

CODE OF BEST ADMINISTRATIVE BEHAVIOUR

Compilation of best
administrative practices
proposed by the Síndic to the
Administration



CODE OF
GOOD ADMINISTRATIVE
BEHAVIOUR

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INTRODUCTION

One of the roles of the Catalan Ombudsman is the protection and defence of rights and freedoms recognized by the Constitution of Spain and the Statute of Autonomy of Catalonia, which, in its Article 30, acknowledges the right to good administration, a right that had been previously declared at the European Union level.

▪ **Legislative recognition of the right to good administration**

In fact, the concept of good administration as a guiding principle of the activity of public administrations and later, as a right of citizens with full judicial effects, is basically a product of the case law built by rulings of the European Court of Human Rights and the Court of Justice of the European Communities. The concept was reflected as a fundamental right in the Charter of Fundamental Rights of the European Union, dated December 7, 2000, the legal effectiveness of which was acknowledged in the Treaty of Lisbon, in which the European Union confirmed that the rights, freedoms and principles of the Charter have the same legal value as the treaties.

Article 41 of the Charter acknowledges people's right to the impartial and fair handling of their matters by EU institutions, bodies and organizations within a reasonable time frame. This includes the right to be heard, to have access to the case file affecting them, to know the grounds of all rulings, to reparation of damages, and the right to address the institutions in any of the EU's official languages, and receive a response in the same language.

On September 6, 2001, the European Parliament approved the Code of Good Administrative Behaviour, aimed at European Union institutions and bodies, based on a proposal drafted by the then-European Ombudsman, Jacob Söderman, considering the rulings of the Court of

Justice and legal codes of the member states.

In Spain, the submission of public powers, and the administration in particular, to the law, is one of the essential principles of the legal code. The principle of legality alludes to the rule of law, to government by laws, not by men. The principle is taken up in Article 9.3 of the Spanish Constitution with this formula. As for the administration, this submission is the source of legitimacy for its actions. It is reiterated in Article 103.1 of the Constitution, according to which the government should act with total submission to law and rights, a principle stipulated in Article 71.2 of the Statute of Autonomy of Catalonia.

Law 30/1992, on the Legal Code for Public administrations and Common Administrative Procedure, made for a great advancement in the regulation of relations between administrations and citizens within the framework of the right to good administration.

In the case of Catalonia, as already stated, the right to good administration is taken up in its Statute of Autonomy, in Article 30, limiting its scope to two specific rights: the right of citizens to be treated by the public authorities of Catalonia, in the matters affecting them, in an impartial, objective manner, and the right for public authorities' actions to be proportionate to the objectives that justify them.

Beyond the regulatory recognition, mention should be made of the Report, dated July 27, 2005, written at the behest of the Government of the Generalitat, by the Task Force on Good Government and Administrative Transparency, led by Anton Cañellas, which provided a number of recommendations to improve the transparency and good government mechanisms. These affect different areas of government activity, and imply, in some cases, regulatory modifications. In this report, transparency and good go-

vernment are understood as the set of measures whose aim, in an advanced society, is to facilitate and make effective accountability by the evaluation of institutions' work, of the processes and practices that determine how power is managed, how citizens participate in the adoption of public decisions and how these decisions are made pursuant to the general interest.

▪ **The Catalan Ombudsman's duty to ensure good administration**

The Catalan Ombudsman's office, as it conducts supervision over public administrations, has always sought to eradicate maladministration, even before the express, specific acknowledgement of the right to good administration, as certain dimensions of this right were already present in the legislative development of the constitutional framework. The decisions that the Catalan Ombudsman has given and continues to hand down to remind administrations of the submission of their activities to the principle of legality do not conclude with a mere indication of the law that has been violated. Rather, they go well beyond that, making proposals as to how to act appropriately to guarantee good administration.

From all of these decisions, it can be concluded that for the Catalan Ombudsman, a good administration is one that informs, listens and responds. It is an administration that acts with transparency, encourages participation of citizens, manages responsibly and fully assumes its responsibilities.

Acknowledging the right to good administration, beyond its judicial effects, also entails a new approach to relations between administrations and citizens. It means that the main criterion is no longer how the Government acts, but rather if it respects people's rights. The standpoint is that of the person who relates to the administration as service provider. Citizens are thus the centre and measu-

rement of administrative organization and action, with the right to good administration understood not just as standards for the administration, but also as guidelines of correct citizen behaviour with regard to different services and public actions. The Catalan Ombudsman is proposing the Code of Best Practices as a tool through which to guarantee this right.

▪ **Structure, content and purpose of the Code, and compilation of best practices: the precedent of the European Code of Best Practices**

The European Parliament approved the code of Good Administrative Behaviour on September 6, 2001. It was addressed to the institutions and bodies of the European Union, with the goal of specifying in practice the right to good administration stipulated in the Charter of Fundamental Rights.

The Code proposed by the Catalan Ombudsman is largely based on the content and systemic features of the European Code of Good Administrative Behaviour, although it also incorporates other principles not taken up therein, given the variable content of the right to good administration, as indicated by Sabino Cassese. Thus it contains principles addressed to public administrations to make the right to good administration effective. In this code, the principle of legality is the entryway to the rest of principles, and is present in all of its development.

The formulation of these principles is necessarily generic, and it has been deemed appropriate to complete them with a compilation of best practices derived from the decisions that the Catalan Ombudsman has directed toward administrations to counter practices contrary to good government over the past 25 years. Thus, each principle may contain best practices of a general nature which correspond to their heading. These are compiled in an annex to the code.

Some methodological considerations regarding the compilation of best practices should be stated. First, in some cases, the practices can be associated with more than one principle. Nonetheless, it was decided to include them with the one most involved in the specific case. Second, the practices have been compiled to express those that make for an addition to the legal development in force. Those taken up in the legislation in force, on which the Ombudsman makes a reminder without adding any condition or demand for good government, have been omitted.

This notwithstanding, those practices which, even though taken up in the legislation, and despite the Catalan Ombudsman's recommendation not implying any condition or demand, are the object of reiterated breaches in public administration activity. A paradigmatic example is non-compliance with the obligation to expressly respond.

