

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (84) 5

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE PRINCIPLES OF CIVIL PROCEDURE
DESIGNED TO IMPROVE THE FUNCTIONING OF JUSTICE¹**

*(Adopted by the Committee of Ministers on 28 February 1984
at the 367th meeting of the Ministers' Deputies)*

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

Whereas the right to justice guaranteed by Article 6 of the European Convention on Human Rights is an essential feature of any democratic society ;

Whereas implementation of the measures and principles laid down in Committee of Ministers Resolutions (76) 5 and (78) 8 on legal aid and Recommendation No. R (81) 7 on measures facilitating access to justice would make it easier for citizens to exercise their right to justice ;

Whereas, however, some rules of civil procedure used in member states may prove an obstacle in obtaining effective justice because, first, they may no longer meet the needs of modern society and, secondly, they may sometimes be abused or be manipulated to cause delay ;

Whereas civil procedure should be simplified and made more flexible and expeditious, while at the same time maintaining the guarantees provided for litigants by the traditional rules of procedure and maintaining the high level of justice required in a democratic society ;

Whereas, in order to attain these objectives, it is necessary to make available to the parties simplified and more rapid forms of proceedings and to protect them against abusive or delaying tactics, particularly by giving powers to the court to direct the proceedings more efficiently ;

Taking into account the discussions held and the resolutions adopted by the European Ministers of Justice at their 12th Conference, held in May 1980 in Luxembourg,

Recommends that the governments of member states adopt or reinforce, as the case may be, all measures which they consider necessary to improve civil procedure, being guided by the principles set out at the appendix to this recommendation.

1. When this recommendation was adopted, the Representatives of Belgium and the Netherlands, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their governments to comply or not with the second sentence of Principle 5 as set out in the appendix to the recommendation.

**Principles of civil procedure
designed to improve the functioning of justice**

Principle 1

1. Normally, the proceedings should consist of not more than two hearings, the first of which might be a preliminary hearing of a preparatory nature and the second for taking evidence, hearing arguments and, if possible, giving judgment. The court should ensure that all steps necessary for the second hearing are taken in good time and, in principle, no adjournment should be allowed except when new facts appear or in other exceptional and important circumstances.
2. Sanctions should be imposed when a party, having perhaps received notice to proceed, does not take a procedural step within the time-limits fixed by the law or the court. Depending on the circumstances such sanctions might include declaring the procedural step barred, awarding damages, costs, imposing a fine and striking the case off the list.
3. The court should be able to summon the witnesses and appropriate sanctions (fines, damages, etc.) should be applied in cases of unjustified non-attendance of such witnesses. When a witness is absent, it is for the court to decide whether the case should continue without his evidence. To facilitate the taking of evidence, provision should be made for the use of modern technical means, such as the telephone or video, in appropriate circumstances.
4. If an expert appointed by the court fails to communicate his report or is late in communicating it without good reason, there should be appropriate sanctions. These might take the form of reduction of fees, payment of costs or damages, as well as disciplinary measures taken by the court or by a professional organisation, as the case may be.

Principle 2

1. When a party brings manifestly ill-founded proceedings, the court should be empowered to decide the case in a summary way and, where appropriate, to impose a fine on this party or to award damages to the other party.
2. When a party fails to observe the duty of fairness in its conduct of the proceedings and clearly misuses procedure for the manifest purpose of delaying the proceedings, the court should be empowered either to decide immediately on the merits or to impose sanctions such as fines, damages or declaring the procedure barred ; in special cases it should be possible to require the lawyer to pay the cost of the proceedings.
3. Professional associations of lawyers should be invited to make provision for disciplinary sanctions in cases where one of their members has acted in the manner described in the foregoing paragraphs.

Principle 3

The court should, at least during the preliminary hearing but if possible throughout the proceedings, play an active role in ensuring the rapid progress of the proceedings, while respecting the rights of the parties, including the right to equal treatment. In particular, it should have *proprio motu* powers to order the parties to provide such clarifications as are necessary ; to order the parties to appear in person ; to raise questions of law ; to call for evidence, at least in those cases where there are interests other than those of the parties at stake ; to control the taking of evidence ; to exclude witnesses whose possible testimony would be irrelevant to the case ; to limit the number of witnesses on a particular fact where such a number would be excessive. These powers should be exercised without going beyond the object of the proceedings.

Principle 4

The court should, at least at first instance, be empowered to decide, having regard to the nature of the case, whether written or oral proceedings, or a combination of the two, should be used except in cases expressly prescribed by law.

Principle 5

Except where the law prescribes otherwise, the parties' claims, limitations or defences and in principle their evidence, should be presented at the earliest possible stage of the proceedings and in any event before the end of the preliminary stage, if there is one. On appeal, the court should not normally admit facts which were not presented at first instance unless :

- a. they were not known at first instance ;
- b. the person presenting them was not a party to the proceedings at first instance ;
- c. there is some special reason for admitting them.

Principle 6

Judgment should be given at the conclusion of the proceedings or as soon as possible thereafter. The judgment should be as concise as possible. It may invoke any rule of law but it should with certainty resolve, expressly or implicitly, all claims raised by the parties.

Principle 7

Steps should be taken to deter the abuse of post-judgment legal remedies.

Principle 8

1. Moreover, particular rules or sets of rules should be instituted in order to expedite the settlement of disputes :

- a. in urgent cases ;
- b. in cases relating to an undisputed right or an established liquidated claim and in cases involving small claims ;
- c. in the field of road accidents, labour disputes, landlord and tenant issues and certain questions of family law, in particular the fixing and reassessment of maintenance.

2. To this end, one or more of the following measures could be utilised : simplified methods of commencing litigation ; no hearing or the convening of only one hearing or, as the occasion may require, of a preliminary preparatory hearing ; exclusively written or oral proceedings, as the case may be ; prohibition or restriction of certain exceptions and defences ; more flexible rules of evidence ; no adjournments or only brief adjournments ; the appointment of a court expert, either *ex officio* or on application of the parties, if possible at the commencement of the proceedings ; an active role for the court in conducting the case and in calling for and taking evidence.

3. These particular rules or set of rules might, according to the circumstances, be compulsory, available on the application of any of the parties or be subject to the consent of all parties.

Principle 9

The most modern technical means should be made available to the judicial authorities so as to enable them to give justice in the best possible conditions of efficiency, in particular by facilitating access to the various sources of law and speeding up the administration of justice.