Parliamentary Assembly
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75
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Recommendation 2281 (2024)[1]

Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future: the question of just and equal redress

Parliamentary Assembly

1. Referring to its Resolution 2559 (2024) "Reparation and reconciliation processes to overcome past conflicts and build a common peaceful future: the question of just and equal redress", the Parliamentary Assembly regrets the great suffering caused by conflicts and the lack of adequate effective mechanisms for providing redress. The Assembly considers that part of an improved "upstream" policy of conflict prevention involves adequately addressing past harm.

2. Recalling that truth-seeking initiatives, justice, reparations, recognition and guarantees of non-repetition are crucial for lasting peace and reconciliation, the Assembly calls on the Committee of Ministers to develop improved mechanisms to this end.

3. The Assembly firmly believes that there is a strong case for increased action by the Council of Europe, through a mediation process under the auspices of the Organisation, to help to address the conflicts of the past, promote reconciliation and reparation in relation to conflicts between Council of Europe member States, and ensure a durable peace for the future.

4. The Assembly considers that a mediated solution could help States to look contextually and holistically at resolving highly complex matters between them, in order to find achievable, enforceable and implementable solutions for the benefit of victims and for lasting peace. Such a mechanism should include the perspective and needs of victims in order to find a just and meaningful solution and should ensure adequate mechanisms for implementing and distributing any awards among victims, having regard to both collective and individual interests.

5. The Assembly recommends that the Committee of Ministers undertake work to establish a mediation process under the auspices of the Council of Europe, which should include the following elements:

5.1. a system should be established to enable member States to submit disputes concerning reparations and remedies to mediation;

5.2. the mediation mechanism should avoid duplication of, or conflict with, any other existing processes and should not be used to bypass or undermine such processes, including in the framework of the United Nations, as well as the procedures before, and the implementation of judgments of, the European Court of Human Rights;

5.3. the Committee of Ministers, the Parliamentary Assembly or the Secretary General of the Council of Europe should be able to initiate this mediation process in the absence of consent by both parties. In the case of the Assembly, this could be through a recommendation;

1. *Assembly debate* on 26 June 2024 (20th sitting) (see Doc. 15933, report of the Committee on Legal Affairs and Human Rights, rapporteur: Lord Richard Keen; Doc. 16019, opinion of the Committee on Political Affairs and Democracy, rapporteur: Mr George Loucaides). *Text adopted by the Assembly* on 26 June 2024 (20th sitting).

5.4. the process should apply to matters within the geographic and temporal limits of the Council of Europe. It should only apply to conflicts between States that were not members of the Council of Europe at the relevant time with their express consent. Moreover, for reasons of enforceability, it should not apply to States that are no longer members of the Council of Europe;

5.5. this system should be available for interstate disputes relating to post-conflict situations or other disputes that risk escalating into tensions;

5.6. this process should also be available to identify a package of reparations and remedies in relation to interstate cases before the European Court of Human Rights, where a given case could benefit from a wider range of tools for proposing solutions that are better adapted to addressing the complexities of post-conflict situations and the needs of victims;

5.7. the approach should be victim centred, involving consultation with victims and other affected groups as well as with the States concerned;

5.8. there should be an obligation on member States to engage in a mediation process in good faith. As a matter of propriety, policy and principle, member States should co-operate with the Council of Europe to resolve issues that have an impact on the human rights of individuals. This is implicit in the general obligation of States to collaborate sincerely and effectively, and to co-operate in good faith, as well as in the specific obligations under the European Convention on Human Rights (ETS No. 5, "the Convention"). In particular, the nature of collective enforcement under the Convention implies an obligation of co-operation between States. There should thus be potential repercussions for a State that is considered not to have engaged in the mediation process in good faith;

5.9. there should be a duty on States to co-operate sincerely with the results of mediation and there should be potential consequences for unreasonable failure to do so;

5.10. to a large extent, such a mediation process could be achieved using the existing legal tools at the disposal of the Council of Europe, such as the Statute of the Council of Europe (ETS No. 1, the Statute) and the European Convention on Human Rights, and ways of working within the framework of those founding instruments, in addition to political and diplomatic pressure using tools at the disposal of the Council of Europe. In a serious case of non-compliance by a member State, use of the complementary joint procedure could be considered, as well as potential suspension where a breach would constitute a serious violation of Article 3 of the Statute of the Council of Europe (namely a serious violation of the principles of the rule of law, human rights and sincere and effective collaboration in the realisation of the aims of the Organisation);

5.11. the Council of Europe should develop an improved toolkit and standards for reparation and reconciliation in order to find solutions that are best adapted to addressing the complexities of a post-conflict situation. Such a toolkit should be non-exhaustive and adaptable to new situations; it should avoid a one-size-fits-all approach and should instead offer a number of ideas for potential use in mediated solutions.