The purpose behind the Code is to join efforts of all public authorities involved in guaranteeing good administration to ultimately improve the services rendered to persons. The Code may allow the Catalan Ombudsman to determine whether maladministration exists. But it can also be a tool to promote good administration for the good of public employees and citizens, who are the ultimate beneficiaries. From this standpoint, the Code aims to also be an educational tool for all its recipients, on the way in which relations between the administration and citizens are to be developed.

▪ **Code recipients and best practice compilation**

This Code is addressed to the public administrations of Catalonia, the autonomous government of Catalonia, local administrations and bodies associated or affiliated with them.

It is also addressed to the persons who come into contact with these administrations. It outlines the principles that public administrations should adhere to so that in their dealings with them the right to good administration, as recognized in the Statute of Autonomy of 2006, is respected.

The Code has also been presented in the Parliament of Catalonia, an institution that represents the people of Catalonia, and which chooses the Catalan Ombudsman.

The Catalan Ombudsman's Office, as the institution to which the Statute assigns the defence of rights, and already subject to the principles approved in the Charter of Services and Good Behaviour of the Catalan Ombudsman, signed March 4, 2008, proposes a code of good behaviour to the public administrations of Catalonia, and agrees to work to guarantee that it is respected, in a spirit that extends beyond monitoring and supervision, through collaboration with all involved administrations. Likewise, the Ombudsman's Office is committed to its maintenance and updating, and to carry out all of the actions necessary for its dissemination.

CODE OF GOOD ADMINISTRATIVE BEHAVIOUR

DECISION

Article 78 of the Statute of Autonomy of Catalonia designates the Catalan Ombudsman as the institution with the task of protecting and defending the rights and freedoms recognized by the Constitution of Spain and the Statute of Autonomy of Catalonia.

Article 30, on the rights of access to public services and good administration, specifies that people have the right to access public services and economic services of general interest in conditions of equality. Public administrations should set the conditions of access and standards of quality for these services, regardless of the system under which they are provided.

Everyone has the right to be treated by the public authorities of Catalonia, in the matters affecting them, in an impartial and objective way, and for the actions taken by public authorities to be proportionate to the purposes that justify them.

Taking as references the Code of Good Administrative Behaviour approved by the European Ombudsman and, based on the analysis of the decisions to combat practices contrary to good administration, the Catalan Ombudsman proposes this Code of Best Practices to all public administrations for them to consider their use to provide quality public services to the people.

Therefore, pursuant to the competencies vested in me by Law 14/1984, of March 20,

I hereby resolve:

1. To approve the Code of Best Administrative Practices,
2. To convey it to the Parliament of Catalonia, the autonomous and local administration and all entities subject to the Catalan Ombudsman's supervision.
3. To convey it for publication in the *Official Bulletin of the Parliament of Catalonia* and in the *Official Journal of the Generalitat of Catalonia*.



Rafael Ribó

Síndic de greuges de Catalunya

Barcelona, 2 de september 2009

CODE OF GOOD ADMINISTRATIVE BEHAVIOUR

I. PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION

The administration should respect the principle of equal treatment in its dealings with persons. It should especially avoid any discrimination on the basis of birth, race, gender, opinion or any other condition or circumstance, personal or social.

II. PROPORTIONALITY PRINCIPLE

The administration should make decisions in a way that is appropriate for the purpose they pursue, reconciling general interest with that of private citizens, avoiding the affectation of public rights and freedoms to the maximum degree possible.

III. LACK OF ABUSE OF POWER

The administration should exercise its powers only for the purpose for which they have been granted by the provisions in force, and should avoid any action lacking legal grounds or not rooted in public interest.

IV. IMPARTIALITY, INDEPENDENCE AND OBJECTIVITY

The administration should be impartial and independent in its actions and should act with objectivity, considering all the relevant factors in each case and giving each one the necessary relevance with relation to each decision.

V. CLARITY, COUNSELLING AND LEGITIMATE EXPECTATIONS

The administration should clearly inform persons on the rights they can exercise in their relations with the administration and also the requisites stipulated by the legislation to process their requests or applications.

In its decisions, the administration should observe and be consistent with its own administrative practice, and should respect the legitimate and reasonable expectations that people have of its actions.

VI. COURTESY AND FRIENDLY TREATMENT

In its relations with persons, the administration should be diligent, polite and accessible, and treat people courteously.

VII. OBLIGATION TO EXPRESSLY RESPOND

The administration should respond expressly to the requests that people send, and hand down expressly grounded decisions in all proceedings and interventions.

VIII. LINGUISTIC RIGHTS

The administration should guarantee people's right to address it in any official language, and should communicate with them in the language chosen.

IX. CONFIRMATION OF RECEPTION AND REFERRAL TO THE COMPETENT ADMINISTRATION

The administration will have to confirm reception of the correspondence and documents that people present and indicate, when relevant, the body competent to serve them and the services it may offer.

X. RIGHT TO BE LISTENED TO

The administration should ensure people's right to be listened to directly or through the representative bodies in administrative procedures, even the approval of rules, that can affect their rights or interests.

XI. REASONABLE TIME FRAME

The administration should undertake the proceedings without delays and avoid any practices not strictly necessary for the decision-making process. In the event of exceptional circumstances that keep it from responding on time, it should inform the interested party of the reasons for the delay.

XII. OBLIGATION TO EXPLAIN GROUNDS

The administration should expressly and clearly explain the grounds for all of its decisions and rulings in a comprehensible and sufficient manner.

XIII. NOTIFICATION OF THE DECISIONS AND INDICATION OF THE POSSIBILITY TO APPEAL

The administration should ensure that any decision affecting the rights or interests of persons is communicated to them in writing within a reasonable time frame, and that they are informed of the possibility for appeal and the time frame in which an appeal should be filed.

XIV. PERSONAL DATA PROTECTION

In all of its activities, the administration should respect the private life and intimacy of persons pursuant to personal data protection regulations in force.

XV. ACCESS TO INFORMATION, PUBLICATION AND TRANSPARENCY

The administration should ensure people's access to public documents and the information relative to the matters that may affect their rights.

