

## Recommendation 1606 (2003)<sup>1</sup>

# Areas where the European Convention on Human Rights cannot be implemented

Parliamentary Assembly

1. The Parliamentary Assembly notes that serious violations of human rights are being committed in certain areas on the territory of Council of Europe member states and that the Council of Europe's potential is insufficiently exploited to end or prevent them.
2. From a legal point of view, the High Contracting Parties to the European Convention on Human Rights (ECHR) secure to everyone within their jurisdiction the rights and freedoms defined in the Convention.
3. The ECHR is applicable throughout the territory of member states. It is also applicable in the event of civil war, and even in the event of derogation from the ECHR in application of its Article 15 (Derogation in time of emergency).
4. In reality, however, there are areas in which obstacles to the application of the ECHR exist. These obstacles take various forms. Some are the result of armed conflict or emergency situations, occupation of part of a state's territory or intervention by one state on the territory of another, or even the effective absence of control by a state over part of its territory.
5. Other obstacles are due to the difficulties – sometimes insurmountable – of submitting individual applications, either through lack of awareness of the ECHR or for practical reasons.
6. Finally, others stem from the scale and gravity of violations which could be regarded as war crimes or crimes against humanity, and to which even thousands of individual applications would fail to do justice.
7. In such situations, only state applications enable a situation to be addressed in its entirety. Unfortunately, despite strong recommendations from the Assembly to this effect as regards massive violations of human rights, states do not use this means of obtaining redress.
8. However, it is first and foremost the responsibility of those states on whose territory violations occur to instigate the necessary investigations and to bring proceedings against the presumed perpetrators. Should they fail to do this, third party states have a responsibility to act. In order to be able to discharge these responsibilities, they should have the option of exercising universal jurisdiction for all international crimes, including terrorist crimes.
9. The Assembly raises particularly its concern about those situations where member states, as a part of the larger international community, engage in a process of reconstruction following an armed conflict in European territories legally not covered by the ECHR. Those territories should be provided with legal means to ensure that they do not turn into lawless areas in the field of human rights under member states' control.

---

1. Assembly debate on 23 June 2003 (17th Sitting) (see [Doc. 9730](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). Text adopted by the Assembly on 23 June 2003 (17th Sitting).



10. In order to put an end to the existence of areas where the ECHR cannot be implemented, as well as to the impunity enjoyed by perpetrators of the most serious crimes, the Assembly recommends that the Committee of Ministers:

- a. take steps to ensure that the ECHR is better known and that training is provided for all those who could help to prevent human rights abuses – lawyers, judges, public prosecutors and civil servants – as well as for those whose actions may give rise to such abuses, particularly members of the armed forces;
- b. envisage an *actio popularis* and create the post of public prosecutor at the European Court of Human Rights, who would have the task of bringing actions concerning violations of human rights before the Court;
- c. entrust this task, if necessary, to the Council of Europe's Commissioner for Human Rights, assigning him the necessary resources to carry out this new function;
- d. include in the ECHR an obligation on states to comply with measures imposed by the Court.

11. The Assembly also recommends that the member states introduce legislation on universal jurisdiction, which would enable them to take proceedings against the perpetrators of international crimes.