Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1671 (2004)[1]

Ratification of protocols and withdrawal of reservations and derogations made in respect of the European Convention on Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly underlines the unique and exemplary role played by the European Convention on Human Rights in protecting and developing human rights in Europe over the last fifty years. It pays tribute to the Convention's vitality and dynamism as demonstrated both by the case-law of the European Court of Human Rights and by the adoption of thirteen protocols, some of which have adapted the supervisory machinery while others have added new rights.

2. In order to respond to new needs or to strengthen certain rights already protected, the Assembly has several times invited the Committee of Ministers to adopt additional protocols adding new rights to the Convention. While this policy will be continued for as long as necessary, it is also important to make sure that the entire body of Convention law – comprising the Convention and all the additional protocols – is ratified by all member states and applied throughout all parts of their territory without exception. The Assembly intends doing everything in its power to achieve this.

3. With the exception of those amending the supervisory machinery established under the Convention (Protocols Nos. 2, 3, 5, 8, 9, 10 and 11), none of the thirteen protocols to the Convention have been ratified by all member states, even though all, other than Protocol No. 12, have entered into force.

4. For example, Protocol No. 1 guaranteeing the right to the peaceful enjoyment of possessions, the right to education and the right to free elections, which was opened for signature in 1952, has still not been ratified by three of the member states; Protocol No. 4 guaranteeing freedom of movement and prohibiting the collective expulsion of aliens, which was opened for signature in 1963, has still not been ratified by five member states; Protocol No. 6 abolishing the death penalty, which was opened for signature in 1983, has still not been ratified by two member states; Protocol No. 7 introducing in particular certain procedural guarantees, which was opened for signature in 1984, has still not been ratified by ten member states; Protocol No. 12 introducing a general non-discrimination clause, which was opened for signature in November 2000, has so far been ratified by only five states; while Protocol No. 13 concerning the abolition of the death penalty in all circumstances, which was opened for signature in 2002, has already been ratified by twenty member states.

5. Furthermore, the Assembly, whose constant concern has been to see that all the rights guaranteed by the European Convention on Human Rights and the decisions of the Court be implemented in all of the Council of Europe's member states, has noted that the reservations and derogations made in respect of the Convention limit the scope of the Convention.

6. Some member states, when ratifying the Convention, entered one or more reservations under its Article 57 and some of these reservations, entered several years ago, have not been withdrawn.

1. (see Doc. 10136, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Olteanu). Text adopted by the Standing Committee, acting on behalf of the Assembly, on 7 September 2004

7. Such reservations are permitted to the extent that legislation in force at the time in the territory of the contracting party is not in conformity with a particular provision of the Convention. They should not therefore be of a permanent nature and should be confined to the period required to bring the legislation in question into conformity with the Convention.

8. Similarly, derogations entered under Article 15 should be temporary since they are only possible in the event of a state of emergency. In this respect, the Assembly takes note of the procedural provisions underlying the United Kingdom's derogation and welcomes the imposition of full parliamentary scrutiny by the Privy Council Review Committee charged with overseeing implementation of the Anti-terrorism, Crime and Security Act 2001.

9. It must nevertheless be acknowledged that numerous states have in fact withdrawn reservations, declarations or derogations, as is the intended practice. The Assembly welcomes such conduct and congratulates the states in question for their commitment to the protection of human rights and their respect for the principles of international law.

10. The Assembly consequently recommends that the Committee of Ministers invite the States Parties to the European Convention on Human Rights to:

10.1. ratify all the protocols within three years of the adoption of the present recommendation, without prejudice to any shorter deadlines which may be set for certain member states;

10.2. withdraw any reservations which they made upon ratifying the European Convention on Human Rights after, where appropriate, amending the legislation which justified the reservation in order to bring it into conformity with the Convention, within three years of the adoption of the present recommendation;

10.3. limit recourse to, and the duration of, derogations under Article 15 to only those exceptional circumstances provided for in this article, and accompany derogations by effective parliamentary scrutiny.

11. Finally, the Assembly recommends that the Committee of Ministers examine carefully any notification of derogation received under Article 15.