The administration should take the measures necessary to make public the maximum amount of information in its power, to promote transparency and efficacy and ensure informed participation of people in matters of public interest.

XVI. RIGHT TO REDRESS

People are entitled to be compensated by the public administration for any damage caused to them by the operation of public services, except in cases of *force majeure*.

XVII. PARTICIPATION RIGHTS

The administration should ensure the right of all people to participate in public affairs in the cases determined by law, and should promote their participation in the development, rendering and evaluation of public policies.

COMPILATION OF
BEST ADMINISTRATIVE
PRACTICES
PROPOSED BY THE SÍNDIC
TO THE ADMINISTRATION

I. PRINCIPLE OF EQUALITY

1. Best practices in guaranteeing material equality

- The administration will be able to adopt the measures that make for unequal treatment of persons when there exists an objective and reasonable justification with regard to the intended purpose and effect.
- The administration should allow the use of all the assistance tools and instruments that facilitate the autonomous development and social integration of persons with disabilities.
- The administration should take measures to guarantee that all interested persons can take part in the selective processes with equal opportunities. To do so, it should take into account the specific needs of persons with disability when performing the tests.
- The administration should ensure compliance with the laws on accessibility and the requisites established in technical reports, in addition to levying the relevant sanctions for violators.
- The administration should serve the needs of children with disability, supporting them and giving them the instruments to compensate their situation of disability, in addition to offering them aid or resources even outside mandatory school hours and the school year.
- The Administration should take the affirmative action established legally to counter objective discrimination for reasons of gender.
- The administration should promote education in equal conditions for men and women.
- The administration should perfect the protection mechanisms for victims of gender violence and ensure the

effectiveness of restraining orders, both through technical risk assessment reports as well as electronic surveillance mechanisms over alleged attackers and convicts.

- When the administration conducts hiring processes it should establish in the terms of the call for applications an exception to the obligation of appearing personally on the day of testing in cases of female applicants for whom the date of the tests coincides with the day they give birth or the days immediately afterwards.

2. Best practices in guaranteeing non-discrimination

- The administration should unite the criteria used in management of the municipal census registry to prevent situations of inequality in access to rights or benefits, depending on the municipality of residence of the affected persons.
- The administration should take sufficient organizational and budgetary measures so that in administrative procedures that affect immigrants, they may exercise the rights inherent to the procedure in the same conditions as the rest of citizens.
- The Administration should work to ensure that children are not discriminated against due to their age or any other condition of the child or their legal guardians.
- In processes of foster care for immigrant children without family members of reference, the administration should always make their condition as a child prevail over the condition as a foreigner.
- The public administration should eradicate cases of “mobbing” in the workplace, characterized by discrimination of employees by their hierarchical superi-

ors or co-workers, as the negative consequences not only affect the victim but the entire organization.

- The public administration should clearly and completely regulate situations of workplace “mobbing” of public employees, classify such conduct as a violation and establish a clear, rapid and strict protocol of action in the case of complaint.
- The administration should ensure that, during the time in which a person is deprived of freedom, they be treated in the same conditions of equality as the rest of persons, with respect for their dignity and special protection of their physical and mental integrity, without prejudice to the measures to be taken due to their deprivation of freedom.
- Law enforcement officers should exercise their powers in detention as well as the conduct of proceedings in the investigation process, without discriminating against involved persons due to their national origin, gender, race, ethnic or social origin, language, religion or their opinions, disabilities, age or social orientation.

II. PROPORTIONALITY PRINCIPLE

1. Best practices in the exercise of discretionary powers

- When the administration acts in the exercise of discretionary powers it is subject, among others, to the principles of appropriateness and proportionality. Therefore, it should weigh the benefit and harm of all its actions according to the interests of the group in question.

2. Best practices in the access to and operation of benefits and services

- The administration should facilitate and flexibilize the mechanisms to accredit special family conditions (single-parent, large families, etc.) when this determines their possibility of accessing certain services or benefits, without prejudice to taking the necessary measures to ensure the correctness of the information provided.

- In the realm of health care, the administration should make rational use of the diagnostic and therapeutic resources to the benefit of patients, also using efficiency criteria.

- The administration should ensure that the measures of containment, or physical or pharmacological restriction adopted in social service centres, in addition to having the necessary prescription, are kept to the minimum necessary.

- In the child protection system, the administration should adopt the appropriate and proportional measures based on children's needs for care and comprehensive development.

- The administration should ensure that measures are applied which do not involve the separation of children from their homes or family environments, a situation that should only occur when it is necessary for the best interests of the

child, in cases of abuse or abandonment.

3. Best practices related with the use of force and the application of surveillance measures

- When the exercise of a fundamental right and the protection of public safety enter into conflict, the response from law enforcement officers should be proportionate at all times.

- In the exercise of the investigation and prevention functions, law enforcement officers should always respect the principles of congruence, opportunity and proportionality.

- The intensity of the force used to respond to situations of violence should always be that which is necessary and sufficient to reach the objective of defending the threatened or violated rights, without causing damage to other protected legal entities.

- The application of surveillance or other security measures that affect the right to privacy should be based on sufficient rational grounds to justify their application and guarantee that the measures are proportionate to the reasons why they are adopted.

- Searching (frisking) should be carried out with strict respect for the principles of necessity and proportionality, the dignity of the person and fundamental rights.

- The administration's discretionality in transfers of persons deprived of liberty responds to its own criteria of organization and operation. They should be harmonized with the principle of proportionality, especially considering serious family situations that make the transfer advisable.

III. LACK OF ABUSE OF POWER

1. Best practices in the exercise of sanctioning power

- The administration should exercise its sanctioning power within the framework of the Constitution and the rest of the legal code to avoid arbitrariness on the part of public authorities.
- The administration's application of the presumption of veracity of the complaints filed by competent officials can not be used to systematically dismiss evidence provided by defendants, as these reports may occasionally distort the evidence.

2. Best practices in the exercise of discretionary powers

- In cases of directly granted subsidies, the administration should sufficiently explain the grounds for direct granting to promote a non-arbitrary and transparent perception of administrative activity.
- Officials who chair public sessions of governing bodies have internal policing competencies to organize their development. Nonetheless, this competency does not include the possibility to impede or restrict the publicity of the session on the presumption that an alteration may occur.
- Recruitment bodies should ground their decisions based on their technical discretionality to not incur in arbitrariness.

