COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (95) 11

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE SELECTION, PROCESSING, PRESENTATION AND ARCHIVING OF COURT DECISIONS IN LEGAL INFORMATION RETRIEVAL SYSTEMS

(Adopted by the Committee of Ministers on 11 September 1995 at the 543rd 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;

Having regard to Recommendation No. R (83) 3 concerning the protection of users of computerised legal information services;

Considering that full knowledge of the jurisprudence of all courts is an essential prerequisite for equitable application of the law;

Considering that it is essential that jurisprudence retrieval systems should be objective and representative if justice is to be done;

Considering that computerised systems are being used more and more frequently for legal research, and that the growing number and complexity of court decisions is resulting in an increasingly widespread recourse to these new methods;

Considering that the general public and the legal profession in particular should have access to these new means of information,

Recommends that the governments of member states:

a. bring the general principles and guidelines set out below to the attention of the persons responsible for the creation, the management and the updating of legal information retrieval systems;

b. take appropriate steps to ensure that these principles and guidelines are applied to automated jurisprudence retrieval systems in the public sector, and to facilitate their application, and see to it that automated jurisprudence retrieval systems are objective and representative;

c. take appropriate steps to ensure that all users have easy access to legal information retrieval systems that are open to the public.

Appendix I to Recommendation No. R (95) 11

General principles applicable to legal information retrieval systems with regard to the selection, processing, presentation and archiving of court decisions

I. Scope

For the purposes of this recommendation, automated jurisprudence retrieval systems cover:

– databanks, irrespective of the organisation of their contents or the method of dissemination;

– the new magnetic and optical retrieval media (*inter alia*, CD-ROMs containing jurisprudence).

II. Objectives of automated jurisprudence retrieval systems

The objectives of automated retrieval systems are, *inter alia*:

– to facilitate the work of the legal profession by supplying rapid, complete and up-to-date information;

– to provide information for all persons directly or indirectly interested in a matter of jurisprudence;

– to make available more quickly new court decisions, especially in areas of law under development;

– to make available a larger number of court decisions concerning both questions of law and questions of fact (for example amount of compensation, of maintenance, length of a sentence, etc.);

– to contribute to the coherence of jurisprudence (reliability of law – "*Rechtssicherheit*") without introducing inflexibility;

– to enable law-makers to analyse the application of laws;

– to facilitate research on jurisprudence;

– in certain cases, to furnish information for statistical purposes.

III. General principles

1. *Coverage*

The jurisprudence concerning all fields of law and from all geographical areas should be disseminated by one or more automated systems. States should themselves set up or encourage the setting up of systems covering sectors not already covered (see Recommendation No. R (83) 3, Appendix I, Part I, No. 5, second sub-paragraph and also below, Appendix II, II.3).

2. *Exhaustiveness – selection*

2.1. In accordance with the rules of the legal system or the needs of automated systems, a selection of decisions can be made, if necessary.

2.2. In sectors where a selection is made, this must be objective, according to the criteria set forth in Appendix II, and the selected decisions must be generally representative of the jurisprudence in the sector in question.

This includes the selection of a decision that goes against a prevailing trend in jurisprudence.

3. *Updating*

Recent court decisions should be fed into the automated system regularly and within a reasonable period of time.

It is desirable that automated systems allow for informing the users quickly about the newest decisions entered into the system.

As far as possible, systems should be updated within a month in the case of supreme court decisions and within three months in the case of decisions by other courts, as from the date of publication of the decision or as from the delivery of the text of the decision to the parties.

The updating routines should profit from the most efficient techniques possible, especially re-use of texts already in machine-readable form. Furthermore, the computerised legal information services should endeavour to ensure that the editorial phase is as short as possible.

4. *Upholding or quashing of court decisions*

When an appeal against a selected decision has been made to a higher court, users should be informed of the appeal whenever the decision is presented.

As far as possible, the decision of the higher court should be indicated (whether it has upheld or quashed the original decision).

5. *Archiving of decisions*

Archiving criteria for jurisprudence retrieval systems should be as clear and simple as possible, and archived decisions should be stored on one or more media that remain accessible to users who expressly want to consult them.

Consideration should be given to avoiding complicating the use of the system by the accumulation of a growing amount of obsolete information.

The computerised legal information services should facilitate retrieval which is restricted to decisions given after a certain date.

Appendix II to Recommendation No. R (95) 11

Guidelines for the selection, processing, presentation and archiving of court decisions in legal information retrieval systems

I. Selection

1. *Definition*

For the guidelines reproduced below, "selection" means the type of choice among the court decisions currently given in a member state to be inserted in the database.

2. *Selection criteria*

Selection of court decisions can be carried out according to the following criteria:

– hierarchical selection: the choice of court decisions of one or several instances of courts according to their hierarchical status in the legal order of the country concerned;

– geographical selection: the choice of court decisions given by one or several courts selected according to their geographical location;

– selection by fields of law: the choice of court decisions in one or more fields of law, for example penal law, environmental law, procedural law, marriage law, fiscal law, etc;

– selection by substance: the choice of court decisions according to whether they are or are not considered of sufficient legal interest.

