Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13098
21 January 2013

The International Convention for the Protection of all Persons from Enforced Disappearance

Reply to Recommendation[1]: Recommendation 1995 (2012)
Committee of Ministers

1. The Committee of Ministers has carefully considered Recommendation 1995 (2012) of the Parliamentary Assembly on "The International Convention for the Protection of all Persons from Enforced Disappearance", which it has transmitted to a number of intergovernmental bodies for information and possible comments.[2]

2. The Committee of Ministers welcomes the entry into force in 2010 of the United Nations International Convention for the Protection of All Persons from Enforced Disappearances, which deals with a serious human rights violation that regrettably still occurs in Europe.[3] Further, the Committee of Ministers invites the States that have not yet done so to consider signing and ratifying the United Nations' Convention as soon as possible, and invites them to consider recognising the competence of the Committee on Enforced Disappearances.

3. The Committee of Ministers takes note of the opinion of the Assembly that the United Nations' Convention fails to address certain elements, but observes that some existing instruments of the Council of Europe to combat enforced disappearances already go beyond the United Nations' Convention, particularly regarding the temporal jurisdiction of the Committee on Enforced Disappearances as expressed in paragraph 3.4 of Recommendation 1995 (2012). This is notable with regard to the fact that the European Court of Human Rights has already ruled in cases of enforced disappearances and declared itself competent ratione temporis to examine, under Article 2 in its procedural aspect, an allegation of enforced disappearance occurring prior to the entry into force of the European Convention on Human Rights in respect of the country in question.[4] As regards paragraphs 3.1, 3.2 and 3.3 of the recommendation, the Committee of Ministers notes that these points have already been discussed in depth and are the result of consensus reached under negotiations of the United Nations' Convention. It therefore considers that it would be inappropriate to reopen the debate on these questions during any negotiations to be held in the framework of the Council of Europe.

4. As regards the invitation formulated in paragraph 4, the Committee of Ministers expresses its opinion that, since the United Nations' Convention only entered into force on 23 December 2010 and its monitoring mechanism, the Committee on Enforced Disappearances, only started to fully operate in November 2011 with two annual sessions, it appears premature at this stage to assess the effectiveness of the United Nations' Convention system and to draw any conclusions with regard to launching a process of negotiation of a European convention.

---

1. Adopted at the 1159th meeting of the Ministers' Deputies (16 January 2013).
2. Forwarded to the Steering Committee for Human Rights (CDDH) and to the Committee of Legal Advisers on Public International Law (CAHDI).
3. CM/AS(2006)Rec1719 final.
4. See, inter alia, the case of Varnava et al. against Turkey [Grand Chamber], No. 16064/90, judgment of 18 September 2009.

5. Regarding the elaboration of the activities and instruments within the Council of Europe to combat enforced disappearances mentioned in the explanatory memorandum to Resolution 1868 (2012) of the Assembly, the Committee of Ministers would like to draw attention to its Recommendation CM/Rec(2009)12 to member States on principles concerning missing persons and the presumption of death.

6. While the Committee of Ministers does not intend at this stage to carry out new normative work in this field, it will continue to follow closely the developments of the on-going work of the Committee on Enforced Disappearances and the ratification and implementation process of the United Nations' Convention, with a view to any future consideration of further legal or policy instruments which the Council of Europe might pursue.