3. Best practices related with the use of force and the application of measures

- The administration should not subject persons deprived of liberty or children or adolescents serving sentences in juvenile centres to any degrading treatment or abuse of word or deed. It should not act arbitrarily or with unnecessary rigor in the application of the rules.
- Medical testing of inmates should be sufficiently justified and objectified due to health reasons or to prevent situations of alteration in the centre, and should be supervised by health care personnel.
- Public employees at penitentiary centres should wear an identification number to endow employee-inmate relations with sufficient judicial security.

IV. IMPARTIALITY, INDEPENDENCE AND OBJECTIVITY

1. Best practices in the exercise of sanctioning power

- The presumption of veracity is applicable to the objective facts that may be directly perceived by competent officers, and those that are accredited with other evidence that are consigned in inspection documents.
- In administrative sanctioning processes, in order for the complaint to become proof, the information included should have been truly, objectively and directly perceived by the competent officer.

2. Best practices in the exercise of discretionary powers

- When administrations grant subsidies through a public call for tenders, they should base their decisions on the criteria previously established in the terms to grant them.
- If there is more than one applicant for a permit to use the streets, the administration can make its decision according to differential objective conditions, such as the seniority or the accredited experience of the activity intended to be carried out. Taking these criteria into account does not constitute an infraction of the principle of equality, as long as these objective conditions are correctly weighed and public.
- In the personnel selection processes, the terms of the hiring call bind the administration as well as the juries that have to grade them and those participating in them.
- In personnel selection processes, the administration should use objective criteria that make it possible to ensure that the capacity of the applicant is in accordance with the characteristics of the job post to be filled.

3. Best practices in the exercise of inspection and control competencies

- The control and inspection competencies of supervisory bodies are incompatible with a technical, commercial, financial or any other kind of link with the organizations subjected to the supervision, whose independence could be affected, with such a relationship having influence in the result of the supervisory activity.
- The administration should regulatively define the quality indicators of a service that will make it possible to objectively measure it and fulfil the duty of ensuring its proper operation.
- The administration should work to ensure application of the code of legal incompatibilities for public employees to guarantee their independence and their impartiality in the duties assigned to them for service purposes, and the objectivity of the decisions they should take.

4. Best practices for service provision

- In social intervention agreements, the terms agreed between the administration and interested parties should be established in writing, establishing the commitments made by the administration and the compensation accepted by the service user.
- In the regulation of social benefits or aid for persons in situations of need, the administration should avoid imposing conditions that are unrelated or incongruent to the situation of need, and the purpose of the aid, that may lead to unjustified restrictions.
- In decisions affecting children and adolescents, the administration should adjust its activities to the national and international legislation on children's rights, considering the best interest of the minor principle.

V. CLARITY, COUNSELING AND LEGITIMATE EXPECTATIONS

1. Best practices to inform on the rights of persons

- When a person complains that they have suffered damages due to a public action or private action supervised by the administration, the administration should inform them on the scope of the administrative penalization action, and the channels to claim compensation for the damages.
- The administration is obliged to inform anyone who has addressed it on the existing availability of subsidized housing and the actions they can take, as well as the processes they should follow to obtain a home, in writing, in a clear, detailed manner.
- In the realm of health care, the administration should offer patients the maximum information on their rights and procedures affecting them, in an easily comprehensible manner.
- The administration should provide the necessary counselling and technical support to children under protection measures in clear, comprehensible language.
- The administration should provide children under institutional care with personalized, updated information on their rights and obligations, their personal and legal situation, and the procedural rules of the centre, as well as the procedures to exercise their rights, especially to file requests, complaints or appeals, in an easy, intelligible manner.
- The administration acting as guardian of children and adolescents should support foster families, accompany them and regularly provide counselling and guidance.

2. Best practices to inform on procedural requisites

- The Administration should draft communications and requisites addressed to individuals in simple language that does not generate confusion in the target audience.
- The Administration should inform individuals on the legal and technical requisites of the provisions imposed on projects, actions or requests they propose to conduct.
- The administration should state on subsidy application forms that this aid depends on the fulfilment of the established requisites and when applicable, budgetary availability.
- When the financial aid is only conditioned by the fulfilment of the established requisites and a limited budget, if the budget runs out, the administration should ensure that applicants are made aware of this before completing the form.

VI. COURTESY AND FRIENDLY TREATMENT

1. Best practices in the treatment of persons addressing the administration

- Public employees should treat everyone respectfully, in face-to-face as well as written communication.
- The administration should apologize when it treats someone improperly, or causes them damages in their activity, as part of the guarantee to receive quality public services.
- Employees of the administration should have a proper level of training, and sufficient information, in order to correctly handle the questions asked them.
- When attending the public, employees of the administration should be clearly and visibly identified.

2. Good practices to guarantee treatment appropriate for one's personal circumstances

- The administration should offer treatment that is appropriate for the needs of persons in accordance with their particular circumstances, especially when dealing with persons who are vulnerable or suffer some kind of disability.
- The administration should promote specific training measures for professionals responsible for dealing with persons in situations of vulnerability to guarantee that they are offered information that is sufficient and appropriate for their needs.
- In the health care realm, the administration should maintain respectful and friendly treatment of patients and their families.
- The administration and its employees should provide responses to children that are appropriate and differentiated in accordance with their age and maturity.
- As regards care for domestic violence victims, appropriate treatment implies that the competent administration official should invest sufficient and reasonable time to listen to the victim and provide them with affable treatment.
- In the identification and frisking (searches) of persons, law enforcement officers should ensure correct treatment at all times, compatibilizing their actions with the rights of persons.

