



Doc. 12022

16 September 2009

The Declaration of Principles on Equality and activities of the Council of Europe

Motion for a resolution

tabled by Mr Boriss CILEVIČS and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

Protection against discrimination and promotion of equality of all persons have become a cornerstone of the modern concept of human rights. Article 1 of the Universal Declaration of Human Rights declares that all human beings are born free and equal in dignity and rights. Non-discrimination provisions are in the heart of both universal and regional systems of human rights protection.

Along with the provisions of international human rights instruments, also national legislation of all European states includes general provisions to outlaw discrimination. However, one cannot but admit that these provisions are often declarative, fragmented and do not always effectively cover all grounds for discrimination. National jurisprudence of some states, including the Council of Europe member states, does not fully reflect the fundamental nature of the right to equality.

The original text of the European Convention of Human Rights contained non-discrimination and equality provisions (Article 14) only with regard to enjoyment of other rights envisaged by the Convention. Therefore, the European Court of Human Rights was limited to treating the right to non-discrimination only as a subsidiary right, in conjunction with other substantive or procedural rights enshrined in the Convention. As a result, relevant case-law accumulated by the Court is limited disproportionately to the utmost significance of the principle of non-discrimination.

Protocol 12 to the Convention opened a new stage in the development of the Council of Europe legal framework pertinent to non-discrimination and equality. Regrettably, most of the Council of Europe member states are yet to ratify this Protocol, despite consistent efforts of the Council of Europe and, in particular, its Parliamentary Assembly.

In a major effort to modernise and integrate legal standards relevant to non-discrimination and equality, a group of prominent experts, under the auspices of an independent international NGO "The Equal Rights Trust", elaborated the *Declaration of Principles on Equality*. Thomas Hammarberg, the Council of Europe Commissioner on Human Rights, was one of the 128 original signatories to the *Declaration*, which has subsequently been signed by numerous further experts from Europe and other regions.

The *Declaration* is a short document consisting of 27 concise legal principles. It highlights the substance of the fundamental right to equality; states that equal treatment as an aspect of the right to equality is not equivalent to identical treatment, and that to realize equality it is necessary to treat people differently according to their different circumstances; and defines positive action as a necessary element within the right to equality. Subsequent chapters of the *Declaration* cover such essential issues as the scope, the rights-holders and the duty-bearers of the right to equality, and obligations, enforcement and prohibitions.



Given the outstanding importance of the principles of equality for achieving the statutory goals of the Council of Europe, the Assembly decides to study the Declaration of Principles on Equality with the view to improving the effectiveness of application of existing legal instruments that aim at promoting equality, as well as possible further strengthening, harmonising and modernising of the existing legal framework. The Assembly also decides to take measures for promoting the basic ideas of the Declaration in the Council of Europe member states.

Signed (see overleaf)

*Signed*¹:

CILEVIČS Boriss, Latvia, SOC
ALIGRUDIĆ Miloš, Serbia, EPP/CD
BRANDE Luc, Van den, Belgium, EPP/CD
ÇAVUŞOĞLU Mevlüt, Turkey, EDG
CLWYD Ann, United Kingdom
EÖRSI Mátyás, Hungary, ALDE
FRUNDA György, Romania, EPP/CD
GARDETTO Jean-Charles, Monaco, EPP/CD
GROSS Andreas, Switzerland, SOC
HOLOVATY Serhiy, Ukraine, ALDE
KOSACHEV Konstantin, Russian Federation, EDG
L'OVOCHKINA Yuliya, Ukraine
LAAKSO Jaakko, Finland, UEL
MARCENARO Pietro, Italy, SOC
MARTY Dick, Switzerland, ALDE
NĂSTASE Adrian, Romania, SOC
POPESCU Ivan, Ukraine, SOC
POURBAIX-LUNDIN Marietta, de, Sweden, EPP/CD
POURGOURIDES Christos, Cyprus, EPP/CD
RACHOŃ Janusz, Poland, EPP/CD
TAKTAKISHVILI Chiora, Georgia, ALDE
VUČKOVIĆ Nataša, Serbia, SOC

1. ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democrat Group
EPP/CD: Group of the European People's Party
SOC: Socialist Group
UEL: Group of the Unified European Left