Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1654 (2004)[1]

Nationality rights and equal opportunities

Parliamentary Assembly

1. Traditionally, each state determines under its own law who are its nationals, although many states have accepted to be bound by international instruments relating to citizenship, multiple nationality and statelessness.

2. In matters of nationality, account must be taken both of the legitimate interests of states and those of individuals. One of the most important legitimate interests of individuals is not to be discriminated against – in particular, on the grounds of gender. However, while this principle has, today, been recognised by most states in theory, in practice discrimination has occurred in the past and may still occur in some cases.

3. Unfortunately, no in-depth comparative study of legislation on nationality focusing on equal opportunities between women and men in Council of Europe member and Observer states has so far been undertaken. The Parliamentary Assembly thus has to base its evaluation of the situation on a survey conducted by its Committee on Equal Opportunities for Women and Men, to which replies from thirty-two member and three Observer states were received.

4. The Assembly congratulates those countries which have removed discrimination based on gender from their legislation. In particular, it welcomes the elimination of discrimination against women in several Council of Europe member states (where citizenship used to be passed down the male line, or women lost their citizenship upon marriage to a foreigner), as well as the elimination of discrimination against men (who were not always allowed to pass down their nationality to illegitimate children, especially those born abroad). Nearly all of the laws in question have full retroactive effect, which is of paramount importance in the area of nationality rights.

5. Some work remains to be carried out, however. Men continue to face obstacles in passing down their nationality to children born out of wedlock to a foreign mother in Denmark, Iceland, Malta and Switzerland. Some discrimination against women also subsists in Switzerland and Turkey, which are about to revise their legislation to eliminate this. Some provisions applied to the dependants of Vatican citizens could be revised to ensure equal treatment of men and women.

6. The Assembly also points out that the situation in the thirteen member and two Observer states which it was not able to study might give rise to legitimate concern. Some countries' provisions on naturalisation requirements may also lead to unintentional discrimination against foreign women as regards, for example, income, social integration or knowledge of language, although some countries have taken measures to counterbalance this effect.

7. The Assembly thus recommends that the Committee of Ministers:

7.1. conduct an in-depth comparative study of the legislation on nationality in all Council of Europe member and Observer states focusing on equal opportunities between women and men, which would uncover any distinctions being made on grounds of gender (be they intentional or unintentional, or due to the lack of retroactivity of legislation intended to eliminate discrimination), would highlight best practices and would make concrete proposals to remedy any shortcomings;

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1. Text adopted by the Standing Committee, on behalf of the Assembly, on 2 March 2004 (see Doc.10070, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Aguiar).

7.2. call on the governments and parliaments of member and Observer states to eliminate any possibility of discrimination on the grounds of gender in their legislation on nationality, if they have not done so already, and to ensure that such legislation is doted with full retroactive effect and is applied in a gender-neutral manner.