COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION No. R (95) 5

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONCERNING THE INTRODUCTION AND IMPROVEMENT OF THE FUNCTIONING OF APPEAL SYSTEMS AND PROCEDURES IN CIVIL AND COMMERCIAL CASES

(Adopted by the Committee of Ministers on 7 February 1995 at the 528th meeting of the Ministers' Deputies)

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

Noting that Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") requires Parties to allow convictions or sentences to be reviewed by a higher court;

Agreeing that appeal procedures should also be available for civil and commercial cases and not only for criminal cases;

Having regard to the problems caused by an increase in the number of appeals and by the length of appeal proceedings;

Considering that everyone's right to a hearing within a reasonable time under paragraph 1 of Article 6 of the Convention might be affected by such problems;

Aware that ineffective or inadequate procedures and the abuse by parties of the right to appeal cause unjustified delays and may bring the justice system into disrepute;

Convinced that effective appeal procedures are in the interests of all parties to litigation and of the administration of justice;

Having regard to Recommendation No. R (81) 7 on measures facilitating access to justice, Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice, Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts and Recommendation No. R (93) 1 on effective access to the law and to justice for the very poor,

Recommends that governments of member states adopt or reinforce, as the case may be, all measures which they consider necessary to improve the functioning of appeal systems and procedures in civil and commercial cases, in particular the following:

Chapter I – General principles

Article 1 – Right to judicial control

a. In principle, it should be possible for any decision of a lower court ("first court") to be subject to the control of a higher court ("second court").

b. Should it be considered appropriate to make exceptions to this principle, any such exceptions should be founded in the law and should be consistent with general principles of justice.

c. Information should be provided to parties concerning their right to appeal and of how to exercise this right, such as the time within which an appeal must be lodged.

d. Judges of higher courts should not be allowed to participate in the proceedings relating to cases with which they were involved in a lower court.

Chapter II – Limitations on judicial control

Article 2 – Measures taken at the level of the first court

a. In principle, the issues of the litigation should be defined at the level of the first court. All possible claims, facts and evidence should be presented to the first court. States should consider adopting legislation or other measures to that effect.

b. To enable the parties to assess whether they should exercise their right to appeal and to be able, wherever possible, to limit the appeal, the first court should be required by law to give clear and complete reasons for its decisions, using language which is readily understandable. In principle, reasons need not be given for decisions in matters which have not been contested or for decisions made by juries.

c. The first court should be able, in appropriate cases, to allow provisional enforcement unless this will cause the losing party irreparable or serious harm or would make it impossible for justice to be done at a later stage.

Article 3 – Matters excluded from the right to appeal

In order to ensure that only appropriate matters are considered by the second court, states should consider taking any or all of the following measures:

a. excluding certain categories of cases, for example small claims;

b. requiring leave from a court to appeal;

c. fixing specific time-limits for the exercise of the right to appeal;

d. postponing the right to appeal in certain interlocutory matters to the main appeal in the substantive case.

Article 4 – Measures to prevent any abuse of the appeal system

In order to prevent any abuse of the appeal system or procedure, states should consider taking any or all of the following measures:

a. requiring appellants at an early stage to give reasoned grounds for their appeals and to state the remedy sought;

b. allowing the second court to dismiss in a simplified manner, for example without informing the other party, any appeal which appears to the second court to be manifestly ill-founded, unreasonable or vexatious; in these cases appropriate sanctions such as fines may be provided for;

c. where the judgment is immediately enforceable, allowing a stay of execution only where the execution will cause the appellant irreparable or serious harm, or will make it impossible for justice to be done at a later stage. In such a case, security in respect of the amount of the judgment must be provided;

d. where the judgment is immediately enforceable, allowing the second court to refuse to hear the case if the appellant has not complied with the judgment, unless he has provided adequate security or the first or the second court grants a stay of execution;

e. where unnecessary delays have been caused by the fault of a party, requiring that party to pay the additional costs caused by the delay.

