Opinion 216 (2000)[1]

Draft Protocol No. 12 to the European Convention on Human Rights

Parliamentary Assembly

1. The Assembly draws attention to its Recommendations 1269 (1995), and 1229 (1994) particularly, in which it recommended that the Committee of Ministers "establish the principle of equality of rights between women and men as a fundamental human right in an additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms".

2. It also draws attention to Recommendation 1116 (1989), in which it recommended that the Committee of Ministers "instruct the Steering Committee for Human Rights to give priority to reinforcing the non-discrimination clause in Article 14 of the European Convention on Human Rights".

3. The Assembly has therefore been awaiting draft Protocol No. 12, which has now been submitted to it for an opinion, with impatience and interest.

4. The Assembly notes that the change introduced by the draft protocol with regard to the scope of the prohibition against discrimination lies in the fact that Article 14 is no longer limited to the rights and freedoms enshrined in the Convention but extended to "any right set forth by law".

5. It also notes that no changes have been made to the list of grounds on which discrimination is prohibited, since it is considered non-exhaustive and can therefore be extended under case-law to include other grounds.

6. It believes that the enumeration of grounds in Article 14 is, without being exhaustive, meant to list forms of discrimination which it regards as being especially odious. Consequently the ground "sexual orientation" should be added.

7. Moreover, no reference is made to the principle of equal rights for women and men in the draft protocol.

8. The Assembly therefore concludes that the draft protocol does not fully meet its expectations.

9. The Assembly therefore recommends that the Committee of Ministers:

i. replace Article 1 of the draft protocol by the following draft:

"Article 1

1. Men and women are equal before the law.

2. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

3. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 2."

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1. Assembly debate on 26 January 2000 (5th Sitting) (see Doc. 8614, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens). Text adopted by the Assembly on26 January 2000 (5th Sitting).

ii. in Article 5, fix at ten the number of ratifications required for the entry into force of the protocol.