

Doc. 11219
30 March 2007

State of human rights and democracy in Europe

Opinion¹

Committee on the Environment, Agriculture and Local and Regional Affairs
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A. Explanatory memorandum

1. Sustainable development is now widely accepted as a European and world goal by both international organisations and states. The concept has been recognised in many national and international legal instruments and is founded on the idea that development should "meet the needs of the present without compromising the ability of future generations to meet their own needs."
2. Sustainable development must make it possible to enhance guarantees of respect for human rights, ensuring that economic development and social protection are compatible with improved protection of the environment.
3. It was the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, which determined the fundamental principles and a plan of action for achieving sustainable development and which, by launching the United Nations Convention on Biological Diversity, gave a global dimension to the implementation of this important programme.
4. In September 2000 the United Nations General Assembly unanimously adopted the Millennium Declaration, and eight Millennium Development Goals (MDGs) were identified, making sustainable development a key concern for the international community. Furthermore, the goal of ensuring environmental sustainability (MDG 7) encompasses specific objectives of integrating the principles of sustainable development into national policies and programmes, reversing loss of environmental resources, halving the proportion of people without access to safe drinking water and basic sanitation by 2015 and significantly improving the living conditions of at least 100 million slum dwellers by 2020.
5. The Johannesburg Declaration adopted in 2002 at the World Summit on Sustainable Development for the first time acknowledged the factors essential to the sustainable development of society – eradication of poverty, equity, peace, security, good governance and respect for human rights and freedom – as global development objectives.
6. In this connection the Assembly refers, inter alia, to its Resolutions 1318 (2003) on globalisation and sustainable development and 1292 (2002) on the World Summit on Sustainable Development: ten years after Rio and to its Resolution 1319 (2003) and Recommendation 1594

¹ See Doc. 11203 tabled by the Political Affairs Committee and Doc. 11202 tabled by the Committee on Legal Affairs and Human Rights.

(2003) on the follow-up to the World Summit on Sustainable Development: a common challenge. It also recalls its Resolution 1449 (2005) on the environment and the Millennium Development Goals.

7. Global warming poses an increasingly serious threat to our environment and to humankind, in particular as regards water resources and food production. Damage to the environment can have harmful effects on the exercise of certain human rights. It is therefore vital that every individual's right to a healthy, ecologically balanced environment should be firmly established in implementing sustainable development policies.

8. In this context the Assembly makes reference to the first principle of the Stockholm Declaration adopted at the United Nations Conference on the Human Environment (1972), which provides "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment that permits a life of dignity and well-being." This right is interdependent with and inseparable from the fundamental values of peace and the rule of law, respect for human dignity and human rights, equity between generations, social and spatial cohesion and economic development. It must be guaranteed if sustainable, solidarity-based development is to be achieved for present and future generations.

9. On this subject the Assembly refers to its Recommendation 1614 (2003) on environment and human rights, in which it recommends, *inter alia*, that the member states recognise a human right to a healthy, viable and decent environment which includes the objective obligation for states to protect the environment in national law, preferably at constitutional level. The Committee of Ministers has moreover instructed the Steering Committee for Human Rights (CDDH) to prepare an appropriate instrument, in the form of guidelines or a manual, recapitulating the relevant rights as interpreted in the European Court of Human Rights' case-law with the aim of underlining the need to strengthen environmental protection at national level, notably by ensuring access to information, participation in decision-making processes and access to justice in environmental matters, as provided for in the Aarhus Convention

10. The environment constitutes a common European heritage which reflects the diversity and wealth of the natural resources of the peoples of Europe and calls to mind that the principle of precaution requires states to take preventive legal measures even if a future hazard to humankind or to the environment is unproven.

11. The principle of prevention must guide policy on accidental pollution and on natural and technological hazards and disasters, particularly in the face of new risks such as global climate change.

