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

Reply to Recommendation¹: Recommendation 2213 (2021)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 2213 \(2021\)](#) “Addressing issues of criminal and civil liability in the context of climate change” and forwarded it to the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Crime Problems (CDPC) for information and possible comments. The Committee fully shares the concerns of the Assembly regarding climate change and its impact on the environment and the need to address issues of criminal and civil liability.

2. As concerns paragraphs 1 and 2 of the recommendation, the Committee of Ministers informs the Assembly that the Working Group on the Environment and Criminal Law (CDPC-EC) has completed a study analysing the failure of the 1998 Convention on the Protection of the Environment through Criminal Law (ETS No. 172) and the need, feasibility and appropriateness of replacing it with a new convention in this field. The study also sets out the main elements of a new convention, including its scope, purpose and terminology; substantive criminal law (offences, perpetrators, penalties); procedural law and international co-operation; prevention measures; and a monitoring mechanism. The feasibility study, as well as proposed terms of reference for a drafting committee to prepare a draft convention superseding and replacing the above-mentioned Convention on the Protection of the Environment through Criminal Law, will be examined by the Committee of Ministers later in the year. Should the Committee decide to take further action in this field, it will bear in mind the Assembly’s principles set out in paragraphs 2.1 to 2.5 of its recommendation.

3. With regard to the recommendations in paragraph 3, the Committee notes with interest the Assembly’s call for a study on the notion of “ecocide” and will take this into account as appropriate in its consideration of future work related to the environment. As for the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano Convention, ETS No. 150), the Committee of Ministers recalls that this convention was classified as “inactive” in the report by the Secretary General on the review of Council of Europe conventions of 16 May 2012 (see [SG/Inf\(2012\)12-add](#)), and therefore it considers that it is inappropriate to encourage member States that have not yet done so to ratify it.

4. The Committee further considers that undertaking future work relating to the Lugano Convention along the lines proposed by the Assembly in paragraphs 3.2 and 3.3 would require a careful review of the relevance and added-value of improving and adapting the international legal framework, taking into account the existing sector-specific civil liability regimes set out in international treaties and other binding legal instruments developed since then and their effectiveness. In this respect, the Committee considers it more appropriate, at this stage, to undertake the study on national climate litigation cases mentioned in paragraph 3.4 of the Assembly’s recommendation, which could also examine the extent to which other legal instruments achieve the aims of the Lugano Convention. It invites the CDCJ to propose a calendar for undertaking this work.

1. Adopted at the 1445th meeting of the Ministers’ Deputies (5 October 2022).



5. Finally, the Committee informs the Assembly that a report on the implementation of Recommendation [CM/Rec\(2016\)3](#) on human rights and business concluded that the question of how business enterprises conduct environmental and human rights due diligence, as well as the question of how victims of human rights and environmental adverse impacts access remedies, require close examination. Further evaluation of implementation of the recommendation will be pursued by the CDDH under its terms of reference for the next quadrennium, with a specific focus on its standards on due diligence and access to effective remedies. These concepts, along with corporate responsibility with respect to the environment, have also been examined in the context of the preparation of a draft Recommendation on human rights and the environment, which the Committee of Ministers will examine shortly.