

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (81) 7

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON MEASURES FACILITATING ACCESS TO JUSTICE

*(Adopted by the Committee of Ministers on 14 May 1981
at its 68th Session)*

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

Considering that the rights of access to justice and to a fair hearing as guaranteed under Article 6 of the European Convention on Human Rights, is an essential feature of any democratic society ;

Considering that court procedure is often so complex, time-consuming and costly that private individuals, especially those in an economically or socially weak position, encounter serious difficulties in the exercise of their rights in member states ;

Bearing in mind that an effective system of legal aid and legal advice, as provided for under Resolution (78) 8 of the Committee of Ministers, may greatly contribute to the elimination of such obstacles ;

Considering that it is nevertheless desirable also to take all necessary measures in order to simplify the procedure in all appropriate cases with a view to facilitating access to justice of the individual whilst ensuring at the same time that justice is done ;

Considering that, with a view to facilitating access to justice, it is desirable to simplify documents used in such procedures,

Recommends the governments of member states to take or reinforce, as the case may be, all measures which they consider necessary with a view to the progressive implementation of the principles set out in the appendix to this recommendation.

Principles

Member states should take all necessary steps to inform the public on the means open to an individual to assert his rights before courts and to make judicial proceedings, relating to civil, commercial, administrative, social or fiscal matters simple, speedy and inexpensive. To this end member states should have particular regard to the matters enumerated in the following principles.

A. Information to the public

1. Appropriate measures should be taken to inform the public of the location and competence of the courts and the way in which proceedings are commenced or defended before those courts.
2. General information should be available from the court or a competent body or service on the following items :
 - procedural requirements provided that this information does not involve giving legal advice concerning the substance of the case ;
 - the way in which, and the time within which, a decision can be challenged, the rules of procedure and any required documents to this effect ;
 - methods by which a decision might be enforced, and if possible, the costs involved.

B. Simplification

3. Measures should be taken to facilitate or encourage, where appropriate, the conciliation of the parties and the amicable settlement of disputes before any court proceedings have been instituted or in the course of proceedings.
4. No litigant should be prevented from being assisted by a lawyer. The compulsory recourse of a party to the services of an unnecessary plurality of lawyers for the need of a particular case is to be avoided. Where, having regard to the nature of the matter involved, it would be desirable, in order to facilitate access to justice, for an individual to put his own case before the courts, then representation by a lawyer should not be compulsory.
5. States should take measures to ensure that all procedural documents are in a simple form and that the language used is comprehensible to the public and any judicial decision is comprehensible to the parties.
6. Where one of the parties to the proceedings does not have sufficient knowledge of the language of the court, states should pay particular attention to the problems of interpretation and translation and ensure that persons in an economically weak position are not disadvantaged in relation to access to the court or in the course of any proceedings by their inability to speak or understand the language of the court.
7. Measures should be taken in order that the number of experts appointed by the court for the same proceedings either on its initiative or at the request of the parties should be as limited as possible.

C. Acceleration

8. All measures should be taken to minimise the time to reach a determination of the issues. To this end steps should be taken to eliminate archaic procedures which fulfil no useful purpose, to ensure that the courts are adequately staffed and they operate efficiently, and to adopt procedures which will enable the court to follow the action from an early stage.
9. Provisions should be made for undisputed or established liquidated claims to ensure that in these matters a final decision is obtained quickly without unnecessary formality, appearances before the court or cost.
10. So that the right of appeal should not be exercised improperly or in order to delay proceedings, particular attention should be given to the possibility of provisional execution of court decisions which might lead to an appeal and to the rate of interest on the judgment sum pending execution.

D. Cost of justice

11. No sum of money should be required of a party on behalf of the state as a condition of commencing proceedings which would be unreasonable having regard to the matters in issue.

12. In so far as the court fees constitute a manifest impediment to justice they should be, if possible, reduced or abolished. The system of court fees should be examined in view of its simplification.

13. Particular attention should be given to the question of lawyers' and experts' fees in so far as they constitute an obstacle to access to justice. Some form of control of the amount of these fees should be ensured.

14. Except in special circumstances a winning party should in principle obtain from the losing party recovery of his costs including lawyers' fees, reasonably incurred in the proceedings.

E. Special procedures

15. Where there is a dispute about a small amount of money or money's worth, a procedure should be provided that enables the parties to put their case before the court without incurring expense that is out of proportion to the amount at issue. To this end consideration could be given to the provision of simple forms, the avoidance of unnecessary hearings and the limitation of the right of appeal.

16. States should ensure that the procedures concerning family law are simple, speedy, inexpensive and respect the personal nature of the matters in issue. These matters should, as far as possible, be dealt with in private.