The following guidelines apply to decisions on the substance of a case as well as to decisions concerning procedure.

II. Guidelines

If a selection takes place, it should be carried out in such a manner that objectivity and representativity of the database are ensured.

The selection should ensure, on the one hand, broad and comprehensive access to information on court decisions and, on the other hand, that the accumulation of useless information is avoided.

The selection criteria established above should be applied in the following manner:

1. Hierarchical selection, which leads to giving priority to decisions of the highest courts, is a useful way of limiting the amount of information available for retrieval. However it should be taken into consideration that the frequency of appeals may vary from one field of law to another and that certain types of cases cannot be appealed against. Therefore decisions of lower courts should not be lost from view.

2. Geographical selection should be avoided unless particular circumstances justify the contrary, for example the existence of regional law or regional jurisdiction, in the case of specific scientific research.

3. The selection by fields of law is a useful way of limiting the amount of information available for retrieval when establishing systems designed for special groups of users. Selection by fields of law will normally be carried out by selecting the decisions in one or several fields of law. This could be done by storing all decisions given by one or several types of specialised courts, for example fiscal courts, criminal courts, etc.

States should endeavour to ensure the creation of databases to cover types of information, fields of law and jurisdictions not covered elsewhere (see Recommendation No. R (83) 3, Appendix I, I, 5.2).

4. Selection by substance should be applied only with great care so as to ensure the objectivity and representativity of the selection of the decisions.

"Legal interest" means that a court decision expresses a rule of law, for example setting a legal precedent, expressing a tendency of jurisprudence in the evaluation of facts, a procedural practice in such a way that the decision is or could be of importance for obtaining adequate and detailed knowledge of court practice in the field of law in question.

The following specific points should be taken into consideration when making selections:

Decisions of assessment (for example of the punishment, of damages), as well as decisions dealing mainly with questions of evidence or of contract should not be omitted as a general rule, as these types of decisions represent some important elements of the legal systems.

Decisions expressing a "constant practice" of the courts should be represented in such a way as to reflect the main principles of the jurisprudence in the field concerned. On the other hand, this should not tend to impede a possible evolution of case-law. Consequently the legal information systems should, at adequate intervals, store decisions that confirm or reverse a "firm practice" of the courts. Appropriate indications could be given, for example by adding annotations confirming or changing the practice.

5. Further selection criteria:

Selection criteria can be positive or negative.

Concerning negative selection criteria, decisions may be excluded:

a. if the grounds on which they are based are stated according to a standard formula or formula clause. This standard formulation can be recognised by modules, such as word processing modules;

b. if they concern questions of evidence which are in agreement with existing case-law.

If a selection proves necessary in the case of the highest courts, it appears desirable that the negative selection method be used in all fields of law.

The following positive selection criteria might be used for choosing decisions:

a. decisions in which the explanation of a concept or legal term is given, that is a rule of law is formulated or amended;

b. decisions in which the method of interpretation used results in an existing rule of law being applied to a body of facts in a way which departs from earlier applications;

c. decisions in which a method of argumentation is noted which departs from earlier applications;

d. decisions in which questions concerning the competence of the court are decided;

e. decisions involving a concurring or dissenting opinion;

f. decisions in which a rule of law and/or a body of facts is involved, which is of general interest.

III. Implementation of selection

Selection should be carried out only according to guidelines that are set up in advance, clearly defined and easily accessible to the users. Such guidelines should be drawn up according to the principles indicated above in II.

The selection should be carried out by one or more persons that have proper legal training. This selection can be carried out in steps, for example by using the method of pre-selection. Selection by substance should be carried out in such a way that broad expertise is used and different opinions and points of view are represented.

This/these person(s) selecting the decisions could be judges, university lawyers, advocates (barristers, solicitors), prosecutors, or other civil servants. Representatives of associations, of law reviews and of other legal information services may also be included in this group of persons.

If a court of last instance requires the insertion of one of its decisions in the database, the decision should in principle be included.

It appears very desirable that the users participate in the selection and choice of selection criteria.

IV. Presentation

1. *Presentation of decisions (documents)*

The documents should be presented in a manner that ensures safe and rapid retrieval.

If possible, court decisions should be stored in the form of the full original texts. Furthermore the following possibilities to enhance the functionality of the database should be closely considered:

- headlines (*titrages*);
- keywords (*mots clés*);
- fixed vocabulary (*vocabulaire fermé*);
- abstracts (*abstracts/sommaires*);
- commentary: summary/analysis (*résumé/analyse*);
- notes (*annotations*), for example references to statute law, case-law, doctrine;
- information on appeals and the result of appeals.

2. *Privacy questions*

Where issues of privacy and protection of personal data may arise in computerised legal information systems, they shall be regulated by domestic law in accordance with the principles laid down by the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention No. 108, European Treaty series) and its subsidiary texts.

3. *Access*

As regards the access of the computerised legal information systems to the source texts of court decisions, including texts in machine-readable form, and the access of the user to the computerised legal information systems, the guidelines of Recommendation No. R (83) 3, Appendix, Part I, points 2 and 3 should be applied.