

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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RECOMMENDATION No. R (84) 15

### OF THE COMMITTEE OF MINISTERS TO MEMBER STATES RELATING TO PUBLIC LIABILITY<sup>1</sup>

*(Adopted by the Committee of Ministers on 18 September 1984  
at the 375th meeting of the Ministers' Deputies)*

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

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

Considering that public authorities intervene in an increasing number of fields, that their activities may affect the rights, liberties and interests of persons and may, sometimes, cause damage ;

Considering that, since public authorities are serving the community, the latter should ensure reparation for such damage when it would be inappropriate for the persons concerned to bear it ;

Recalling the general principles governing the protection of the individual in relation to the acts of administrative authorities as set out in Resolution (77) 31 and the principles concerning the exercise of discretionary powers by administrative authorities set out in Recommendation No. R (80) 2 ;

Considering that it is desirable to protect persons in the field of public liability,

Recommends the governments of member states :

- a. to be guided in their law and practice by the principles annexed to this recommendation ;
- b. to examine the advisability of setting up in their internal order, where necessary, appropriate machinery for preventing obligations of public authorities in the field of public liability from being unsatisfied through lack of funds.

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1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Sweden reserved the right of his Government to comply with it or not and the Representatives of Denmark and Norway reserved the right of their Governments to comply or not with Principle II thereof.

### **Scope and definitions**

1. This recommendation applies to public liability, that is to say the obligation of public authorities to make good the damage caused by their acts, either by compensation or by any other appropriate means (hereinafter referred to as "reparation").
2. The term "public authority" means :
  - a. any entity of public law of any kind or at any level (including state ; region; province ; municipality ; independent public entity) ; and
  - b. any private person,when exercising prerogatives of official authority.
3. The term "act" means any action or omission which is of such a nature as to affect directly the rights, liberties or interests of persons.
4. The acts covered by this recommendation are the following :
  - a. normative acts in the exercise of regulatory authority ;
  - b. administrative acts which are not regulatory ;
  - c. physical acts.
5. Amongst the acts covered by paragraph 4 are included those acts carried out in the administration of justice which are not performed in the exercise of a judicial function.
6. The term "victim" means the injured person or any other person entitled to claim reparation.

### **Principles**

#### **I**

Reparation should be ensured for damage caused by an act due to a failure of a public authority to conduct itself in a way which can reasonably be expected from it in law in relation to the injured person. Such a failure is presumed in case of transgression of an established legal rule.

#### **II**

1. Even if the conditions stated in Principle I are not met, reparation should be ensured if it would be manifestly unjust to allow the injured person alone to bear the damage, having regard to the following circumstances: the act is in the general interest, only one person or a limited number of persons have suffered the damage and the act was exceptional or the damage was an exceptional result of the act.
2. The application of this principle may be limited to certain categories of acts only.

#### **III**

If the victim has, by his own fault or by his failure to use legal remedies, contributed to the damage, the reparation of the damage may be reduced accordingly or disallowed.

The same should apply if a person, for whom the victim is responsible under national law, has contributed to the damage.

#### **IV**

The right to bring an action against a public authority should not be subject to the obligation to act first against its agent.

If there is an administrative conciliation system prior to judicial proceedings, recourse to such system should not jeopardise access to judicial proceedings.

## V

Reparation under Principle I should be made in full, it being understood that the determination of the heads of damage, of the nature and of the form of reparation falls within the competence of national law.

Reparation under Principle II may be made only in part, on the basis of equitable principles.

## VI

Decisions granting reparation should be implemented as quickly as possible. This should be ensured by appropriate budgetary or other measures.

If, under domestic law, a system for a special implementation procedure is provided for, it should be easily accessible and expeditious.

## VII

Rules concerning time limits relating to public liability actions and their starting points should not jeopardise the effective exercise of the right of action.

## VIII

The nationality of the victim should not give rise to any discrimination in the field of public liability.

### **Final provisions**

This recommendation should not be interpreted as :

*a.* limiting the possibility for a member state to apply the principles above to categories of acts other than those covered by the recommendation or to adopt provisions granting a wider measure of protection to victims ;

*b.* affecting any special system of liability laid down by international treaties ;

*c.* affecting special national systems of liability in the fields of postal and telecommunications services and of transportation as well as special systems of liability which are internal to the armed forces, provided that adequate reparation is granted to victims having regard to all the circumstances ;

*d.* affecting special national systems of liability which apply equally to public authorities and private persons.