

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 9

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON EMERGENCY MEASURES IN FAMILY MATTERS

*(Adopted by the Committee of Ministers on 9 September 1991
at the 461st 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 large number of family cases which require prompt action in order to prevent adverse or even irreversible consequences ;

Noting that, in many cases, the courts and other competent authorities dealing with family matters do not succeed in providing rapid solutions where the interests of children and other persons in need of special protection and assistance are in serious danger ;

Recognising that existing emergency measures do not always enable the courts and other competent bodies to deal satisfactorily with certain urgent cases and in particular with cases where children have been improperly removed or their welfare is in serious danger ;

Considering that states should give great priority to emergency measures in family matters and provide sufficient resources to protect the interests of the family ;

Agreeing that effective emergency measures should be widely available ;

Noting that steps should also be taken to encourage the persons concerned and those acting on their behalf to seek prompt action to make use of the available emergency measures,

Recommends governments of member states to take all necessary steps to implement the following principles and ensure that effective emergency measures are available to the courts and other competent authorities dealing with family matters to protect children and other persons who are in need of special protection and assistance and whose interests are in serious danger.

Principle 1

Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.

Particular protection should be given to a child whose welfare is in serious danger owing to neglect or any other physical or mental ill-treatment or who has been or may be improperly removed from a person entitled to custody.

Principle 2

These courts or competent authorities should be ready to act at any time in extremely urgent cases.

Principle 3

1. Simple and expeditious procedures should be available to ensure that decisions are reached very quickly. To this end, the following measures could be used:
 - lodging a request by simple application;
 - allowing a court or competent authority to act on its own motion;
 - provisional measures taken without a hearing;
 - using all modern communication technology to facilitate the introduction and conduct of any proceedings, the transmission of requests and exchanges of information between courts and other competent authorities and the different parties to the proceedings;
 - allowing the court or competent authority to play an active role in conducting the case and in calling for and taking evidence;
 - preventing any party from improperly delaying emergency measures.
2. National authorities should ensure that information on emergency measures is given to the public and to those to whom a person in need of such measures may turn for help.
3. Legal aid and advice should be provided rapidly when required.
4. Courts and other competent authorities should have the power to grant decisions which are immediately enforceable.
5. Courts and other competent authorities should be given sufficient powers to ensure that their decisions are rapidly enforced.

Principle 4

In family matters the existence of an international element should not be allowed to cause delay in giving a decision. To this end, states should ensure that simple and expeditious procedures are available.

In particular the following steps, in addition to those mentioned in Principles 1 to 3, should be taken where international co-operation between the courts or other competent authorities is required:

1. Any necessary assistance should be given to persons living abroad in applying for legal aid and advice and in providing translation, where appropriate.
2. These cases should be brought before the courts or other competent authorities without delay and dealt with rapidly.
3. Any necessary additional information from abroad concerning facts or law should be obtained quickly.
4. With a view to facilitating international co-operation in family matters, states should become parties to and apply effectively international instruments providing such co-operation and should consider withdrawing their reservations to such instruments where possible.
5. Where necessary, other forms of co-operation between states should be provided to ensure that emergency measures can be taken quickly.
6. In cases where the return of a child is sought, courts and other competent authorities should:
 - make use of appropriate measures in order to trace the child;
 - give a decision whenever possible within six weeks of the receipt of the complete application by the requested authority; a decision to return the child should be enforceable.