VII. OBLIGATION TO EXPRESSLY RESPOND

1. Best practices on the right to express response

- The administration should provide a written response to the matters on which persons address them in writing, within the framework of an administrative procedure, as well as when they make suggestions, proposals, complaints or requests for information.
- The administration should expressly respond to the statements of opposition that the interested parties may make, even if the administrative ruling is final.
- Administrative silence allows the interested party to access judiciary protection, but it does not exempt the administration from the obligation to respond, nor does it keep it from deciding in any way.
- When the administration grants a social benefit that involves the payment of an amount, such payment does not exonerate it from expressly resolving the application.
- The lack of competency, or the incoherence of an application sent does not exonerate the administration from the duty to respond.

2. Best practices on the content of responses

- The administration's express responses should be reasoned, intelligible and congruent with the requests or allegations sent to not cause defencelessness or legal insecurity in the persons addressing the administration.
- The administration should avoid conclusion of proceedings with standardized decisions that could violate the right to a congruent response.
- The administration should give a congruent response, which may be common for all of the allegations that contain subject matter that is substantially the same, to persons who appear in the public information procedures and who present allegations and observations.
- The administration should act diligently in its responses to allegations presented by rights-holders affected by projects in the public information phase, to guarantee their right to information and the possibility to act in their own interests.

3. Best practices for responses by electronic media

- The administration should arrange the resources necessary to process and respond to, in a reasonable time frame and in a well-grounded manner, the requests sent by persons telematically through the channels that the administration has provided for such purpose.
- The administration should provide technological solutions to guarantee response to requests presented by e-mail to fill various job posts, the covering of which it manages telematically.

VIII. LINGUISTIC RIGHTS

1. Best practices for the guarantee of the right to use official languages

- The administration should guarantee the possibility to use any of the official languages in its relations with citizens.
- The language in which the procedures are carried out is determined by the territorial ambit of the administration body responsible for its management, not the governmental ambit that holds the competency.
- The administration should support and guarantee linguistic pluralism, without the possibility of anyone being discriminated against on the basis of language.
- The special nature of the electoral Administration should not imply any exemption from the linguistic rights and duties that govern relations between persons and the rest of administrations.
- It should be guaranteed that the administrative bodies created to prevent violations of linguistic rights act in coordination with the competent organizations to handle complaints and give information to the claimants to prevent administrative odysseys.
- The administration should take into account the linguistic uniqueness of Aran and guarantee the use of the Occitan language in the relations with the public administration bodies in compliance with the law.

2. Best practices on the availability of resources to guarantee linguistic rights

- The administration should avoid the generation of situations which, due to a lack of planning (forms, computer programs, etc.) keep persons from addressing it and being served orally and in writing in the official language they have chosen.
- The administration should have the translations necessary in order for persons to receive the documentation requested in the chosen language, despite the legal validity of the procedures conducted in Catalonia in either of the two official languages.
- The administration should translate into Spanish the documents that form part of case files and that should have validity outside Catalonia, as well as those addressed to persons who so request it.
- The administration should require its staff to have sufficient linguistic training in the official languages to enable them to fulfil the duties inherent to their job post.
- Where relevant, the administration should consider the knowledge of the Occitan language as part of recruitment processes for posts in the territory where it is spoken.

IX. CONFIRMATION OF RECEIPT AND INDICATION/REFERRAL TO COMPETENT BODIES

1. Best practices on confirmation of receipt and to guarantee referral to the competent administration

- The administration should indicate in the confirmation of receipt, the body responsible for responding both in the case that the matter is protracted over time as well as if the body that the interested party has addressed is not competent.
- Administration bodies and companies managing public services who deem themselves incompetent for the resolution of a matter should ensure that the information on the competent body be correct and cause neither more management costs for the interested party, nor an increase in processing time.

X. RIGHT TO BE LISTENED TO

1. Best practices on the right to be listened to in accordance with personal circumstances

- The Administration should listen to children and adolescents through persons with the proper professional skills, building a relationship of trust with them.
- Children and adolescents should be informed on their rights and have the opportunity to be listened to in any administrative proceedings they may be involved in.

2. Best practices on public information procedures

- In administrative procedures in which a public information period has been established, the simultaneous conduct of proceedings that generate the perception that public information is a mere formality based on a pre-established decision are to be avoided.
- When the administration is to decide on the installation of facilities that could generate rejection, not only will an educational effort be necessary to disseminate information on the need for the services provided, but also the incorporation of the public information formalities into the proceedings for approval of the facility construction project, so that persons can express their allegations.

3. Best practices on hearing procedures

- The administration should respect the possibility of holding a hearing in cases of ex-officio revisions of unfavourable decisions that are final and do not allow appeal.
- The administration should let claimants file allegations within the penalization proceedings if the penalty that could be levied may generate a current or future positive effect in their legal ambit, either providing them with a direct benefit or removing a charge or encumbrance they currently bear.
- Whenever possible, the administration should arrange a hearing for foreigners before striking them from the municipal census registry.
- In cases of repatriation, unaccompanied foreign children and adolescents are entitled to a hearing. Within the hearing, they are entitled to legal aid, through the sufficient technical intervention and space, and accompaniment by a translator when necessary.

XI. REASONABLE TIME FRAME

1. Best practices to avoid procedural delays

- The appointment system for persons addressing the administration should work to improve the service for them, not delay presentation of applications due to a lack of resources and staffing.
- The administration should comply with the established procedural time frames and will not be able to justify non-compliance on the grounds of lack of resources or the inadequate organization of its services.
- Any irrational, disproportionate and unjustified delay in adoption of an administrative decision could lead to damage liability of the administration, without prejudice to the complexity of the matter at hand and any incidents that may arise over the course of processing.
- The design of the administrative circuit, aside from the mandatory procedures derived from the regulations, is important to simplify the administrative procedures and avoid unjustified delays. Therefore, the administration should design it weighing costs in terms of time and money, without undermining the quality of the final decision nor negatively affecting persons' interests and rights.
- In recruitment processes, the Administration should avoid excessive delays between the testing and the incorporation of the successful candidates into their posts. Establishing orientating periods for recruitment processes, along with the causes for extension or suspension, can help streamline these processes.
- In keeping with the regulatory framework, the administration should take measures to streamline processing of ad-

ministrative documentation and technical reports for abused immigrant women, to prevent their situation of vulnerability from worsening and to reinforce their social integration process.