12. In order to meet the needs of sustainable development, the principle of good environmental governance is crucial. It must guide the various public authorities with responsibility for the environment, at both national level and the regional and local levels. In this connection the Assembly refers to its Recommendation 1653 (2004) on "environmental accounting" as a sustainable development tool, in which it recommends, *inter alia*, that the Committee of Ministers prepare a recommendation to the member states on the introduction of environmental accounting at national, regional and local level with the aim of incorporating environmental costs into their policies.

I. The right to water

13. Water is essential to life, and water management is a vital issue for sustainable development and a matter of concern for everyone. Integrated water management, including of transboundary water resources, is a fundamental prerequisite for sustainable development and for the future of the European continent and the planet.

14. The Assembly recalls, *inter alia*, its Recommendations 1668 (2004) on management of water resources in Europe and 1669 (2004) on transboundary water basins in Europe and its invitation to member states to develop transfrontier co-operation for the integrated management and protection of transboundary rivers and lakes, in particular through bilateral and multilateral agreements based on appropriate environmental, social and economic criteria.

15. Officially recognising a right to water would effectively acknowledge the environmental dimension of existing human rights and it would be desirable to promote a rights-based approach to water issues. This is the message conveyed by the Assembly at the 4th World Water Forum, held in Mexico City in March 2006, and in particular at the first world parliamentary conference on water held on 19 and 20 March 2006 in the context of the Forum. The Assembly also stressed the importance of a joint, integrated approach to water management in Europe and of sharing responsibilities between all concerned: parliaments and governments, local and regional authorities, the private sector and civil society.

16. Water resources and services in Europe are interdependent. The countries of Europe must adequately integrate the management of transboundary water basins and need co-ordinated measures, solidarity and responsibility in their water management policies and plans, especially at a time when climate change is leading to a growing scarcity of water resources.

17. The member states must develop transfrontier co-operation for the integrated management and protection of transboundary rivers and lakes, in particular through bilateral and multilateral agreements based on sound environmental, social and economic criteria.

18. A viable sustainable development policy entails the transfer to local and regional government of all the requisite powers and responsibilities concerning management of natural and energy resources.

19. The Assembly recognises that everyone has a right to a healthy, viable and decent environment. This right is interdependent with and inseparable from the fundamental values of peace and the rule of law, respect for human dignity and human rights, equity between generations, social and spatial cohesion and economic development. It must be guaranteed if sustainable, solidarity-based development is to be achieved for present and future generations.

20. Access to water and sanitation for all must be considered a fundamental human right. Officially recognising a right to water would effectively acknowledge the environmental dimension of existing human rights. In this connection the Assembly reaffirms the validity of the principles laid down in the Council of Europe Charter on Water Resources adopted by the Committee of Ministers on 17 October 2001.

21. The member states must guarantee individual rights to information on the environment, public participation in decision making and access to justice in environmental matters, as recognised in the Aarhus Convention. In its Recommendation 1614 (2003) on environment and human rights the Assembly moreover recommends that the governments of member states safeguard the individual procedural rights to access to information, public-participation in decision-making and access to justice in environmental matters set out in the Aarhus Convention.

22. Sustainable development at local and regional level rests on subsidiarity and local independence without prejudice to the necessary joint management of natural resources by several local or regional entities or by the central and local levels together.

II. The right to food and food security

23. Public authorities' decisions concerning food and agriculture must be consistent with the main policy lines on environmental matters, sustainable use of resources, animal well-being, food safety, nutrition and human health, financial viability and social justice, and the principle of precaution must prevail, especially where foodstuffs are concerned.

24. Sustainable development and the ensuing responsibility ethic, not least in food production and consumption, indeed require that the various political and economic players also guarantee the sustainability of economic prosperity and greater respect for human rights to health, healthy foodstuffs and a varied, high-quality environment.

25. In addition adaptations of farming and forestry will be necessary to cope with the consequences of climate change: changes in practices, very probably relocation of certain production

activities in line with climate trends and – why not? – introduction of new crops and new uses for agricultural land.

