

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (93) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON EFFECTIVE ACCESS TO THE LAW AND TO JUSTICE FOR THE VERY POOR¹

*(Adopted by the Committee of Ministers on 8 January 1993
at the 484th meeting of the Ministers' Deputies)*

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

Recalling that, under the European Convention on Human Rights, member states proclaimed their attachment to human rights and fundamental freedoms;

Referring to Resolutions (76) 5 on legal aid in civil, commercial and administrative matters and (78) 8 on legal aid and advice, to Recommendation No. R (81) 7 of the Committee of Ministers to member states on measures facilitating access to justice and to the United Nations resolutions on human rights and extreme poverty, in particular Resolution 46/121 of 17 December 1991 of the General Assembly and Resolution 1992/11 of 18 February 1992 of the Commission on Human Rights, as well as to the study prepared by the International Movement ATD-Fourth World entitled "Towards justice accessible to all: legal aid machinery and certain local initiatives as seen by families affected by severe poverty" [H (92) 2];

Concerned at the situation of the very poor – understood to mean persons who are particularly deprived, marginalised or excluded from society both in economic and in social and cultural terms;

Considering that this situation of severe poverty continues to deprive men and women of the effective enjoyment of human rights which must be secured for all without distinction, in accordance with Article 14 of the European Convention on Human Rights;

Convinced that efforts to promote access to the law and to justice will only be fully effective as part of a comprehensive, coherent and forward-looking policy aimed at combating severe poverty in co-operation with the population groups concerned;

Recalling the principle of the indivisibility of human rights which implies that the enjoyment of civil and political rights such as those enshrined particularly in Articles 6, paragraph 3.c, and 13 of the European Convention on Human Rights is not effective if economic, social and cultural rights are not equally protected;

Reaffirming that attachment to human rights is linked to respect for human dignity, especially as regards access to the law and to justice for the very poor;

Recalling that in addition to the right of access to the law and to justice provided for in Article 6 of the European Convention on Human Rights, the other provisions of the Convention and particularly

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Austria reserved the right of his Government to comply with it or not.

Articles 2, 3 and 8 are equally applicable to the very poor, as are the other legal instruments of the Council of Europe such as the European Social Charter;

Considering that this recommendation is intended to improve, especially with regard to the very poor, existing legal advice and legal aid systems, and therefore to complement existing machinery with regard to the other categories of people for which the systems were designed,

Recommends that the governments of member states:

1. Facilitate access to the law for the very poor ("the right to the protection of the law") by:
 - a. promoting, where necessary, action to make the legal profession aware of the problems of the very poor;
 - b. promoting legal advice services for the very poor;
 - c. defraying the cost of legal advice for the very poor through legal aid, without prejudice to the payment of a modest contribution by the persons benefiting from such advice where this is required by domestic law;
 - d. promoting the setting up where the need seems to appear of advice centres in underprivileged areas;
2. Facilitate effective access to quasi-judicial methods of conflict resolution for the very poor by:
 - a. increasing the involvement of non-governmental organisations or voluntary organisations providing support to the very poor in quasi-judicial forms of conflict resolution such as mediation and conciliation;
 - b. extending the benefit of legal aid or any other form of assistance to such methods of conflict resolution;
3. Facilitate effective access to the courts for the very poor, especially by the following means:
 - a. extending legal aid or any other form of assistance to all judicial instances (civil, criminal, commercial, administrative, social, etc.) and to all proceedings, contentious or non-contentious, irrespective of the capacity in which the persons concerned act;
 - b. extending legal aid to very poor persons who are stateless or aliens, in any event where they are habitually resident in the territory of the member state in which the proceedings are to be conducted;
 - c. recognising the right to be assisted by an appropriate counsel, as far as possible of one's choice, who will receive adequate remuneration;
 - d. limiting the circumstances in which legal aid may be refused by the competent authorities chiefly to those cases in which the grounds for refusal are inadmissibility, manifestly insufficient prospects of success, or cases in which the granting of legal aid is not necessary in the interests of justice;
 - e. simplifying the procedure for granting legal aid to the very poor, and considering the immediate granting of provisional legal aid wherever possible;
 - f. considering the possibility of enabling non-governmental organisations or voluntary organisations providing support to the very poor, to give assistance, in the context of access to the courts, to persons who are in a position of such dependence and deprivation that they cannot defend themselves; this appraisal should concern both proceedings before national tribunals and proceedings before the European Commission and Court of Human Rights and other international instances of judicial nature;
4. Consult whenever possible, in the framework of their general policy aimed at combating severe poverty, non-governmental organisations interested by the field covered by the present recommendation and voluntary organisations providing support to the very poor.