

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (80) 11

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING CUSTODY PENDING TRIAL

*(Adopted by the Committee of Ministers on 27 June 1980
at the 321st meeting of the Ministers' Deputies)*

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

Having regard to Resolution (65) 11 on remand in custody and bearing in mind Resolution (73) 5 on the standard minimum rules for the treatment of prisoners ;

Considering that it is desirable that the recommendations contained in these resolutions be adapted to current developments in the field of crime policy and criminal procedure ;

Considering that it is desirable for humanitarian and social reasons to reduce the application of custody pending trial to the minimum compatible with the interests of justice ;

Considering that it is desirable to establish, at European level, certain standards to be applied to persons awaiting trial ;

Recognising the importance of providing the resources necessary to ensure that any person charged with an offence is brought to trial as expeditiously as possible ;

Bearing in mind the relevant provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, and the case-law of the European Commission and Court of Human Rights relating thereto ;

Having regard to Resolution No. 1 adopted by the Conference of European Ministers of Justice in Vienna in May 1974,

Recommends the governments of member states to ensure that their law and practice in matters relating to custody pending trial be guided by the following principles.

I. General principles

1. Being presumed innocent until proved guilty, no person charged with an offence shall be placed in custody pending trial unless the circumstances make it strictly necessary. Custody pending trial shall therefore be regarded as an exceptional measure and it shall never be compulsory nor be used for punitive reasons.

II. Principles applicable to decisions on custody pending trial

2. A person charged with an offence and deprived of his liberty shall be brought promptly before a judge or other person authorised by law to exercise judicial power (hereinafter referred to as "the judicial authority").

When the person concerned is brought before the judicial authority, the decision concerning custody shall be taken without delay.

3. Custody pending trial may be ordered only if there is reasonable suspicion that the person concerned has committed the alleged offence, and if there are substantial reasons for believing that one or more of the following grounds exist :

- danger of his absconding,
- danger of his interfering with the course of justice,
- danger of his committing a serious offence.

4. Even where the existence of the aforementioned grounds cannot be established, custody pending trial may nevertheless exceptionally be justified in certain cases of particularly serious offences.

5. In considering whether custody should be ordered, the judicial authority shall have regard to the circumstances of the individual case, and in particular to such of the following factors as may be relevant :

- the nature and seriousness of the alleged offence,
- the strength of the evidence of the person concerned having committed the offence,
- the penalty likely to be incurred in the event of conviction,
- the character, antecedents and personal and social circumstances of the person concerned, and in particular his community ties,
- the conduct of the person concerned, especially how he has fulfilled any obligations which may have been imposed on him in the course of previous criminal proceedings.

6. Consideration shall be given to the development of services designed to improve the information available to the judicial authority about the personal and social circumstances of the person concerned.

7. Custody pending trial shall not be ordered if deprivation of liberty would be disproportionate in relation to the nature of the alleged offence and the penalty which the offence carries.

8. If custody is ordered, the record of the decision shall state as precisely as possible the subject matter of the charge and the reasons underlying the decision. It must be communicated promptly to the person concerned who shall be given a copy of it.

9. Whenever, in accordance with the aforementioned principles, custody pending trial can be ordered, the judicial authority shall consider whether the use of custody can be avoided by imposing alternative measures such as those mentioned in principle 15.

10. The person concerned shall be entitled to be legally represented before the judicial authority on any occasion when the question of custody pending trial arises or is likely to arise.

If custody pending trial is ordered he shall as soon as practicable be granted legal aid if his means are insufficient.

11. Any person against whom custody pending trial is ordered shall be entitled to appeal against the decision and apply for release.

12. A person against whom custody pending trial is ordered shall be informed of his rights, in particular the right to be legally represented, the right to ask for legal aid, and the right to appeal and apply for release.

13. Custody pending trial shall not be continued beyond what is required in the light of the objectives laid down in principle 3, nor shall it be continued if the period spent in custody awaiting trial would be disproportionate to the sentence likely to be served in the event of conviction.

14. Custody pending trial shall be reviewed at reasonably short intervals which the law or the judicial authority shall fix. In such a review, account shall be taken of all the changes in circumstances which have occurred since the person concerned was placed in custody.

III. *Principles applicable to alternative measures*

15. When examining whether custody pending trial can be avoided, the judicial authority shall consider all available alternative measures, which may include the following :

- a promise of the person concerned to appear before the judicial authority as and when required and not to interfere with the course of justice,
- a requirement to reside at a specified address (e.g. the home, a bail hostel, a specialised institution for young offenders, etc.) under conditions laid down by the judicial authority,
- a restriction on leaving or entering a specified place or district without authorisation,
- an order to report periodically to certain authorities (e.g. court, police, etc.),
- surrender of passport or other identification papers,
- provision of bail or other forms of security by the person concerned, having regard to his means,
- provision of surety,
- supervision and assistance by an agency nominated by the judicial authority.

Such measures shall be notified in writing and shall be clearly explained to the person concerned, who shall also be warned that he might be taken into custody if he fails to comply with them.

A person on whom any alternative measure is imposed shall, in so far as that measure requires, have the benefit of the same safeguards as are accorded under the present recommendation to a person placed in custody pending trial.

IV. *Principles applicable to the investigation and the trial*

16. The investigation of the charges against persons kept in custody pending trial and the procedures up to trial shall always be conducted as expeditiously as possible so as to reduce to the minimum the period of custody. Every possible effort should be made to attain that aim.

In conducting the investigation and in bringing the person concerned to trial, the authorities involved shall give priority to cases where the person concerned is in custody.

17. The period spent in custody pending trial shall be deducted from the length of the sentence.

18. Consideration shall be given to the establishment or development of a scheme for compensating persons who have spent time in custody pending trial and are subsequently not convicted.