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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 2398 (2021)[1]

Addressing issues of criminal and civil liability in the context of climate change

Parliamentary Assembly

1. The Parliamentary Assembly is convinced of the importance of a healthy and sustainable environment. It notes that climate change has now become a global concern of humankind: it puts at risk the integrity of all ecosystems and biodiversity and poses serious threats to the enjoyment of people's human rights and fundamental freedoms, including the right to life and the right to respect for private and family life enshrined in Articles 2 and 8 of the European Convention on Human Rights (ETS No. 5). Such urgent challenges to humankind need to be addressed by Council of Europe bodies without delay.

2. The Assembly recalls that by acceding to the 1992 United Nations Framework Convention on Climate Change, member States of the Council of Europe committed themselves to achieve stabilisation of greenhouse gas (GHG) concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Moreover, member States that ratified the 2015 Paris Agreement have committed themselves to limit global warming to well below 2°C, preferably to 1.5°C, compared to pre-industrial levels.

3. Therefore, by acceding to these two treaties, member States of the Council of Europe have recognised their legal responsibility for climate change at national, European and international levels and thus, indirectly, the concept of "climate justice". While human rights law may prove useful for ensuring the protection of the environment and for countering climate change, other areas of law, including criminal and civil law, play an increasingly important role in "climate litigation". The Dutch case *Urgenda Foundation v. the Netherlands*, in which the domestic courts confirmed the State's duty to prevent dangerous climate change and further cut its GHG emissions, clearly shows that this type of litigation can be successful.

4. The Assembly has always endeavoured to promote environmental protection and to promote the role of the Council of Europe, which was responsible, *inter alia*, for drawing up the Convention on the Protection of the Environment through Criminal Law (ETS No. 172) and the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150). Therefore, it is disappointed that these two conventions have not attracted the number of ratifications necessary to enter into force.

5. Therefore, the Assembly calls on Council of Europe member States to give renewed attention to these two treaties without delay. In light of the current circumstances, member States should reflect as a matter of urgency on whether there is a need to revise or replace these treaties, in order to adapt them to the current challenges related to climate change.

6. Moreover, recalling the United Nations "Guiding Principles on Business and Human Rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework" ("United Nations Guiding Principles"), the Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business, and its own Resolution 2311 (2019) and Recommendation 2166 (2019) "Human rights and business – what

1. *Assembly debate* on 29 September 2021 (27th sitting) (see Doc. 15362, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ziya Altunyaldiz). *Text adopted by the Assembly* on 29 September 2021 (27th sitting).
See also Recommendation 2213 (2021).

follow-up to Committee of Ministers Recommendation CM/Rec (2016)3?", the Assembly stresses that it is now widely recognised that businesses have responsibility for human rights abuses, including in the environmental field, and that the victims of such abuses shall have access to an effective remedy.

7. Therefore, the Assembly calls on member States of the Council of Europe to:

7.1. ensure that relevant legal instruments are available to respond to environmental and other harm caused by climate change; in this context, access to judicial remedies (civil, criminal and administrative), to both prevent and compensate for harm caused by climate change in relation to actions or omissions by the State, natural and/or legal persons, is essential;

7.2. implement national courts' judgments delivered in climate litigation cases;

7.3. ensure that non-governmental organisations working for environmental protection and human rights protection are entitled to launch proceedings against States and private entities for conduct that might have an impact on climate change;

7.4. ensure an enabling environment for environmental human rights defenders and refrain from any acts of intimidation or reprisal against them;

7.5. strengthen corporate liability by establishing companies' duty of vigilance, requiring them to detail their activities affecting the environment, and therefore climate change;

7.6. ensure that corporate social responsibility for preventing and remedying environmental harm is taken into account in procurement contracts and the allocation of public funds;

7.7. ensure that any person with an interest in climate litigation has effective access to appropriate information on environmental matters and the risks related to climate change;

7.8. provide training and workshops on the specificities of environmental law and aspects of climate change for judges and legal practitioners.

8. As regards reinforcing criminal liability for acts and omissions that might have an impact on climate change or cause other severe environmental damage, the Assembly calls on member States of the Council of Europe to:

8.1. strengthen their co-operation as regards pursuing a common criminal policy aimed at the protection of the environment;

8.2. give priority to the harmonisation of laws on liability for environmental damage, with special focus on the definition of environmental crimes and sanctions related thereto;

8.3. revise or replace, as soon as possible, Convention ETS No. 172 in order to have a legal instrument better adapted to the current challenges;

8.4. ensure that the most serious environmental crimes are punished with appropriate severity, by introducing relevant sanctions in their criminal legislation and by effectively prosecuting the perpetrators of such crimes;

8.5. consider introducing the crime of ecocide into their national criminal legislation, if they have not yet done so;

8.6. consider recognising universal jurisdiction for ecocide and the most serious environmental crimes, including in the 1998 Rome Statute of the International Criminal Court.

9. As regards reinforcing civil liability for acts and omissions that might have an impact on climate change or cause other severe environmental damage, the Assembly calls on member States to:

9.1. ratify Convention ETS No. 150 and take the necessary measures to adapt it to the current challenges;

9.2. strengthen civil liability for environmental damage by amending national civil law legislation, if need be, in particular by alleviating the burden of proof, notably by establishing factual presumptions regarding causation, for persons requesting compensation for damage, adding specific provisions on responsibility for ecological harm, and/or by expanding the scope of strict liability in relevant situations relating to environmental damage.

10. The Assembly also invites Council of Europe member States that are also member States of the European Union to promote the revision of the relevant European Union legal instruments concerning liability for environmental damage, including Directive 2008/99/EC of the European Parliament and of the Council on

the protection of the environment through criminal law and Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage, in order to adapt them to current challenges, including climate change, in line with relevant international and Council of Europe standards.

11. The Assembly also calls on member States of the Council of Europe to fulfil all their commitments stemming from the United Nations Framework Convention on Climate Change and the Paris Agreement.

12. It also calls on them to enhance their co-operation with other international organisations, in particular the United Nations, the World Bank, the Organisation for Economic Co-operation and Development (OECD) and the European Union, in order to consolidate coherent standards on legal responsibility for conduct that might have an impact on climate change and promote implementation of the United Nations Guiding Principles. In particular, member States of the Council of Europe should support the adoption of a legally binding instrument on business activities and human rights, which is now being examined by the United Nations' Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.