26. Climate change will doubtless have advantages for the countries of the North, which are responsible for the bulk of CO₂ emissions at world level, whereas it will considerably harm the countries of the South located near the equator, that is to say those least able to bear the costs. Global co-operation is vital to ensure that the impact of climate change does not exacerbate the North-South divide, notably as regards access to agricultural products.

27. The Assembly refers to its recent work on the production and use of agricultural products, in particular its Recommendation 1636 (2003) on development of organic farming, its Recommendation 1575 (2002) on introduction of a quality label for food products derived from hill farming and its Resolution 1419 (2005) on genetically modified organisms (GMOs).

28. In these documents the Assembly takes the view that, to preserve sustainability in agriculture, GMO-free agriculture should be guaranteed in law without ruling out the cultivation of GMO crops and the confined release of GMOs for scientific purposes. At the same time, organic farming, in particular, deserves protection as it is the best form of agriculture in terms of ecological sustainability.

29. The Assembly believes that, in the interests of growth of the organic produce market, of the necessary promotion of sustainable agricultural development and of the need to guarantee improved food security, a European strategy is required to guide the development of organic farming, together with efforts to harmonise national policies in this sphere, not only where the European Union is concerned but also at the broader level of the Council of Europe.

30. As regards foodstuffs, increased globalisation goes hand in hand with a multiplication and diversification of the production centres, which are increasingly distant from the consumer. The lack of information, heightened by food safety crises – such as mad cow disease and avian flu – has ultimately led to an intensified new demand for information. In the era of participative democracy, consumers now want to know what is really on their plates and what they are giving their children to eat. However, quite apart from food security concerns, consumers regard themselves as responsible citizens and are adopting a new ethical consumer behaviour.

31. The Assembly considers that the public authorities have a duty to guarantee food security for citizens, while alerting them to their responsibilities as consumers, particularly of food, and helping to make the other players in the agri-food sector, such as farmers, transporters, distributors and so on, more accountable.

III. Local and regional democracy

32. Democracy, and compliance with the principles deriving from it, is one of the principal values that the Council of Europe has defended and promoted since its foundation, alongside human rights and the rule of law. The existence of true democracy has always been an absolute prerequisite for accession to the Organisation. This was reconfirmed, and more forcefully, from the 1990s on with the accession of new member states following the political changes in central and eastern Europe. To be even more precise, at the Council of Europe the term democracy is synonymous with parliamentary democracy, representative and therefore elective democracy, satisfying criteria which are now well-established in law and verified, notably when elections are held in the different countries concerned, especially those still subject to monitoring procedures.

33. The Council of Europe also came to believe at a very early stage that observance of democratic principles must also be a requirement applicable to decentralised tiers of government, whether local or regional, in accordance with the oft-mentioned criterion of local democracy, perceived as a "school of democracy" or the "foundation of democracy". The Assembly concerned itself with local democracy from the outset, establishing a specific committee responsible for local and regional affairs as far back as 1952. It was also the Assembly which decided, in 1955, to convene an annual Conference of Local Authorities of Europe that was put in place in 1957 and has now become the Congress of Local and Regional Authorities of the Council of Europe.

34. The Assembly has since aided and supported the process of promoting, establishing and safeguarding local and regional democracy in Europe, in particular by giving its backing to the Council of Europe's conventions on the subject, chief of which the European Charter of Local Self-Government (ETS No.122). This instrument, the culmination of years of work and discussions on the subject, summarises the principles to be respected by European states in matters of local democracy. It has become one of the authoritative standards, a binding document for member states of the Council of Europe, and one of the key conventions with which compliance is generally verified as part of the monitoring procedure.

35. Another major instrument is the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), whereby the Organisation seeks to promote co-operation between local and regional authorities. This is another powerful means of strengthening local democracy in Europe by facilitating exchanges and agreements between local authorities in different countries. As regards both above-mentioned conventions, and others in the same field, the Assembly has played a crucial role, providing an impetus or backing, which has helped bring about the adoption and the international recognition of European conventions enshrining the essence of Europe's political beliefs in the sphere of grassroots democracy.

