COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 18

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE SIMPLIFICATION OF CRIMINAL JUSTICE[1]

(Adopted by the Committee of Ministers on 17 September 1987
at the 410th meeting of the Ministers' Deputies)

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

Recalling that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that joint action to accelerate and simplify the working of the criminal justice system must take due account of the requirements laid down in particular in Articles 5 and 6 of the European Convention on Human Rights;

Having regard to the increase in the number of criminal cases referred to the courts, and particularly those carrying minor penalties, and to the problems caused by the length of criminal proceedings;

Considering that delay in dealing with crimes brings criminal law into disrepute and affects the proper administration of justice;

Considering that delays in the administration of criminal justice might be remedied, not only by the allocation of specific resources and the manner in which these resources are used, but also by a clearer definition of priorities for the conduct of crime policy, with regard to both form and substance, by:

— resorting to the principle of discretionary prosecution;

— making use of the following measures when dealing with minor and mass offences:

- so-called summary procedures,

- out-of-court settlements by authorities competent in criminal matters and other intervening authorities, as a possible alternative to prosecution,

- so-called simplified procedures;

— the simplification of ordinary judicial procedures;

Having regard to the conclusions of the meeting of European Ministers of Justice in Montreux on 10 September 1981,

---

1. When this recommendation was adopted, the Representative of the Federal Republic of Germany, in accordance with Article 10.2.*c* of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of his Government to comply or not with paragraphs II.*a*.3 and II.*a*.4 of the recommendation.

Recommends that the governments of member states, while taking into account their own constitutional principles or legal traditions, take all appropriate measures to apply the principles set out below:

I. **Discretionary prosecution**

a. *The principle of discretionary prosecution*

1. The principle of discretionary prosecution should be introduced or its application extended wherever historical development and the constitution of member states allow; otherwise, measures having the same purpose should be devised.

2. The power to waive or to discontinue proceedings for discretionary reasons should be founded in law.

3. The decision to waive prosecution, under this principle, only takes place if the prosecuting authority has adequate evidence of guilt.

4. This principle should be exercised on some general basis, such as the public interest.

5. The competent authority, in exercising this power, should be guided, in conformity with its domestic law, notably by the principle of the equality of all citizens before the law and the individualisation of criminal justice, and especially by:

— the seriousness, nature, circumstances and consequences of the offence;
— the personality of the alleged offender;
— the likely sentence of a court;
— the effects of conviction on the alleged offender; and
— the position of the victim.

6. The waiving or discontinuation of proceedings may be pure and simple, accompanied by a warning or admonition, or subject to compliance by the suspect with certain conditions, such as rules of conduct, the payment of moneys, compensation of the victim or probation.

7. The alleged offender's consent should be obtained wherever conditional waiving or conditional discontinuation of proceedings is envisaged. In the absence of such consent, the prosecuting authority should be obliged to proceed against the alleged offender unless it decides for a different reason to drop the charges.

Failure to challenge the measure decided upon or compliance with a condition required within the meaning of paragraph 6 may be considered as amounting to consent.

Rules should be prescribed to ensure that informed consent is given freely and not subject to constraint.

8. In general, the waiving or discontinuation of proceedings may be temporary, pending expiry of the statutory period for prosecution, or final.

9. In the case of conditional discontinuation, discontinuation should be final once the person has fulfilled his or her obligations.

The decision should not be treated as equivalent to conviction and follow the normal rules regarding, *inter alia*, inclusion in the criminal record unless the alleged offender has admitted his or her guilt.

10. Whenever possible, a decision to waive or discontinue proceedings should be notified to the complainant.

11. The victim should be enabled to seek reparation for the injury done to him by the offence in a civil or criminal court.

12. The notification of the suspect should not be necessary if the decision takes the form of a simple decision not to prosecute.

b. *Measures having the same purpose as discretionary prosecution*

States which, in view of their historical development and their constitution, apply the principle of mandatory prosecution should introduce or extend the use of measures that, although different from discretionary prosecution, have nevertheless the same purpose as the latter, and above all:

i. the number of cases in which initiation of prosecution is subject to a condition should be extended; in particular, where public interest is not predominant, the request or the consent of the victim may be a condition for prosecution;

ii. the law should entitle judges to suspend proceedings conditionally or terminate them in cases and according to procedures similar to those practised by prosecuting authorities under the system of discretionary prosecution.

II. **Summary procedures, out-of-court settlements and simplified procedures**

a. *Decriminalisation of and summary procedures for offences which are inherently minor*

1. Legal systems which make a distinction between administrative offences and criminal offences should take steps to decriminalise offences, particularly mass offences in the field of road traffic, tax and customs law, under the condition that they are inherently minor.

2. In dealing with such offences, where the factual element takes precedence over the moral element (intention to commit an offence), all states should make use of summary procedures or written procedures not calling, in the first place, for the services of a judge.

