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The climate crisis and the rule of law

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A. Draft Resolution

1. Thirty years of reports by the Intergovernmental Panel on Climate Change (IPCC) have helped to establish a broad scientific consensus on the severity of the climate crisis, acknowledging that irreversible changes have occurred under human influence. We face a local, national, regional and global challenge, which requires everyone to play their part.
2. The Council of Europe and the Parliamentary Assembly had occasion, very early on, to take action to combat this threat to human rights and humankind in its entirety. The Assembly refers to Principle 1 of the Stockholm Declaration (1972), which states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment, for present and future generations".
3. The Assembly intends, pursuant to the commitments it made in the context of the United Nations Framework Convention on Climate Change and the Paris Agreement, to help to develop climate resilience. This must equip our societies to cope with the blows and the threats that global overheating deals us, both from the outside and from the inside, through its work to promote the rule of law, meaning the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness, and transparency.

Amendment 1

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, at the end of paragraph 2, add the following sentence:

"The Assembly also recalls that although the European Convention on Human Rights (ETS No. 5, "the Convention") does not contain an explicit right to a healthy environment, the European Court of Human Rights has established, though its case law, that in certain circumstances, States Parties have positive obligations to adopt reasonable and adequate measures to protect the rights of individuals if their well-being might be affected by environmental damage".

Amendment 2

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 3, replace the words "pursuant to the commitments it made" with the following words:

"pursuant to commitments made by Council of Europe member States"

Amendment 3

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, paragraph 3, replace the second sentence with the following sentence:

"The Assembly underlines that any measures aiming at equipping our societies to cope with the impact and the threats of global warming must adhere to the principles of the rule of law".

Amendment 4

Tabled by the Committee on Legal Affairs and Human Rights

In the draft resolution, after paragraph 3, insert the following paragraph:

"The Assembly recalls the reflection it has undertaken on the notion of the rule of law, in particular in Resolution 1594 (2007) "The principle of the 'Rule of Law'" and in Resolution 2187 (2017) "Venice Commission's Rule of Law

Checklist". It reiterates that its core elements are legality, including a transparent, accountable and democratic process for enacting law, legal certainty, prohibition of arbitrariness, access to justice before independent and impartial courts, including judicial review of administrative acts, respect for human rights, and non-discrimination and equality before the law, which are to be respected at all times".

4. The Assembly urges the Council of Europe member States, while securing everyone's dignity and well-being to:
 - 4.1. adopt the aim of "net zero emissions", based on clear and credible plans to meet commitments to keep the global temperature increase in line with the preferred objective of the Paris Agreement, amounting to an increase in average temperatures of 1.5°C;
 - 4.2. continue to take a holistic approach combining economic, social and political development and environmental protection, in a spirit of equality and solidarity of purpose, as it had already invited them to do so in its Resolution 1292 (2002) "World Summit on Sustainable Development: ten years after Rio". It invites them therefore to make widespread use of assessments of the environmental impact of public policies at local, national and regional level, incorporating economic, social and political criteria and supporting the undertakings made under the Paris Agreement;
 - 4.3. launch, in response to the Covid-19 pandemic and as quickly as possible, ambitious recovery programmes respecting the limit of 1.5°C set by the Paris Agreement;
 - 4.4. schedule, as soon as possible, parliamentary debates on the nationally determined contributions, so as to share information, in full transparency, on the national ambitions arising from the preferred objective set by the Paris Agreement;
 - 4.5. exercise the utmost caution and restraint when adopting measures that might necessitate derogation from the European Convention on Human Rights (ETS No. 5), and before doing so, explore every possibility for responding to the emergency situation using normal measures (see Resolution 2209 (2018) «State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights»).
5. The Assembly calls on Turkey to join the international consensus by ratifying the Paris Agreement.

Amendment 5
Tabled by the Committee on Legal Affairs
and Human Rights

In the draft resolution, paragraph 4.1, replace the word "adopt" with the following words:

"promote the rule of law and to employ a transparent, accountable and democratic legislative process for implementing"

6. The Assembly emphasises the importance of the involvement of parliaments. Renewing the ground-breaking commitment to combating the climate crisis which it made through Resolution 1292 (2002), it calls for the establishment of a parliamentary network operating under its auspices. Its task will be to monitor the action taken by the national authorities to honour the strong commitments they have made vis-à-vis the climate crisis while fostering the mutual enrichment of ideas and setting up regular opportunities for parliamentarians in Europe and on other continents to pool their experience.

Amendment 7

Tabled by Mr John HOWELL, Mr Jean-Pierre GRIN, Ms Françoise HETTO-GAASCH, Mr Simon MOUTQUIN, Ms Selin SAYEK BÖKE

In the draft resolution, paragraph 6, third sentence, replace the word "monitor" with the following words:

"inspire and follow".

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2021) "The climate crisis and the rule of law". The Earth has entered the Anthropocene Era and irreversible changes have been made. Despite the strong commitments made in connection with the United Nations Framework Convention on Climate Change and the Paris Agreement, the possibility of a doomsday scenario cannot be ruled out. The climate crisis is a local, national, regional, and global challenge, which humankind must face up to.
2. The climate crisis is a systemic threat, which puts institutions and societies to the test. It questions our ability to react to risks and vulnerabilities which were not seen in time for what they really were. Like the Covid-19 pandemic, this crisis amplifies the effects of other crises, namely those of society, the economy and democracy.
3. The Assembly is convinced that the Council of Europe can help to establish climate resilience in the face of global overheating by drawing on the rule of law, democracy and human rights. The rule of law orchestrates the capacity of institutions to play their role with due regard for the separation of powers and when faced with adversity. The Assembly invites the Committee of Ministers to reincorporate the task of protecting the environment into the Council of Europe's intergovernmental activities as a matter of priority.
4. Bearing in mind the huge changes in mentalities and attitudes required to meet the challenge of the climate crisis, the Assembly solemnly emphasises the scale of the efforts required. The last ways of tackling the climate crisis will have to be attempted over the next nine years because it may be too late afterwards. Consequently, the Assembly calls on the Organisation to mobilise every partner, at local, national, regional and world levels, to make these changes promptly and to share the results of their experimentation.
5. The Assembly recommends that the Committee of Ministers:
 - 5.1. incorporate sustainable development and climate crisis-tackling objectives into all of the Council of Europe's activities and operations, including when preparing strategies and action plans;
 - 5.2. encourage Council of Europe partners, whether from the public or private sector, to implement the States' commitments with regard to the reduction of greenhouse gas emissions;
 - 5.3. assess and limit the Council of Europe's environmental impact at local, national, regional, and international levels so as to enhance its sustainability.

Amendment 6 Tabled by the Committee on Legal Affairs and Human Rights

In the draft recommendation, after paragraph 5.3, insert the following paragraph:

"strengthen co-operation with other international organisations, in particular the United Nations, the World Health Organisation, and the

European Union, in order to consolidate efforts in tackling climate crisis issues".