- The administration should ensure the presence of material and human resources to expedite the processing of gender violence complaints.

2. Best practices to prevent delays in the exercise of public competencies

- The absence of regulatory development can not be an obstacle for the administration to apply the legal provisions when the legal code offers tools sufficient to fill this shortcoming to the body meant to resolve a request from any interested party.
- In the case of renewable universal social aid or benefits, such as financial aid for dependent children, the administration should design a somewhat automatic process for renewals, or seek a simplification of the procedures that does not imply a loss of guarantees, nor of certainty for the administration in terms of compliance with the requisites to receive the aid.
- If the non-fulfilment of administrative actions causes damages to third parties, the option between subsidiary implementation and a coercive fine should be resolved in favour of the former, whenever possible, to guarantee a quicker implementation, the soonest possible achievement of the objective sought through the action and to avoid or reduce damages to a third party.
- In urban planning, if the system of action is expropriation, the administration should act under strict criteria, and approve plans with resources sufficient to not delay implementation, in considera-

tion of the severe affectation caused to the property of the persons in question.

- In cases of complaints of alleged abuse in penitentiary or juvenile justice centres, the administration should conduct a swift, urgent investigation to prevent the evidence-gathering from taking place without judicial guarantees.
- In the exercise of their duties, law enforcement officers should act with the necessary decisiveness, and without delay to keep situations of inappropriate treatment from arising.

3. Best practices to avoid delays in the provision of public services

- Administrative actions and decisions in the realm of child protection should be carried out within a reasonable time to avoid delay in beginning the study of the child's personal and family situation, in the proposal and provision of alternative resources to the family, and of any other decision affecting their lives.

- The administration should begin to document unaccompanied foreign children and adolescents, and process their residency when the impossibility of their return is accredited, interpreting the nine months established in the regulations as the maximum period.

- The intervention of the various administrations in services to socially vulnerable groups should be coordinated to avoid delays for this reason, and should ensure compliance of the prevention and risk detection duties.

- The administration should resolve all requests within a reasonable time frame in the order of their admission, and should prioritize certain requests due to exceptional reasons and justified grounds, as long as such grounds are duly justified.

XII. OBLIGATION TO EXPLAIN GROUNDS

1. Best practices on the sufficiency of grounds

- The administration should reflect the reasons in fact and law, as well as the essential elements of the process followed to reach a specific administrative decision.
- The administration should justify its decisions and guarantee the persons' right to know the reasoning followed to make a decision, and in order for jurisdictional bodies to carry out the relevant supervision and monitoring whenever necessary.
- Technical proposals for child protection should reasonably and clearly specify the reasons that justify it, the objectives and improvement plan.
- If a call for financial aid or benefit applications for disabled persons allows the admission of applications in the event that the needs emerge after expiry of the normal presentation period, the administration may not refuse them due to the belated nature of the action. Rather, the decision should express the reasons why the need having emerged after the deadline is not considered accredited.
- The technical reports that justify decisions of refusal handed down by the administration should be justified in accordance with technical knowledge on the matter, and should be drafted in language that is comprehensible for them to be sufficient, clear and specific.

2. Best practices for justification of decisions of refusal

- Decisions of refusal handed down by the administration should go beyond descriptive formats of the reasons in fact and law, and be reasoned in a detailed, accurate way outlining the reasons on which the refusal is based.

- When the administration denies aid or benefits due to the economic status of the applicants, it should include the information taken into account to calculate it in its decision.

3. Best practices to ground the exercise of discretionary powers

- The administration's discretionary powers can not justify any decision. Rather, they should be based on rational, weighted, objective and impartial principles subject to law, which should be specified in the decision.
- If it has to choose from among several correct and possible options, the administration should choose that which best serves the general interest, and properly ground its reasons.
- Within the framework of the exercise of discretionary power, if anyone proposes alternatives to the option proposed by the administration, it should assess its viability or relevance, and convey the assessment to the person who has proposed the alternative by a specific, duly-grounded letter.

4. Best practices in the justification of actions that limit rights

- To accuse a person of committing a crime, there should be evidence for the prosecution sufficient to annul the presumption of innocence, as well as the non-existence of administrative responsibility. Within the proceedings, the administration should provide any additional evidence that it could reasonably obtain, despite the presumption of veracity of any statement made by a competent administration official.
- Any action carried out in penitentiary centres should be grounded and objectified on specific facts and

information. The existence of irregular and/or prohibited behaviour should be evaluated.

- In prison overcrowding situations, in which the rights of inmates are reduced due to reasons of organization and security, any restriction added to the deprivation of liberty should be especially justified to guarantee inmates' dignity as well as the rest of their rights in this setting.

XIII. NOTIFICATION OF THE DECISIONS AND INDICATION OF THE POSSIBILITY TO APPEAL

1. Best practices on notification content

- When the administration makes notifications, it should use the proper mechanisms that inform recipients of the action and how to exercise their rights of defence.
- The administration should specify in notifications the possibility that interested parties have to exercise their rights to appeal the decisions contained in the notification.
- Authenticity, identity and confidentiality of communications should be preserved in relations between persons and the administration that are conducted by electronic means, especially through normalized use of electronic signature systems to guarantee legal security in this setting.

2. Best practices on notification practice

- Administrative notifications should be made by means that make possible a record of receipt and the postal service (registered letter with acknowledgement of receipt) is the delivery mechanism *par excellence*.
- In the event of irregularities in the practice of notifications, it is the administration, and not the intended recipient, who should hold the postal notification delivery service accountable for deficient provision of services.
- If the administration is unable to serve a notification at the address it has for the interested party, it may access the municipal census registry or the National Statistics Institute to consult the latest address. For this purpose, it should strengthen and use the technological platforms that allow it to transfer data among administrations.
- The administration should diligently make a second notification attempt, in keeping with the need to ensure it has

done everything possible to contact the interested party.