36. Along the same lines, in 1955 the Assembly set up the Europe Prize, which is awarded annually to a deserving municipality for its co-operation activities and efforts to promote the ideal of European union, based on the shared value of democracy as fostered by the Council of Europe. In its Resolution 1475 (2005) on the 50th anniversary of the Europe Prize – stock-taking and prospects, the Assembly bore witness to the success of this initiative and voiced the desire to promote it further in future.

37. However, following the enlargement of the Council of Europe to the continent's geographical limits, on the basis of democratic principles now recognised by all the member states, and in view of political trends recently observed in many European countries in matters of decentralisation and regionalisation, the Assembly, inter alia, wishes to go beyond defending and promoting local democracy, which can now be considered to have gained acceptance throughout Europe. For this reason, the Assembly recently adopted Recommendation 1770 (2006) on the promotion of local self-government along Council of Europe borders, in which it states its intention to persuade the Organisation's immediate neighbours to espouse its values, notably local democracy, and to develop co-operation with the latter aimed at bringing them to recognise in their own legislation the principles of local democracy defended by the Council of Europe.

38. For a number of years now, regard being had to the regionalisation processes implemented in a number of member states, the Congress and the Assembly have also been striving to promote the idea of recognition of the principles of regional self-government and regional democracy. An initial draft Charter of Regional Self-Government, drawn up some years ago, was ultimately not adopted, and a new draft European Charter of Regional Democracy is currently under preparation. Like the European Charter of Local Self-Government, this instrument aims to set out the principles of regional democracy that should be recognised by Council of Europe member states, or at least those with structures of regional government.

39. At the same time, apart from the regionalisation movements in various countries, the regions themselves, by virtue of their own powers and responsibilities and within the general context of European co-operation, engage in transfrontier co-operation activities with neighbouring or more distant regions, which has inter alia resulted in the adoption of an additional protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation. The Assembly can but support these forms of co-operation between local and regional authorities, which strengthen the democratic fabric of Europe.

40. In this connection, the Assembly has also warmly welcomed the Congress's initiative to develop advanced forms of regional co-operation, no longer of a bilateral nature between regions, but encompassing large geographical areas within Europe. An initial, already successful example is the Adriatic Euro-region, to which the Assembly gave its full support in Resolution 1446 (2005) on co-operation and sustainable development in the Adriatic Basin. A similar initiative is being implemented in the Black Sea Basin, and there are plans to launch another such project in the Baltic region.

41. All these new initiatives departing from traditional transfrontier co-operation projects also necessitate appropriate legal instruments. It is for this reason, for example, that a new additional protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities on Euroregional co-operation groupings is currently being discussed. It is also why new Euro-regions are being established in answer to modern-day needs and institutional realities.

42. This also explains why the Assembly has favourably received a new initiative, currently being considered, of establishing a Council of Europe centre for inter-regional and transfrontier co-operation with the aim of helping to promote local and regional self-government in Europe and to develop co-operation between European local and regional authorities.

B. Conclusions by the committee

I. Elements to be incorporated in the draft resolution

43. The Assembly recognises a human right to a healthy, viable and decent environment, which includes the objective obligation for states to protect the environment and invites the member states to reinforce bilateral, multilateral and transfrontier co-operation for the sustainable development of the European continent and for joint management of resources.

44. The Assembly acknowledges the importance of local and regional democracy as the foundation and a guarantor of democracy in Europe and calls upon Council of Europe member and observer states to genuinely apply the principles of the European Charter of Local Self-Government. It also calls upon non-member states along the Organisation's borders to implement these principles;

45. The Assembly invites national parliaments to take legislative measures in favour of joint sustainable management of resources in order to protect the environment, to stimulate the use of renewable energy resources, to implement energy-saving programmes in industry, offices and housing, to stimulate public transport and sustainable water-management, and to put in place an agricultural policy in which food safety, animal welfare and the sustainable use of resources are central elements;

46. The Assembly encourages the Congress of Local and Regional Authorities of the Council of Europe to promote the role and responsibilities of local and regional authorities in sustainable development matters, in particular as regards the management of natural and energy resources, not least through transfrontier co-operation.

