Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2123 (2018)[1]

Strengthening international regulations against trade in goods used for torture and the death penalty

Parliamentary Assembly

1. The absolute prohibition of torture and inhuman or degrading treatment or punishment in all circumstances is a peremptory norm of international law, incorporated into numerous treaties including Article 3 of the European Convention on Human Rights (ETS No. 5, hereinafter the Convention), Article 7 of the International Covenant on Civil and Political Rights and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This prohibition is so strict as to require States to take into account consequences of their actions that may occur in other countries.

2. The death penalty is now unlawful in all Council of Europe member States. Protocol No. 6 to the European Convention on Human Right (ETS No. 114), which abolishes the death penalty in peacetime, has been ratified by all member States except the Russian Federation, whose Constitutional Court has nevertheless instituted a moratorium; and Protocol No. 13 to the European Convention on Human Rights (ETS No. 187), which abolishes the death penalty in all circumstances, has been ratified by all member States except Armenia, Azerbaijan and the Russian Federation. Recognising and building on this progress, in 2010, the European Court of Human Rights ruled that the death penalty amounted to inhuman or degrading treatment and thus fell within the prohibition set out in Article 3 of the Convention.

3. The Parliamentary Assembly considers that on the basis of these existing legal obligations, Council of Europe member States are required to take effective measures to prevent activity within their jurisdictions that might contribute to or facilitate capital punishment, torture and inhuman or degrading treatment or punishment in other countries, including by effectively regulating the trade in goods that may be used for such purposes.

4. The trade in goods used for the death penalty, torture or inhuman or degrading treatment or punishment can contribute to the incidence of capital punishment and torture or serious ill-treatment by providing those responsible with the means to act. The European Union's prohibition of sales of pharmaceutical products that could be used for capital punishment to third countries where it is known that the products will be used for that purpose, for example, has seriously hampered the ability of several States of the United States of America to execute the death penalty.

5. The Assembly cannot accept that companies or other individuals or entities in Council of Europe member States are involved in the trade in goods used for the death penalty, torture or inhuman or degrading treatment or punishment. It is concerned that the trade in this type of goods continues to take place in some member States.

6. The Assembly takes note of the Council of the European Union's Regulation (EC) No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, as amended by Regulation (EU) No. 2016/2134. This regulatory regime is the most advanced and effective in the world. It represents an approach that can and should be applied by all Council of Europe member States. Since information sharing and technical co-operation, which are fundamental parts of any international regulatory mechanism, depend on normative and procedural compatibility, it is important to harmonise the regulatory systems of all the Council of Europe member States.

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1. *Assembly debate* on 26 January 2018 (9th Sitting) (see Doc. 14454, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Vusal Huseynov). *Text adopted by the Assembly* on 26 January 2018 (9th Sitting).

7. The Assembly welcomes and fully supports the Global Alliance to end trade in goods used for capital punishment and torture (the Global Alliance), launched by the European Union, Argentina and Mongolia at the United Nations General Assembly on 18 September 2017, and its Political Declaration adopted by 58 countries, including 41 Council of Europe member States, and the European Union. The Declaration recalls the essential principles of international law, condemns the trade in goods used for the death penalty, torture or inhuman or degrading treatment of punishment, commits States to taking regulatory action at national level and to co-operating at international level, and establishes a basic framework to facilitate this.

8. For the purposes of this Recommendation, the expression "goods used for the death penalty, torture or inhuman or degrading treatment or punishment" should be considered to cover items falling within the following categories, as defined in Annexes II, III and III.*a* of Regulation No. 1236/2005, as revised in 2014 and 2016:

8.1. goods which have no practical use other than for the purposes of the death penalty, torture or inhuman or degrading treatment or punishment, the trade in which should be prohibited, including:

8.1.1. goods specifically designed for the execution of human beings, and certain of their components;

8.1.2. goods designed to restrain human beings but which are not suitable for such use by law-enforcement authorities;

8.1.3. portable devices which are not suitable for use by law-enforcement authorities for the purpose of riot control or self-protection;

8.1.4. certain types of whips;

8.2. goods designed for legitimate use by police or security forces but which could be abused for the purpose of torture or inhuman or degrading treatment or punishment, the trade in which should require authorisation, including:

8.2.1. certain goods designed for restraining human beings;

8.2.2. certain weapons designed for the purpose of riot control or self-protection;

8.2.3. certain weapons and equipment disseminating incapacitating or irritating chemical substances for the purpose of riot control or self-protection and certain related chemical substances;

8.2.4. products which could be used for the execution of human beings by means of lethal injection.