- Before resorting to notification by edicts, the administrations should exhaust all possible forms of personal notification that ensure, by certified means, that the recipient has received the administrative decision.
- If it is impossible to personally notify the interested party, the administration should inform them that the notification has been attempted and deposit a notice stating same in their mailbox.
- The administration needs to invest more resources in strengthening its telematic notification system, which facilitates and expedites transmission and reception of communications and notifications, and can prevent problems derived from the absence of the interested party at the time the notification is served. Along these lines, it is also indispensable to guarantee its reception by the recipient with mechanisms accrediting reception, such as electronic certificates.
- Aside from the methods they usually use to make decisions known, consumer affairs offices should do so in writing, appropriately recording their correspondence, as the best guarantee of consumers' rights.
- The administration should ensure the sending of the application and receipt by the interested party in cases of economic benefits and aid for families with dependent children.
- The administration should guarantee formal notification of abandonment rulings concerning children and adolescents who are 12 or older, in addition to other administrative decisions affecting them, and the repatriation rulings for foreign children and adolescents.

XIV. BEST PRACTICES RELATED WITH PERSONAL DATA PROTECTION

1. Best practices on information and processing of personal data

- Natural persons whose data are requested by the administration shall be entitled to the right of information in the collection of the data, and the administration should provide for it prior to collecting the data. This is also applicable to cases in which a person addresses the administration through an information phone number.
- When the administration provides information on penalization proceedings by telephone, the mechanisms to identify the person making the request, and their condition as a holder of legitimate interest in the proceedings should be specific enough to ensure that this person is in fact the interested party.
- The administration should implement mechanisms to quantify and make use of this statistical data, especially that which refers to little-known social realities, to offer tools for the research and planning of public policies, without overlooking the right to personal data protection in this effort.
- When the administration sends out mass e-mails, it should use the software features to prevent communicating or transferring the e-mail addresses of other natural persons without their consent.
- When the administration directly gathers information on children in matters affecting their privacy, it should inform them of their right to not provide the information, and on the possible uses that this information could be put to, especially in the realm of juvenile justice.

2. Best practices on the dissemination, transfer and communication of personal data

- When drafting and serving decisions to persons who have filed allegations, the administration may not make public the domicile without consent of the interested party, as the purpose of the domicile is to locate the party making the allegations, and should only be used to notify them of responses to allegations.
- When third parties are processing personal data included in administration files, the contract should expressly stipulate the security measures, that the third party supervisor shall only treat them in keeping with the instructions of the person ultimately responsible for the data, that they will not be used for any purpose other than that allowed for in the contract, and that they will not be communicated to other persons.
- All bodies involved in any investigation should be cautious in any dissemination of information engaged in, and that could affect victims and their families, especially when this information is related with actions underway by orders of a judicial authority.
- The administration should protect children and adolescents from the publication of their personal data and the dissemination of pictures that could damage their dignity.
- When law enforcement officers access personal data in the municipal census registry, in exercise of their competencies on the control and residency of foreigners in Spain, and in the realm of public safety, the local administration should carry out specific and thorough follow-up of the number of accesses and the type of personal data consulted.

3. Best practices to respect the privacy of persons and the obligation as regards circumspection

- In the realm of health care, the administration should maintain due circumspection and confidentiality of information and documentation obtained from centres or users, or that to which it could have access in the exercise of its duties.
- In the realm of health care, the administration should establish mechanisms of active, diligent custody of the clinical history, which guarantee that the collection, recovery, integration and communication of the information respect the principle of confidentiality.
- The administration should work to protect children's right to privacy and honour, especially those who have been subjected to sexual assault, abuse or any other traumatic experience.
- Anyone intervening in processes of pre-adoption foster care or adoption shall be obliged to maintain secrecy on the information they obtain, and the filiation data of the children in care or adopted, especially preventing the biological family from knowing the pre-adoptive or adoptive family.
- In cases of workplace absenteeism, when the administration is exercising its powers of supervision and inspection, it should act with respect for the privacy of personnel and their service, and in accordance with the proportionality principle.

- Medical data of public employees can not be subjected to computerized processing that exceeds the information relative to the dates of admissions and leaves, and information relative to medical diagnosis can not be included without the consent of the persons affected.

4. Best practices on the cancellation of personal data

- Due to the growing importance of search engines to locate information on the Internet, the administration should take organizational and technical measures to cancel the personal data that are no longer necessary or relevant to the purpose for which they were collected.
- The personal data that have been the object of an acquittal, stay of proceedings, or in cases in which the alleged crime has surpassed the limitation of power to prosecute should be cancelled ex-officio at the same effective date as the decision from which they are derived.
- The personal data contained in the files of law enforcement officers should be cancelled when they are no longer necessary for the investigation for which they were collected.

XV. ACCESS TO INFORMATION, PUBLICATION AND TRANSPARENCY

1. Best practices for providing information services

- The administration should sufficiently inform persons on the resources and services they may access.
- The administration should promote telematic access to citizen service offices to overcome the shortcomings derived from limited opening hours, without prejudice to planning hours for face-to-face service that are adjusted to people's needs.
- The administration should be proactive in the dissemination of information, also using electronic media, to avoid unnecessary requests and additional costs.
- The administration should establish a telephone number to centralize information on its activity into a single, easily-memorized number, as it is a useful tool to bring the administration closer to the people.
- When the administration provides telephone information services at an additional charge, it should provide a free, prior recording informing on the price of the call so that persons calling are aware of the cost of the service.
- Providing the information beforehand, defining the objectives of the service and making a commitment with users are tools that make it possible to guarantee transparency of the administration and service-providing companies.
- The administration should ensure that the service-providing companies disseminate among consumers any notifications it orders in health matters.
- In the realm of health care, the administration should offer information

that is sufficient and appropriate for persons to give their consent on decisions affecting them, and should also respect a person's wish not to be informed.

- The administration should guarantee information appropriate for persons' needs depending on their particular circumstances when they are in a situation of vulnerability, or suffer any sort of disability.
- The administration should inform children taking their conditions of maturity and age into account.
- The administration responsible for protecting children and adolescents should work for them to address the administration in order for them to receive all the information and assistance they need on the matters affecting them.
- When the administration calls adolescents to take part in an identity parade (or line-up), it should make sure this is done as seldom as possible, and shall inform their parents and/or guardians as to this participation.