3. No physical coercive measure—especially detention on remand—should be ordered.

4. The sanctions so imposed should be principally of a pecuniary nature and their rate, determined by law, should normally be a fixed or a lump sum. A sanction involving the restriction or deprivation of rights, to the exclusion of any deprivation of liberty, may be imposed in cases provided for by law.

5. Such pecuniary sanctions could be collected on the spot by the officer recording the offence, or subsequently notified to the suspect by the competent administrative or judicial authority, in which case automatic data-processing methods may be used for collection, in view of the massive number of cases to be dealt with.

6. This procedure, which is to be regarded as a proposal, should be subject to express or tacit acceptance, the payment of the fine or otherwise complying with the sanction being equivalent to agreement. In the case of tacit acceptance, the notification procedure should unambiguously safeguard all the rights of the addressee.

7. The acceptance of or compliance with such a proposal should preclude any prosecution in respect of the same facts (*ne bis in idem*).

8. Such procedure should not infringe the right of the suspect to have his case brought before a judicial authority.

b. *Out-of-court settlements*

1. In the light of their constitutional requirements, member states should review their legislation with regard to out-of-court settlements in order to allow an authority competent in criminal matters and other authorities intervening at this stage to promote the possibility of out-of-court settlements, in particular for minor offences on the basis of the following principles:

2. The law should prescribe the conditions which the authorities may propose to the alleged offender, more particularly:

i. the payment of a sum of money to the state or to an institution of a public or charitable nature;

ii. the restitution of goods or advantages obtained by the commission of the offence;

iii. that appropriate compensation be granted to the victim of the offence either in advance of the settlement or as a part of it.

3. The competence of the authorities concerned to make such a proposal and the categories of offences should be determined by law. The authority should be able, for the benefit of the alleged offender, to revise its proposal after having taken note of possible objections made by the alleged offender.

4. The authorities should specify the circumstances in which they have recourse to out-of-court settlements and should draw up guidelines and tables of amounts payable for out-of-court settlements in order to ensure, as far as possible, the principle of equality before the law. With this aim, it is useful to publish these circumstances, guidelines and tables of amounts payable.

5. The alleged offender who does not wish to accept a proposal for an out-of-court settlement should always be entirely free to ignore or refuse the offer.

6. The acceptance of the out-of-court settlement by the alleged offender and his fulfilling of the conditions makes the renunciation of the right to prosecute definitive.

7. The authorities should publish an annual report on how they have exercised their powers of out-of-court settlement, without disclosing the identity of the alleged offenders.

c. *Simplified procedures in cases which are minor due to the circumstances of the case*

1. In the case of offences which are minor due to the circumstances of the case, where the facts of the case seem well established and it appears certain that the person charged is the person who committed the offence, recourse may be had to simplified procedures, that is written procedures carried out by the judicial authority, dispensing with the hearing stage and leading to decisions equivalent to sentences, for example the penal order procedure.

2. A penal order should contain the elements necessary for the accused to be properly informed of the consequences of his acceptance. It should be made known to him in a clear and definite manner, the person concerned being allowed a reasonable time in which to take legal advice if he so wishes.

3. The sanctions available by way of the penal order procedure should be limited to pecuniary sanctions and forfeiture of rights, to the exclusion of any prison sentence.

4. The accused's consent to the penal order may be express or tacit and should by itself make the order equivalent to a judgment delivered in the ordinary way with all legal consequences (application of the *ne bis in idem* principle, possibility of enforcement, entry in the criminal record).

5. The accused's opposition to the penal order, for which reason need not be given, should *ipso facto* cause the order to be null and void and make it necessary to have recourse to ordinary procedure without the prohibition of *reformatio in peius* being applied.

6. Independently of the penal order, it should also be possible to dispense with the hearing stage where the alleged offender asks for the imposition of an alternative penalty, provided that the public prosecutor does not object to such a procedure and the judge deems it advisable to grant such a request.

III. **Simplification of ordinary judicial procedures**

a. *Judicial investigation prior to and at the trial court hearing*

1. Investigations carried out by a judicial authority prior to the case coming to court constitute, where they exist, a guarantee for a defendant, but should not be universal or compulsory.

2. Such preliminary investigations by a judicial authority should be limited to cases where they may appear useful for the completion of the case and the subsequent establishment of guilt or innocence of suspects.

3. Whether a preliminary investigation would be useful should be determined by a judicial authority, taking due account of police inquiries, the gravity and complexity of the case, and whether or not the facts are contested by the accused.

4. If there is a preliminary investigation, it should be carried out according to a procedure which excludes all unnecessary formalities and, in particular, avoids the need for a formal hearing of witnesses in cases where the accused does not contest the facts.

5. If the relevant judicial authority does not consider that it would be useful to have a preliminary investigation, the case should be brought directly before the trial court.

