

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (83) 12

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
CONCERNING SAFE CONDUCT FOR WITNESSES
IN APPLICATION OF ARTICLE 12.1 OF THE EUROPEAN CONVENTION
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS¹

*(Adopted by the Committee of Ministers on 23 September 1983
at the 362nd meeting of the Ministers' Deputies)*

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

Having regard to Article 12.1 of the European Convention on Mutual Assistance in Criminal Matters ;

Considering the importance of direct evidence for establishing the truth and for arriving at correct decisions in criminal proceedings ;

Considering that it may be necessary to hear witnesses from abroad ;

Considering that witnesses abroad summoned to appear before a judicial authority might refrain from complying with a summons owing to uncertainty about the scope of safe conduct ;

Considering that witnesses complying with a summons might be exposed to a higher risk of being remanded in custody on the suspicion of having committed offences in connection with their testimony, and in this respect having regard to Recommendation No. R (80) 11 concerning custody pending trial,

I. Recommends the governments of member states party to the convention to be guided in its practical application by the following principles :

1. The scope of safe conduct under Article 12.1 should clearly be pointed out already in the summons served on witnesses abroad and be recalled on the occasion of their being cautioned in the requesting state ; in particular, it should be emphasised that safe conduct does not bar the prosecution of offences, especially those in connection with a testimony, which a witness might commit after his departure from the requested state ;

1. When this recommendation was adopted, the Representatives of Denmark, the Netherlands, Portugal, Norway, Sweden and Switzerland, referring to Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their governments to apply paragraph I.2 of the recommendation under the following conditions :

"Where a witness answering a summons and appearing before the judicial authorities of the requesting state refuses wholly or partially to testify, due consideration should be given to the voluntary character of his appearance and, in consequence, to the desirability that he is not detained or otherwise prevented from leaving the country, even if, under the law of the requesting state, such a refusal constitutes a criminal offence or could give rise to coercive measures."

2. Where a witness answering a summons and appearing before the judicial authorities of the requesting state refuses wholly or partially to testify, he should not be detained or otherwise prevented from leaving the country, even if, under the law of the requesting state, such a refusal constitutes a criminal offence or could give rise to coercive measures ;

3. Where custody pending trial might be ordered against a witness who is suspected of having committed an offence in connection with his testimony before the judicial authority in the requesting state other than the refusal to testify, due consideration should be given to whether the requirements of justice might not adequately be protected by other measures such as provision of bail or surety or, where possible, by leaving the prosecution to another state ;

II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of those Contracting States which are not members of the Council of Europe.