

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (86) 12

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING MEASURES TO PREVENT AND REDUCE

THE EXCESSIVE WORKLOAD IN THE COURTS

*(Adopted by the Committee of Ministers on 16 September 1986
at the 399th 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 the increasing number of cases brought before the courts, which is liable to interfere with everyone's right to a hearing within a reasonable time under Article 6.1 of the European Convention on Human Rights;

Considering, moreover, the high number of non-judicial tasks to be performed by judges which, in some countries, has a tendency to increase;

Convinced of the interest of limiting the number of non-judicial tasks performed by judges as well as of reducing any excessive workload of the courts in order to improve the administration of justice;

Further convinced of the interest of permanently ensuring a balanced distribution of cases among the courts and of making the best possible use of their human resources,

Invites the governments of member states, apart from allocating to the judiciary the necessary means to deal effectively with the increasing number of court proceedings and non-judicial tasks, to consider the advisability of pursuing one or more of the following objectives as part of their judicial policy:

I. Encouraging, where appropriate, a friendly settlement of disputes, either outside the judicial system, or before or during judicial proceedings:

To that effect, the following measures could be taken into consideration:

a. providing for, together with appropriate inducements, conciliation procedures for the settlement of disputes prior to or otherwise outside judicial proceedings;

b. entrusting the judge, as one of his principal tasks, with responsibility for seeking a friendly settlement of the dispute in all appropriate matters at the commencement or at any appropriate stage of legal proceedings;

c. making it an ethical duty of lawyers or inviting the competent bodies to recognise as such that lawyers should seek conciliation with the other party before resorting to legal proceedings and at any appropriate stage of such proceedings.

II. Not increasing but gradually reducing the non-judicial tasks entrusted to judges by assigning such tasks to other persons or bodies.

The appendix to this recommendation contains examples of non-judicial tasks which in some states are at present performed by judges and of which they could be relieved, taking into account the particular circumstances of each country.

III. Providing for bodies which, outside the judicial system, shall be at the disposal of the parties to solve disputes on small claims and in some specific areas of law.

IV. Taking steps, by suitable means and in appropriate cases, to make arbitration more easily accessible and more effective as a substitute measure to judicial proceedings.

V. Generalising, if not yet so, trial by a single judge at first instance in all appropriate matters.

VI. Reviewing at regular intervals the competence of the various courts as to the amount and nature of the claims, in order to ensure a balanced distribution of the workload.

VII. Evaluating the possible impact of legal insurance on the increasing number of cases brought to court and taking appropriate measures, should it be established that legal insurance encourages the filing of ill-founded claims.

Appendix to Recommendation No. R (86) 12

Examples of non-judicial tasks of which judges in some states could be relieved according to the particular circumstances of each country

Celebration of marriage

Establishment of family property agreements

Dispensing with the publication of marriage bans

Authorising one spouse to represent the other: replacing the consent of the spouse prevented from giving consent

Change of family name-change of first name

Recognition of paternity

Administration of the property of those lacking legal capacity

Appointment of a legal representative for legally incapacitated adults and for absent persons

Approval of acquisition of property by legal persons

Supervision of traders' books of account

Commercial registers:

traders

companies

trademarks

motor vehicles

ships, boats and aircraft
Granting of licences for the exercise of commercial activities
Judicial intervention in elections and referenda other than provided for in the Constitution
Appointment of a judge as chairman or member of committees in which his presence is merely required to strengthen the committee's impartiality
Collection of taxes and customs duties
Collection of judicial fees
Acting as a notary public
Measures relating to estates of deceased persons
Civil status documents and registers
Land registry (control over registration of transfer of property, of charges over immovable property...
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Appointment of arbitrators when such appointment is required by law.