II. Elements to be incorporated in the draft recommendation

47. The Assembly recognises that everyone has a right to a healthy, viable and decent environment. This right is interdependent with and inseparable from the fundamental values of peace and the rule of law, respect for human dignity and human rights, equity between generations, social and spatial cohesion and economic development. It must be guaranteed if sustainable, solidarity-based development is to be achieved for present and future generations.

48. It recommends that the Committee of Ministers invite the governments of the member states to:

- i. set joint sustainable development objectives at the pan-European level with a view to harmonising their laws on environmental protection and security and guaranteeing access to water and energy resources;
- ii. harmonise their laws on environmental protection and security with a view to introducing the concept of environmental offences in their legislation and providing for appropriate penalties;
- iii. incorporate protection of the environment in the state constitution in those countries which have not already done so;
- iv. take measures to protect the environment, stimulate the use of renewable energy resources, implement energy-saving programmes in industry, offices and housing, stimulate public transport and sustainable water-management, and put in place an agricultural policy in which food safety, animal welfare and the sustainable use of resources are central elements;
- v. guarantee the individual rights to information on the environment, public participation in decision-making and access to justice in environmental matters set out in the Aarhus Convention;

- vi. promote the role and responsibilities of local and regional authorities in sustainable development matters, in particular as regards the management of natural and energy resources, not least through transfrontier co-operation;
- vii. endow local and regional authorities with all the powers, responsibilities and resources necessary to enable effective implementation of sectoral policies in full accordance with the principles of subsidiarity and good governance and for the benefit of Europe's citizens.

Appendix

List of Council of Europe conventions relating to the environment and sustainable development

International conventions currently in force:

Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 1950
European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products, Strasbourg, 1968
European Convention for the Protection of Animals during International Transport, Paris, 1968 (Additional Protocol, Strasbourg, 1979)
European Convention for the Protection of Animals Kept for Farming Purposes, Strasbourg, 1976 (Protocol of Amendment, Strasbourg, 1992)
European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters, Strasbourg, 1978
European Convention for the Protection of Animals for Slaughter, Strasbourg, 1979
Convention on the Conservation of European Wildlife and Natural Habitats, Bern, 19 September 1979
European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Madrid, 21 May 1980 (Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, 1995; Protocol No 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, Strasbourg, 1998)
Convention for the Protection of the Architectural Heritage of Europe, Granada, 1985
European Charter of Local Self-Government, Strasbourg, 1985
European Convention for the Protection of Vertebrate Animals Used for Experimental and Other Scientific Purposes, Strasbourg, 1986 (Protocol of Amendment, Strasbourg, 1998)
European Convention for the Protection of Pet Animals, Strasbourg, 1987
European Convention on the Protection of the Archaeological Heritage (Revised), Malta, 1992
Convention on the Participation of Foreigners in Public Life at Local Level, Strasbourg, 1992
European Charter for Regional or Minority Languages, Strasbourg, 1992
Framework Convention for the Protection of National Minorities, Strasbourg, 1995
European Landscape Convention, Florence, 2000.

International conventions not yet in force:

Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano, 1993
Convention on the Protection of Environment through Criminal Law, Strasbourg, 1998

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Reporting committees: Political Affairs Committee and Committee on Legal Affairs and Human Rights

Committee for opinion: Committee on the Environment, Agriculture and Local and Regional Affairs

Reference to Committee: Reference No. 3283 of 6 October 2006 and Reference No. 3217 of 29 May 2006

Opinion approved unanimously by the Committee on 2 March 2007

Secretariat of the committee: Mr Sixto, Mr Torcătoriu, Mrs Trévisan