2. Best practices on the right to access public documentation

- The administration should weigh the right to information access against the principle of effectiveness in its operation, in accordance with the principles of transparency and proportionality. In procedures to exercise the right to information, it is good for conditions and limits to be clearly regulated.
- The administration may not require justification of the information consultation purpose, nor allege reasons of expediency to deny the right to access. Further, it should restrictively interpret the legally established grounds for denial.

- The administration should facilitate consultation of public documentation, and if it affects privacy or is not allowed, before refusing it, determine whether partial access or anonymity, through the dissociation procedure, would make it possible to access the part of the documentation not affected by this prohibition.

- While the administration does not accredit the elimination of documents, in accordance with the established procedure, it should guarantee people's right to obtain certification of the documents listed in its archives.

3. Best practices on the information related with the processing of administrative case files

- The administration should implement formulas to improve coordination among administrations and services taking part in a single procedure to guarantee access of interested persons to the information contained in the case files and the data relative to the procedures.

- The use of electronic media in the processing and procedures simplifies access and knowledge of the status of case file processing by the interested party. Nonetheless, it can not imply a relaxation of the administration's obligation to act respecting all guarantees and requisites established in each administrative procedure, nor can it make for an additional economic expense for the interested party.

- The information linked to an administrative procedure in process, or that which persons provide to the administration on the operation of a public service should be obtained through a telephone number of standard cost. Calls should not be charged at the same rate as those for general information given through telephone assistance services.

- Claimants who do not hold legitimate interests are also entitled to be informed by the administration of the actions that their complaint has given rise to and also, even succinctly, the outcome.

4. Best practices regarding publication and transparency

- The administration should publish the adopted standardized interpretation criteria, instructions and internal memoranda, any time they have external effects.

- The administration should guarantee publicity of calls for tenders, and accurate, comprehensible drafting of the terms, to the utmost.

- Total publicity should be given to the results of staff recruitment tests for administration personnel and that of public companies.

XVI. RIGHT TO REDRESS

1. Best practices regarding the applicable legal system

- The determination of damage liability should be conducted within the framework of the procedure and the administration should not reject a claim because it considers itself to not be liable, as this deprives the claimant of the right to process.
- Pursuant to the principle of social solidarity, the administration will have to take a leading role in initiating proceedings in which the circumstances concur to begin them ex-officio.
- When the legally established circumstances concur, the administration should apply a summary procedure, in addition to reaching compensatory agreements, for the simplicity and agility of the procedures.
- The submission of the administration's activities to private law does not imply that it does not have to respond directly for damages caused by the personnel it employs, in accordance with the objective equity liability regimen.
- When the damages caused have their origin in the actions of a company contracted for public works or service, the administration that has contracted it should inform the interested party as to the procedures to follow and take those that correspond to it as the contracting body.

2. Best practices regarding mechanisms for evidence of damages

- The administration should not require any unreasonable probatory effort or one that goes beyond what could be considered sufficient, although it respects the principle of the burden of proof being borne by the claimant.
- In the framework of ex-officio processing and investigation of facts, the administration will be able to request the reports it believes may contribute to clarifying the facts and the causality between the damage and operation of the service.
- The administration should process and resolve equity liability claims in accordance with the rules and parameters of objective responsibility, without basing their decision exclusively on the report from the insurer, nor conveying the claims to the insurer.

XVII. RIGHT TO PARTICIPATE

1. Best practices to support participation

- The administration should promote participation of persons in decision-making processes in subject areas that can affect them, to reinforce the legitimacy of public actions and as a tool for conflict prevention and pacification.
- The administration needs to launch participation and information processes that involve persons in the construction of facilities and infrastructures, at the time of designing and defining public action as well as the time executing the works.
- The administration intervening in the definition and execution of certain projects should act in a planned, coordinated manner, with a comprehensive perspective to achieve the participation and acceptance of society.
- It is necessary for the administration to develop new proposals that incorporate elements of more direct participation (data collection, opinions, consideration of proposals, etc.) and from others inherent to the technique of public and institutional relations that disseminate the sense and principles of the projects that involve citizens in the execution follow-up.
- The administration should promote individual and group participation of persons in the definition of policies that affect them, as well as the function and daily activity of public centres and establishments.
- The administration should facilitate access to and use of public information and dissemination media to persons and

associations, by making specific spaces and times available to them.

- The administration should allow persons to develop the complaints and claims they deem necessary, and collaborate in the improved provision of public services through initiatives and suggestions.
 - Children and adolescents are entitled to express their opinion, and the administration should take it into account in all matters that affect them.
 - The administration should promote children and adolescents' participation in decision-making processes in their cities and in the process of execution and evaluation of public policies.
 - The administration should guarantee the mechanisms for the students to file complaints on actions taking place inside educational centres that make for a violation of their rights.
- ### **2. Best practices to guarantee an informed opinion**
- The administration must provide persons with clear and sufficient information in order for them to develop an educated opinion on the topics that make up the subject matter under consultation in participative processes.
 - The administration should guarantee that, in participation processes, associations and non-associated persons have sufficient knowledge to exercise their right to informed participation.
 - The administration should guarantee the dissemination of principles and the decision finally taken regarding a project

previously put to citizen participation, in order for it to reach all affected persons.

3. Best practices to provide participatory processes with legal security

- When the administration makes the decision to begin a citizen participation process, and adopts standards of action to regulate and make feasible this direct participation, it must guarantee that all parties involved respect the rules.
- When a public consultation is held on a municipal level, the administration should respect the procedure as legally established to not undermine the legitimacy or confidence in the participatory process.

4. Best practices on equality of opportunities for participation

- The administration that calls a public consultation should take measures to guarantee participation of all interested persons in conditions of equality, aside from the measures taken to promote participation of neighbours' organizations.
- The administration should consider the specific needs of sight-impaired persons, or those with other types of disabilities, when deciding on the tools needed to make possible their right to participate.

FINAL PROVISION:

This Code is addressed to the public administrations of Catalonia, whose activity is subject to the supervision of the Catalan Ombudsman, in accordance with article 78 of the Statute of Autonomy of Catalonia.

The Catalan Ombudsman agrees to work to ensure its fulfilment, dissemination and updating to guarantee the right to good administration.

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