

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (77) 28

ON THE CONTRIBUTION OF CRIMINAL LAW TO THE PROTECTION OF THE ENVIRONMENT

*(Adopted by the Committee of Ministers on 28 September 1977,
at the 275th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that various aspects of present-day life, especially industrial development, entail a degree of pollution which is particularly dangerous to the community ;

Considering that the health of human beings, animals and plants and the beauty of landscapes must be protected by all possible means ;

Considering that while recourse to the criminal law in this field should be a last resort, nevertheless use must be made of it when other measures are not observed or are ineffective or inadequate ;

Considering that it is in the interests of the member states of the Council of Europe to develop a common policy directed towards effective protection of the environment ;

Having regard to the conclusions of the 7th Conference of European Ministers of Justice, held in Basle in 1972,

Recommends governments of member states to examine carefully all the problems raised in the report, with a view to adopting possibly one or more of the measures proposed, taking account of the fundamental principles of their constitution and their criminal law. These measures might be the following :

1. examination of criminal penalties for damage to the environment and whilst maintaining the traditional penalties of fine and imprisonment (possibly conditional) in the most serious cases :

a. introduction in this field of particular forms of pecuniary penalty, such as daily fines ("astreintes"), day fines, suspended fines and conditional fines,

b. allocation of proceeds from pecuniary penalties for pollution to environmental uses,

c. introduction in this field of measures such as restoration of the former state possibly ordered in connection with a suspended custodial penalty, work for the benefit of the community, disqualifications (as principal penalties) and publication of convictions ;

2. re-examination of the principles of criminal liability, with a view, in particular, to the possible introduction in certain cases of the liability of corporate bodies, public or private ;

3. examination of the advisability of criminalising acts and omissions which culpably (intentionally or negligently) expose the life or health of human beings or property of substantial value to potential danger ;

4. re-examination of criminal procedure in matters of environmental protection and in particular :

a. creation of specialist branches of courts and offices of public prosecution to deal with environmental cases,

b. means of giving persons or groups the right to become associated with criminal proceedings for the defence of the interests of the community,

c. creation of a special criminal register of persons convicted for pollution, independently of the general criminal register,

d. exclusion from amnesty of serious environmental offences ;

Draws attention to the advantages which certain member states may derive from gradually compiling in a single collection in particular the criminal provisions relating to environmental protection with a view to :

a. subsequent consolidation at a national level, e.g. by codification, of the entire legislation on the environment in so far as this appeared desirable or feasible,

b. an eventual future harmonisation of all legislations of the member states of the Council of Europe in this field ;

Recommends to the governments of member states that they ensure wide circulation within their departments concerned of the report by the European Committee on Crime Problems on the contribution of criminal law to the protection of the environment ;

Invites the governments of member states to report to the Secretary General of the Council of Europe every five years on the action they have taken on the recommendations contained in this resolution.