Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 213 (1999)[1]

Draft Civil Law Convention on Corruption

Parliamentary Assembly

1. The Assembly recalls that, in its Opinion No. 207 (1998) on the draft criminal law convention on corruption, it had stated that corruption was a threat to democracy.

2. It therefore welcomes the preparation of a draft civil law convention on corruption as another in the series of conventions established by the Council of Europe to combat corruption. It also congratulates the Multidisciplinary Group on Corruption (GMC) on its imaginative idea to apply the rules of civil law in order to curb this phenomenon by following a multidisciplinary approach.

3. Although the draft convention does not establish any rights exercisable directly by persons in the domestic courts, it nevertheless contains specific obligations for states which undertake to set up mechanisms and procedures available to the victims of corruption. The draft also includes basic principles of civil law, present in most European legal systems, and gives them a new practicality by incorporating them in an overall strategy on corruption.

4. The Assembly welcomes the fact that the draft convention does not permit any reservations.

5. It supports the principle of full compensation for all damage suffered as a result of corruption, but thinks that punitive damages should also be imposed as a deterrent to the commission of such acts.

6. It regrets the fact that only parties to contracts whose consent has been vitiated by an act of corruption may withdraw their consent and apply for the contract to be declared void. This provision could be extended to third parties with a legitimate interest.

7. It also considers that people should be encouraged to report acts of corruption and regrets the fact that only employees are protected against sanctions imposed for doing so. It proposes that this protection also be extended to third parties.

8. Finally, as with the draft criminal law convention on corruption, it considers that the number of ratifications required for the convention to enter into force should be reduced.

9. Consequently, the Assembly recommends that the Committee of Ministers make the following amendments:

9.1. in Article 3, to add at the end of paragraph 2 the words “as well as punitive damages”;

9.2. in Article 8, to add a third paragraph worded as follows: “Each party shall provide in its internal law for any third party having a legitimate interest to apply to the court for such a contract to be declared void, without prejudice to their right to claim damages”;

9.3. in Article 9, to add the words “and third parties” after the words “for employees”;

9.4. in Article 13, to add a second paragraph which could read as follows: “Parties which have neither signed nor ratified the conventions dealing with the subjects mentioned in paragraph, above, shall guarantee to each other an equivalent level of mutual assistance in judicial matters in the fields covered by this convention”;

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1. See Doc. 8402, report of the Committee on Legal Affairs and Human Rights (rapporteur: Mr Bartumeu Cassany). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 May 1999.

9.5. in Article 15, to reduce to ten the number of ratifications required.

10. The Assembly also recommends that the Committee of Ministers take appropriate measures to enable the Assembly to participate in the work of the Group of States Against Corruption (Greco).