Chapter 4  The Prohibition of Discrimination under Protocol 12 of the European Convention on Human Rights

1. Introduction

Equality as a basic social value has had a long history. Although different meanings have been attached to the notion, the basic idea that all men are created equal and are therefore entitled to equal rights and treatment has remained the core and the aim of the relevant legal safeguards. As was rightly pointed out by Judge Cardozo, “from the moment of birth onward, humankind, as the law views it, is a society of equals.” The first definitions of equality are based on the principle of Aristotle that equality consists in treating equals equally and unequals unequally. The principle of equality and its corollary rule of non-discrimination have received universal recognition “as the most important


single principle that any nation can take as its ideal”. Judge Douglas stated that “wherever equality is the theme, men live together in peace. Wherever inequality is the practice, grievances and complaints fester.”

Equality is also aptly described as “the complement of democracy”.

The majority of modern constitutions contain clauses directed against arbitrary discrimination and aiming at ensuring equal rights. Constitutional guarantees of equality take a great number of forms. Certain provisions make use of the concepts of equality before the law, equal protection and equal treatment, while others refer to the concept of discrimination. A great number of international instruments also include guarantees of equal treatment and protection from discrimination.

Naturally one would have expected that in a major human rights instrument like the European Convention on Human Rights (hereinafter referred to as “the Convention”), equality in the sense of the right to equal treatment or the prohibition of discrimination between individuals standing in the same or an analogous position would have been included as one of the basic rights. Yet ever since its adoption in 1950 the Convention has not guaranteed such an autonomous right. It was only on 26 June 2000 that the Committee of Ministers of the Council of Europe approved Protocol No. 12, which introduced for the first time a general clause prohibiting discrimination. The Protocol was opened for signature on 4 November 2000 and came into force on 1 April 2005 when the requirement of ratification by ten States was satisfied.

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5 Ibid., no. 11, ad. 425.