decided upon by the competent authorities.

2. Conciliation and mediation

i. Conciliation and mediation can be initiated by the parties concerned, by a judge or be made compulsory by law.

ii. Conciliators and mediators should arrange meetings with each party individually or simultaneously in order to reach a solution.

iii. Conciliators and mediators can invite an administrative authority to repeal, withdraw or modify an act on grounds of expediency or legality.

3. Negotiated Settlement

i. Unless otherwise provided by law, administrative authorities shall not use a negotiated settlement to disregard their obligations.

ii. In accordance with the law, public officials participating in a procedure aimed at reaching a negotiated settlement shall be provided with sufficient powers to be able to compromise.

4. Arbitration

i. The parties should be able to choose the law and procedure for the arbitration within the limits prescribed by law. Subject to the law and the wishes of the parties, the arbitrators' decisions can be based upon equitable principles.

ii. Arbitrators should be able to review the legality of an act as a preliminary issue with a view to reaching a decision on the merits even if they are not authorised to rule on the legality of an act with a view to it being quashed.