Article 5 – Measures limiting the scope of the proceedings in the second court

In order to ensure that appealed matters are examined by the second court, states should consider taking any or all of the following measures:

a. allowing the court or the parties to accept some or all of the findings of fact of the first court;

b. allowing the parties to seek a ruling limited to certain aspects of the case;

c. where leave to appeal is necessary, enabling the court to limit the scope of the appeal, for instance to points of law;

d. including restrictions concerning the introduction of new claims, facts or evidence in the second court unless new circumstances have arisen or there were other reasons specified by the internal law why they were not introduced in the first court;

e. limiting the hearing of the appeal to the reasoned grounds of the appeal, subject to cases where the court may act on its own motion.

Chapter III – Other measures to improve the functioning of appeal systems and procedures

Article 6 – Measures improving the efficiency of the appeal procedures

In order to ensure that appeals are heard expeditiously and efficiently, states should consider taking any or all of the following measures:

a. not making use of more judges than necessary to deal with cases. A single judge could be used, for instance, in some or all of the following matters:

i. applications for leave to appeal;

ii. procedural applications;

iii. minor cases;

iv. where the parties so request;

v. where the case is manifestly ill-founded;

vi. family cases;

vii. urgent cases.

b. as the case has been dealt with by the first court, limiting the number of written submissions exchanged between the parties to the minimum necessary, for example prescribing that each party may only submit one set of documents to the second court;

c. in states where oral proceedings are possible in the second court, enabling parties to agree to have the case decided without a hearing, unless the second court finds it necessary;

d. reducing the length of oral hearings to what is strictly necessary, for instance by making more use of written procedures or by using outline arguments or written addresses;

e. where oral hearings take place, ensuring that they are completed as soon as possible ("concentration of oral hearings"). The court should consider the case in connection with the hearing and should pass judgment immediately thereafter or within a short time period as provided for by the law;

f. requiring strict observance of time-limits, for example concerning the exchange of documents and pleadings, and providing sanctions for non-compliance with time-limits, for example fines, dismissal of the appeal or not considering the matter to which the time-limit related;

g. giving the second court a more active role both before and during the hearing of the case in order to regulate its progress, for example by making preparatory enquiries or by encouraging settlements;

h. regulating matters relating to urgent cases, for instance deciding who may request an accelerated consideration of such a case, on what criteria a case should be considered to be urgent and deciding who within the judicial system would have competence for dealing with such cases;

i. improving contacts between the court and lawyers and others involved in litigation, for instance by arranging seminars involving the second court and the bar associations or enabling discussion on how to improve procedures;

j. providing adequate technical facilities to the second court, such as telefaxes or computers, and providing similar facilities to the first court to allow preparation of transcripts of hearings and decisions;

k. promoting the use of qualified lawyers, acting for parties in the court.

Chapter IV– Role and function of the third court

Article 7 – Measures relating to appeals to a third court

a. The provisions of this recommendation should, where appropriate, apply also to the "third court", where such a court exists, that is a court which exercises control over the second court. Constitutional courts or similar are, for the purposes of this recommendation, not included.

b. In considering measures concerning third courts, states should bear in mind that cases have already been heard by two courts.

c. Appeals to the third court should be used in particular in cases which merit a third judicial review, for example cases which would develop the law or which would contribute to the uniform interpretation of the law. They might also be limited to appeals where the case concerns a point of law of general public importance. The appellant should be required to state his reasons why the case would contribute to such aims.

d. States could consider introducing a system whereby the third court could deal with a case directly, for instance by means of a referral for a preliminary ruling or a procedure which bypasses the second court ("leapfrog" procedure). Such procedures may in particular be suitable for matters involving points of law in which an appeal to the third court would be likely in any event.

e. Decisions made by the second court should be enforceable, unless the second or the third court grants a stay of execution or the appellant gives adequate security.

f. States which do not admit a system of leave to appeal to the third court or which do not admit the possibility for the third court to reject part of an appeal, could consider introducing such systems aiming at limiting the number of cases meriting a third judicial review. The law could define specific grounds which would enable the third court to limit its examination only to certain aspects of the case, for instance when granting leave to appeal or rejecting, after a summary consideration of the case, some parts of the appeal.

g. In principle, new facts or new evidence may not be presented in the third court.