

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (82) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING INTERNATIONAL CO-OPERATION IN THE PROSECUTION AND PUNISHMENT OF ACTS OF TERRORISM

*(Adopted by the Committee of Ministers on 15 January 1982
at the 342nd 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 greater unity among its members ;

Concerned at the increased number of acts of terrorism committed in certain member states ;

Considering the prevention and suppression of such acts to be indispensable to the maintenance of the democratic institutions of member states ;

Having regard to Council of Europe initiatives¹ in the past aimed at the suppression of terrorism, which represent important contributions to the fight against this threat to society ;

Convinced that it is necessary further to develop and to strengthen international co-operation in this field ;

Desirous of rendering existing procedures of international judicial co-operation simpler and more expeditious, of improving the exchange of information between the competent authorities of member states, particularly between those with a common border, and of facilitating the prosecution and punishment of acts of terrorism ;

Having regard to existing co-operation and channels of communication between the police forces of member states ;

Recalling the Declaration on Terrorism adopted by the Committee of Ministers on 23 November 1978 ;

1. In particular :

- European Convention on Extradition (1957) with two Additional Protocols (1975 and 1978) ;
- European Convention on Mutual Assistance in Criminal Matters (1959) and Additional Protocol (1978) ;
- European Convention on the Suppression of Terrorism (1977) ;
- Resolution (74) 3 on international terrorism adopted by the Committee of Ministers at its 53rd Session (January 1974) ;
- Declaration on Terrorism adopted by the Committee of Ministers at its 63rd Session (November 1978) ;
- Communiqués of the Committee of Ministers at its 67th (October 1980), 68th (May 1981) and 69th (November 1981) Sessions ;
- Assembly Recommendations 684 (1972), 703 (1973), 852 (1979) and 916 (1981) ;
- Conference on the "Defence of democracy against terrorism in Europe—Tasks and problems" (November 1980).

Emphasising that any measure of international co-operation must be fully compatible with the protection of human rights and particularly with the principles contained in the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950,

Recommends the governments of member states to give effect, by the most appropriate means, to the following measures aimed at improving international co-operation in the prosecution and punishment of acts of terrorism directed against the life, physical integrity or liberty of persons, or against property where they create a collective danger for persons, including, in accordance with domestic law, attempts at, or threats of, or participation as an accomplice in, these acts (referred to as "acts of terrorism" in the present recommendation).

I. Channels of communication for mutual judicial assistance in criminal matters

1. Direct communication, between the authorities concerned in the requesting and the requested state, of requests for judicial assistance and the replies thereto, should be encouraged in all cases where it is permitted by the law of these states or by any treaty to which these states are party, if it is likely to render mutual judicial assistance more expeditious.

2. Where direct transmission is permitted, cases involving acts of terrorism should be treated with urgency according to the procedure provided by Article 15.2 of the European Convention on Mutual Assistance in Criminal Matters or by other treaties in force between member states or by the law of these states, so that letters rogatory may be addressed by the authority concerned in the requesting state directly to the authority concerned in the requested state, it being understood that the requested state may require a copy to be sent to its Ministry of Justice or other competent ministry.

3. Where requests for assistance and the replies thereto may be communicated directly between the authorities concerned in the requesting and the requested state, their transmission should be effected as rapidly as possible, either through Interpol National Central Bureaux, in so far as this is not contrary to Interpol's Constitution, or by other existing ways of transmission.

4. Where communication is effected between Ministries of Justice or other competent ministries, the authority concerned in the requesting state should be allowed directly to provide the authority concerned in the requested state with an advance copy of the request. The authority concerned in the requested state should be advised that the sole purpose of transmitting the copy is to enable it to prepare for the execution of the request.

II. Exchange of information

5. Exchanges of information between member states should be improved and reinforced. To that end, the competent authorities should, in so far as this is not contrary to domestic law, be enabled to furnish, of their own accord, information in their possession on such matters as :

- i. measures concerning the prosecution of the alleged offender (e.g. arrest, indictment) ;
- ii. the outcome of any judicial or administrative proceedings (e.g. conviction, decision on extradition) ;
- iii. the enforcement of any sentence (including pardon, conditional release) ;
- iv. other relevant information relating to the whereabouts of the person concerned (e.g. expulsion, escape, execution of an extradition decision)

to the authorities of any member state concerned as, for instance, the state where the act of terrorism was committed, the state which has jurisdiction over the offence, the state of which the offender is a national, the state where the offender has his habitual residence, or any other state likely to have an interest in the particular element of information.

6. The exchange of this information should be effected with all necessary expediency either through Interpol National Central Bureaux, in so far as this is not contrary to Interpol's Constitution, or by other existing ways of transmission.

III. *Prosecution and trial of offences of an international character*

7. Where one or several acts of terrorism have been committed in the territory of two or several member states and there is a link between those acts or their authors, the member states concerned should examine the possibility of having the prosecution and the trial conducted in only one state. To that end, the states concerned should agree on the competent state, in accordance with existing international treaties and their internal law. The same should apply, if possible, where one or several acts of terrorism of an international character have been committed in the territory of a single state by several persons acting in unison who have been apprehended in various states. In negotiating such agreements on the competent state, the states concerned should, with a view to ensuring that prosecution and trial take place in the state best suited for conducting the proceedings, take into account the number of offences committed in each state, the seriousness of the offences, the availability of evidence, the personal circumstances of the alleged offender, in particular his nationality and habitual residence, and the prospects of rehabilitation.