

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (82) 15

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE ROLE OF CRIMINAL LAW IN CONSUMER PROTECTION

*(Adopted by the Committee of Ministers on 24 September 1982
at the 350th 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 the need to protect the lives, health and legitimate economic interests of consumers ;

Considering that technological and economic development in the member states involves the production of goods whose manufacture and composition are complex, increases the distance between the supplier and the consumer and makes it difficult to protect the consumer ;

Considering the need to draw up European rules to make consumer protection more effective and at the same time preserve freedom of trade and industry and the rules of competition ;

Considering the fundamental role of civil, commercial and administrative law in consumer protection ;

Considering that recourse is frequently had to the criminal law as an alternative in consumer protection where the above-mentioned types of law have proved ineffective ;

Considering that this increased recourse to criminal law, which is contrary to the tendency towards decriminalisation observed in other fields, is justified by the need to protect certain important social values from serious impairment and to redress the economic imbalance between suppliers and consumers ;

Considering that it is in the interest of the member states to lay down common criminal policy principles so as to ensure full protection for consumers ;

Having regard to the relevant proceedings of the Parliamentary Assembly, and particularly Resolution 543 (1973) on a Consumer Protection Charter, and to the work of the European Committee on Legal Co-operation and of the ad hoc Committee of Experts on the Protection of Consumers in the Socio-Economic Field ;

Having regard to the Committee of Ministers' Recommendation No. R (81) 12 on economic crime,

Recommends that the governments of the member states :

1. re-examine their legislation and consider the need to supplement by criminal sanctions the rules of civil, commercial and administrative law relating to consumer protection, or, where this is already the case, to improve the sanctions ;
2. examine, with a view to improving consumer information and facilitating the implementation of regulations by the authorities, the advisability of codifying the rules in criminal law for the protection of consumers or of consolidating them to form a single coherent body of legislation ;

3. encourage the drawing up of codes of business ethics for the protection of consumers, if only as a preventive measure, and to enable the court in its assessment of evidence to determine more accurately the nature of the fault committed and the resulting liability ;
4. set up, again as a preventive measure, official consumer protection bodies or encourage the setting up of private bodies for the same purpose as well as increase or widen the activities of existing bodies in order to alleviate the work of the criminal authorities ;
5. ensure the application of legislation for the protection of consumers by improving the means available to the police, trade, labour and health authorities for supervising economic activities and by empowering them, where necessary, to refer a matter to the criminal authorities ;
6. consider the advisability of introducing into their legislation the concept of the criminal liability of legal persons or institutions designed to achieve the same object ;
7. consider the advisability of introducing a statutory obligation to state the name of the producer on any dangerous product ;
8. consider amending their criminal procedure where necessary to enable an individual consumer, who is the victim of an offence, to take effective action :
 - by reporting the matter to the police, to the public prosecutor (where there is one) or to any other appropriate authority for the purpose of having criminal proceedings instituted ;
 - or by claiming the right to take part in proceedings, possibly by entering a claim for damages in a criminal prosecution begun by the public prosecutor or by some other prosecuting authority ;
 - or by bringing a private prosecution where the public prosecutor or other prosecuting authority has not done so ;
9. consider the advisability of granting consumer associations, where necessary, the right to take part in criminal proceedings by entitling them to follow the same procedure as that prescribed for individual victims ;
10. review the penalties applicable in the matter of consumer protection and, if necessary, introduce specific penalties or new ways of applying conventional penalties ;
11. co-operate at European level by means of existing conventions and the exchange of information on legislation and practice with a view to fuller protection of the rights of consumers who are victims of criminal offences ;

Asks the governments of the member states to make available to the government departments concerned the CDPC report on the role of criminal law in consumer protection.