



Doc. 12229

28 April 2010

Securing the fundamental right to equality between women and men in the European Convention on Human Rights

Motion for a recommendation

tabled by Ms Lydie ERR and other members of the Assembly

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

Equality between women and men is one of the fundamental principles of all democracies.

Yet this fundamental right does not appear as such in the European Convention on Human Rights. Its protection on the ground of gender-based discrimination (Article 14) is possible only if it is conjoined with another fundamental right expressly deriving from the Convention. Thus the Convention prohibits unequal treatment in the exercise of rights and freedoms. With no independent existence, this right therefore can only be invoked incidentally.

This lack of independence generates uncertainties as well as deficiencies in protection against discrimination, in so far as condemnation of a wrongful difference of treatment is contingent on the application of another of the Convention provisions. The outcome is inconsistent precedent, both at national level and at that of the European Court, and the absence of condemnation of discrimination albeit obvious depending on the case.

Article 5 of Protocol No. 7 only partly resolves the difficulty by guaranteeing equality between spouses and in respect of their children, precisely because its scope is limited. Nor does Protocol No. 12 represent the proper solution in that it prohibits all forms of discrimination, particularly on the ground of sex, but does not provide for any right to equality between women and men.

Hence the need to establish, by means of an additional protocol, the principle of equality between women and men as a fundamental right independent of the other rights and freedoms secured by the European Convention on Human Rights, which should be inspired by Article 3 of the German Constitution.

The Assembly therefore recommends to the Committee of Ministers that a further Protocol to the Convention, securing the fundamental right to equality between women and men, be drawn up.

Signed (see overleaf)



*Signed*¹:

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1. ALDE: Alliance of Liberals and Democrats for Europe
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