Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 2213 (2021)[1]

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

Parliamentary Assembly

1. Referring to its Resolution 2398 (2021) "Addressing issues of criminal and civil liability in the context of climate change", the Parliamentary Assembly welcomes the establishment by the European Committee on Crime Problems (CDPC) of its Working Group on the Environment and Criminal Law (CDPC-EC).

2. Bearing in mind the work recently started by the CDPC-EC, it recommends that the Committee of Ministers draft without delay a new legal instrument to replace the Convention on the Protection of the Environment through Criminal Law (ETS No. 172), which remains unimplemented due to the lack of ratifications. The new legal instrument should address the recent developments in the environmental situation (including climate change) and should seek to update and improve the existing convention. It should combine the fundamental principles of criminal and environmental law and try to achieve a minimum degree of harmonisation as regards definitions of criminal offences and related sanctions, according to the following principles:

2.1. the offences and sanctions must be governed by the principle of legality, namely they must be defined clearly and precisely;

2.2. sanctions must be necessary and proportionate;

2.3. recognition of the general interest of protecting the environment shall be the core principle;

2.4. a harmonised sanctions mechanism shall be based on solidarity between the States and the existence of common rules for developing international co-operation in criminal law;

2.5. the cost of climate change and inaction with regard to environmental challenges must be well defined, and effective measures shall be taken and policies developed within a comprehensive and inclusive framework, in 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.

3. The Assembly also recommends that the Committee of Ministers:

3.1. conduct a study on the notion of "ecocide", its introduction into domestic legislation and its possible universal recognition;

3.2. examine why there have been no ratifications of the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (ETS No. 150) and encourage member States to ratify it;

3.3. consider the advisability of revising this convention (in particular by updating its Appendix I on dangerous substances) or replacing it with another legal instrument better adapted to the current environmental challenges;

3.4. conduct a study on national climate litigation cases;

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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).

3.5. when taking stock of the implementation of its Recommendation CM/Rec(2016)3 on human rights and business, reflect on how environmental issues are taken into account by member States of the Council of Europe, in particular in the context of access to effective remedies and due diligence procedures.