

Opinion 204 (1998)¹

Council of Europe draft Convention on the Protection of the Environment through Criminal Law

Parliamentary Assembly

1. The Parliamentary Assembly reaffirms its great interest in saving the environment. It is convinced that criminal law has to play a most important role in this field and that the Council of Europe member states need to pursue a common criminal policy towards this end.
2. It warmly welcomes the draft convention on the protection of the environment through criminal law,² which will provide a framework to inspire adequate legislation in the penal field.
3. The aim of the draft convention is to provide a European instrument on the criminalisation of acts and omissions detrimental to the environment and to establish the concept of the criminal liability both of individuals and of corporate entities.
4. The draft convention seeks to foster the harmonisation of national legislation in this field, as well as to oblige future contracting parties to insert new provisions into their domestic criminal law or, where applicable, amend existing provisions.
5. Among the considerations stated in the preamble to the draft convention, the Assembly endorses, in particular:

"Recognising that, whilst the prevention of the impairment of the environment must be achieved primarily through other measures, criminal law has an important part to play in protecting the environment;

Recalling that environmental violations having serious consequences must be established as criminal offences subject to appropriate sanctions;

Wishing to take effective measures to ensure that the perpetrators of such acts do not escape prosecution and punishment and desirous of fostering international co-operation to this end;

Convinced that imposing criminal or administrative sanctions on legal persons can play an effective role in the prevention of environmental violations and noting the growing international trend in this regard."

6. It expresses the hope that the draft convention will soon be finalised by the Committee of Ministers and opened for signature and ratification.
7. It is, therefore, in a positive and constructive spirit that the Assembly recommends that the Committee of Ministers introduce the following amendments in the draft convention with a view to strengthening and improving its text:
 - 7.1. in Article 1:

replace the words "infringing a law" by "infringing the law";

1. Assembly debate on 23 April 1998 (15th Sitting) (see [Doc. 8056](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gross; and [Doc. 8083](#), opinion of the Committee on the Environment, Regional Planning and Local Authorities, rapporteur: Mr Kukk). - See [Document 7883](#) Document 7883. Text adopted by the Assembly on 23 April 1998 (15th Sitting).



delete the words "aiming at the protection of the environment";

replace the words "means groundwater and surface water" by "means all kinds of groundwater and of surface water";

7.2. in Article 2 (paragraphs 1 and 2), 3, 4, 5 (paragraphs 1 and 2), 9 and 10 : delete the words "adopt such appropriate measures as may be necessary to";

7.3. in Article 2, paragraph 1.b : add, after "lasting deterioration", the words "or serious temporary deterioration";

7.4. in Article 2, paragraph 1 : add a new sub-paragraph f, starting with "the unlawful heating of water or air which causes, or is likely to cause ... [to be completed]";

7.5. in Article 3:

delete paragraph 2;

delete paragraph 3;

7.6. in Article 5 : delete paragraph 4;

7.7. in Article 6 : delete the words "adopt, in accordance with the relevant international instruments, such appropriate measures as may be necessary to enable it to";

7.8. in Article 9 : delete paragraph 3;

7.9. in Article 10 : delete paragraph 2;

7.10. in Article 11 : replace the words "may, at any time, in a declaration addressed to the Secretary General of the Council of Europe, declare that it will, in accordance with domestic law, grant" with the words "shall grant";

7.11. in Article 12 : delete the words "in accordance with the provisions of the relevant international instruments on international co-operation in criminal matters and with their domestic law";

7.12. in Article 17, paragraph 1 : delete the words "Article 3, paragraphs 2 and 3, Article 5, paragraph 4" and "Article 9, paragraph 3".

7.13. after Article 17, paragraph 2 : add the following new sub-paragraphs :

"The number of reservations which a Contracting State may make is limited to two;" and

"Any reservation can be made for a limited period of maximum three years, after which it must be renewed or will lose its validity."