9. The term "trade" in goods used for the death penalty, torture or inhuman or degrading treatment or punishment should be considered to cover the following activities, as defined in Regulation No. 1236/2005, as amended in 2016:

9.1. the import and export of regulated goods;

9.2. the transit of regulated goods through national territory;

9.3. the brokering of transfers of regulated goods between third countries;

9.4. the provision of technical assistance in relation to regulated goods;

9.5. the training in the use of regulated goods;

9.6. the promotion of regulated goods at trade fairs;

9.7. the buying from or selling to parties in third countries of any form of advertising for regulated goods.

10. The Parliamentary Assembly invites the Committee of Ministers to call on the member States of the Council of Europe, insofar as it is not already done, to:

10.1. introduce legislation regulating the trade in goods used for the death penalty, torture or inhuman or degrading treatment or punishment, prohibiting trade in the goods defined in paragraph 8.1 and requiring authorisation for trade in the goods defined in paragraph 8.2, such authorisation to be withheld when there are reasonable grounds for believing that these goods might be used for capital punishment or torture or inhuman or degrading treatment or punishment in a third country;

10.2. take full account of information from a range of sources, including the reports of international and regional human rights mechanisms and independent civil society bodies, on the situation regarding the death penalty, torture and inhuman or degrading treatment or punishment in third countries when examining requests for authorisation of trade in relevant goods;

10.3. publish annual reports on their regulatory activities in this area, including details of decisions given on requests for authorisation of trade in specific goods and the reasons for those decisions;

10.4. on the basis of such annual reports and through direct contacts, take account of other member States' decisions on requests for authorisation of trade in specific goods, especially refusals to grant such authorisation;

10.5. join the Global Alliance, make full use of and contribute to the global network of Focal Points for sharing information, including on decisions on requests for authorisation of trade in specific goods, and best practice, and, where necessary, seek the technical assistance of other members of the Global Alliance for the design and implementation of relevant legislation;

10.6. ratify Protocols Nos. 6 and 13 to the European Convention on Human Rights and request that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) make public any unpublished reports concerning them.

11. The Parliamentary Assembly invites the Committee of Ministers to call on the European Union and its institutions, as appropriate, to:

11.1. encourage its member States that have not yet done so to publish the annual reports required of them under Regulation No. 1236/2005, ensuring that the European Commission's own future annual report is a comprehensive review of the situation across the European Union;

11.2. consult independent civil society bodies with particular expertise in the field when preparing the European Commission's review of the implementation of Regulation No. 1236/2005, including with respect to possible amendment of the regulation and revision of its Annexes II and III;

11.3. continue promoting the Global Alliance throughout the world, and co-operate with the Council of Europe to this end as regards the latter's member States.

12. The Council of Europe, which is a global pioneer in the abolition of the death penalty and enforcement of the prohibition on torture, should, along with its member States, continue to play a leading role in this field. The Parliamentary Assembly therefore calls on the Committee of Ministers to:

12.1. encourage those Council of Europe member States that have not yet done so to join the Global Alliance;

12.2. provide technical support in relation to the implementation of paragraph 10 of this Recommendation through co-operation activities with those member States that request it;

12.3. consider adopting a recommendation to member States setting out technical guidance on how to establish and implement an effective regulatory regime, whose effect would be to extend the scope of the approach taken by Regulation No. 1236/2005 through harmonised national systems in non-European Union member States, and which should include a mechanism to monitor progress made in implementing the recommendation;

12.4. co-operate with the European Union to these ends.