

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

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### RESOLUTION (78) 8

#### ON LEGAL AID AND ADVICE

*(Adopted by the Committee of Ministers on 2 March 1978  
at the 284th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the right of access to justice and to a fair hearing, as guaranteed under Article 6 of the European Convention on Human Rights, is an essential feature of any democratic society ;

Considering that it is therefore important to take all necessary steps with a view to eliminating economic obstacles to legal proceedings and that the existence of appropriate systems of legal aid will contribute to the achievement of this aim especially for those in an economically weak position ;

Considering that the provision of legal aid should no longer be regarded as a charity to indigent persons but as an obligation of the community as a whole ;

Considering that facilitating the availability of legal advice as a supplement to legal aid for persons in an economically weak position is of equal importance in the elimination of obstacles to access to justice,

Recommends the governments of member states to take or reinforce, as the case may be, all measures which they consider necessary with a view to the progressive implementation of the principles set out in the appendix to this resolution ;

Invites the governments of member states to inform the Secretary General of the Council of Europe periodically of the measures taken to follow up the recommendation contained in this resolution.

#### Appendix to Resolution (78) 8

##### **Part I — Legal aid in court proceedings**

1. No one should be prevented by economic obstacles from pursuing or defending his right before any court determining civil, commercial, administrative, social or fiscal matters. To this end, all persons should have a right to necessary legal aid in court proceedings. When considering whether legal aid is necessary, account should be taken of :

- a.* a person's financial resources and obligations ;
- b.* the anticipated cost of the proceedings.

2. Legal aid should be available even where a person is able to pay part of the costs of his proceedings. In that case, legal aid may be available with a financial contribution by the assisted person which shall not exceed what that person can pay without undue hardship.

3. Legal aid should provide for all the costs necessarily incurred by the assisted person in pursuing or defending his legal rights and in particular lawyers' fees, costs of experts, witnesses and translations.

It is desirable that, where legal aid is granted, there should be exemption from any requirement for security for costs.

4. It should be possible for legal aid to be obtained in the course of the proceedings, if there is a change in the financial resources or obligations of the litigant or some other matter arises which requires the granting of legal aid.

5. Legal aid should always include the assistance of a person professionally qualified to practise law in accordance with the provisions of the state's regulations, not only where the national legal aid system always of itself so provides, but also :

*a.* when representation by such a person before a court of the state concerned is compulsory in accordance with the state's law ;

*b.* when the competent authority for the granting of legal aid finds that such assistance is necessary having regard to the circumstances of the particular case.

The assisted person should, so far as is practical, be free to choose the qualified person he wishes to assist him. The person so appointed should be adequately remunerated for the work he does on behalf of the assisted person.

6. When considering whether legal aid should be granted, the authorities may :

*a.* take into consideration, having regard to the circumstances of the particular case, whether or not it is reasonable for proceedings to be taken or defended ;

*b.* take account of the nature of the proceedings and, if need be, grant aid only for costs other than those relating to assistance by a qualified person as referred to in principle 5.

7. The legal aid system should provide for a review of a decision to refuse a grant of legal aid.

8. The responsibility for financing the legal aid system should be assumed by the state.

9. The limits of financial eligibility for legal aid should be kept under review, especially having regard to rises in the cost of living.

10. The legal aid system should provide for the granting of legal aid, in accordance with the principles contained in the present resolution in any proceedings for the recognition or enforcement of a decision in the state concerned of a decision given in another state.

11. The state should take the necessary steps to bring the provisions of the legal aid system to the attention of the public and other interested parties, particularly those agencies in the state to which potential applicants might turn for help.

## **Part II — Legal advice**

12. The state should ensure that a person in an economically weak position should be able to obtain necessary legal advice on all questions arising out of the matters mentioned in principle 1, which may affect his rights or interests.

13. Legal advice should be available either free or on payment of a contribution dependent on the resources of the person seeking the advice.

14. The state should ensure that information on the availability of legal advice is given to the public and to those to whom a person in need of legal advice may turn for help.

15. The state should take appropriate steps to see that such information on the legislation of the state as is necessary is available to advice-giving agencies.

16. The state should pay particular attention to the need for legal advice when proceedings may have to be taken in another state.