Parliamentary Assembly
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COUNCIL OF EUROPE
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Opinion 233 (2002)[1]

Draft Protocol to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the decision by the Committee of Ministers to draft a protocol to the European Convention on Human Rights concerning the abolition of the death penalty in all circumstances, thus responding to one of the key recommendations made by the Assembly in Recommendation 1246 (1994) on the abolition of capital punishment.

2. The Assembly recalls its most recent resolutions on the subject, Resolution 1187 (1999) on Europe: a death penalty-free continent, and Resolution 1253 (2001) on the abolition of the death penalty in Council of Europe Observer states, in which it reaffirmed its beliefs that the application of the death penalty constitutes inhuman and degrading punishment and a violation of the most fundamental right, that to life itself, and that capital punishment has no place in civilised, democratic societies governed by the rule of law.

3. The European Convention on Human Rights already boasts a protocol on the abolition of the death penalty in peacetime, Protocol No. 6, which currently binds thirty-nine of the Council of Europe's forty-three member states (the other four states respect a moratorium on executions, and three have already signed the protocol). Protocol No. 6, also a product of an Assembly initiative, does, however, still allow for the death penalty to be inflicted in respect of acts committed in time of war or imminent threat of war.

4. As early as 1994, the Assembly found that there was no reason why capital punishment should be inflicted in respect of acts committed in time of war or of imminent threat of war.

5. The second sentence of Article 2 of the European Convention on Human Rights still provides for the death penalty. It has long been in the interest of the Assembly to delete this sentence, thus matching theory with reality. This interest is strengthened by the fact that more modern national constitutional documents and international treaties no longer include such provisions.

6. In consequence the Assembly recommends to the Committee of Ministers that, in the interest of updating the European Convention on Human Rights as such on this important matter, a second paragraph be added to Article 5 of the draft protocol ("Relationship to the Convention"), worded as follows:

"When this Protocol has come into force in all States Parties to the Convention, the second sentence of Article 2 paragraph 1 of the Convention shall be replaced with the text of Article 1 of this Protocol, and in the first sentence of Article 57 of the Convention, after the words 'provision of the Convention' the words 'except for Article 2, paragraph 1' shall be added."

7. The Assembly urges all states parties to the European Convention on Human Rights to sign this protocol on the day of its opening for signature.

1. Assembly debate on 21 January 2002 (1st Sitting) (see Doc. 9316, report of the Committee of Legal Affairs and Human Rights, rapporteur: Mrs Wohlwend). Text adopted by the Assembly on 21 January 2002 (1st Sitting).