6. In systems which provide for judicial investigation, the possibility of dispensing with it should be accompanied by safeguards at three levels:

— at the police inquiry stage, in that the judicial authority directs and controls police activities or in that the suspect's rights are given more ample consideration;

— at the stage where suspects are remanded in custody upon completion of police inquiries until their appearance before a court, such action being supervised in all cases by one or more independent judges;

— at the stage of the court hearing, the bench must be able to make conclusive investigations during the said hearing in order to determine itself the validity of the charges laid before it and, if considered useful, to entrust an independent judicial authority with the task of making supplementary enquiries;

7. Wherever constitutional and legal traditions so allow, the procedure of "guilty pleas", whereby an alleged offender is required to appear before a court at an early stage of the proceedings in order to state publicly to the court whether he accepts or denies the charges against him, or similar procedures, should be introduced. In such cases, the trial court should be able to decide to do without all or part of the investigation process and proceed immediately to the consideration of the personality of the offender, the imposition of the sentence and, where appropriate, to decide the question of compensation.

8. i. The "guilty plea" procedure must be carried out in a court at a public hearing.

ii. There should be a positive response by the offender to the charge against him.

iii. Before proceeding to sentence an offender under the "guilty plea" procedure, there should be an opportunity for the judge to hear both sides of the case.

9. Where the investigation process at the court hearing is retained, notwithstanding the willingness of the accused to admit his guilt, it should be restricted to those steps absolutely necessary for establishing the facts, taking account of procedure already gone through prior to the trial. In particular, the hearing of witnesses who have previously testified before a judicial authority should be avoided as far as possible.

b. *Procedure at the court hearing*

1. The law of each member state should encourage the joining together of criminal proceedings involving the same accused, irrespective of where the offences were committed, in order to avoid successive decisions by different courts.

2. The procedure to be followed at the hearing should dispense with all formalities which are unnecessary. In particular, it should be possible for the proceedings to be declared void on procedural grounds only in strictly defined circumstances where failure to comply with procedural requirements may have caused real damage to the interests of the defence or prosecution.

3. Member states should consider allowing trial courts, at least for minor offences and having regard to the penalty which may be imposed, to hear and decide a case in the absence of the accused, provided that the latter has been duly informed of the date of the hearing and of his right to be represented legally or otherwise.

c. *Trial records and simplified delivery of judicial decisions*

1. The decision by the trial court must be taken within strict time-limits if the defendant has been detained on remand for the case at issue.

2. If the proceedings are recorded on magnetic tape, or if they reveal no new facts not already in the case-file, the written records of the trial should be restricted to the minimum and consist merely of a summary record.

3. Wherever the constitution so permits, and if the decision of the trial court concerns cases which are not serious, or if the parties so agree, the court should be exempted from the requirement to issue its decision in writing and should merely have to record its findings in the case-file.

4. Where, in other cases, a written decision is necessary, it should mention only the information required by the parties and for the use of the appeal court, or for the information of the foreign authorities which might be called upon to execute the decision, namely the grounds, the decision as to guilt and,

where applicable, the penalty and any compensation for injured parties. As regards investigation procedure, facts and pleadings of the parties, the judgment should simply refer to the items of the file, the written conclusions submitted by the parties, the written summary or the tape recording of the proceedings.

5. Where there are rules governing the reading, *in extenso*, of judgments at a public hearing, these should be relaxed, for example by allowing the trial court—and, if the trial is being heard by a panel of judges, one of the latter, even in the absence of the non-presiding judges—to read aloud only the decision as to guilt, penalty and compensation.

6. The notification of the written decision, as well as the summons, should be given by means of simple, rapid procedures, including by mail, if necessary by requiring the accused, at the outset of the legal process, to indicate an official address to which all communications and notifications may be sent to him until the completion of the trial.

d. *Composition and specialisation of trial courts*

1. As a general principle, the composition of the trial court should, insofar as member states' constitutional and legal traditions allow, be determined with due regard to the seriousness, nature, technicality and complexity of the alleged offence.

2. Where trials are heard by a panel of professional judges, the number of judges on the panel should be kept to the minimum, with a single judge wherever the degree of seriousness of the case allows.

3. Where jury trial is provided, it should be available only for a defined class of more serious offences. The trial should be arranged in such a way as to ease the task of the jury, with the judge explaining to them as clearly as possible at the start of their deliberations the issues for decision and the law relevant to the case before them.

4. Where the issue of guilt is determined by a jury or a panel of professional judges, or by lay assessors together with professional judges, the decision should be reached by a simple or qualified majority, with no requirement of unanimity.

5. Cases such as those involving economic crime, in which bringing evidence is technically a highly complicated matter, should be assigned to officials and judges with appropriate training, knowledge and experience.

6. Where the constitution so permits, such cases should, where appropriate, be dealt with by the prosecuting and investigating authorities, and possibly by courts, either set up or organised specifically to cope with the difficulties created by their inherent nature and complexity.

7. The authorities responsible for the prosecution, investigation and trial of cases which require it should have available the assistance of experts in fields such as social psychology, medicine, psychiatry, accountancy, economics, finance or forensic science in sufficient numbers to cope with the growing technicality of crime and the taking of evidence.