



## International Instruments for the Principle of Equality

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### Abstract

*The purpose of this paper is to show what are the international instruments for the realization of equality and non-discrimination. The international instruments for the realization of equality and to fight discrimination are always in continuous development, being harmonized with the initiatives of different countries. These initiatives not only individually but also in joint coordination. The concept of equality and freedom has evolved enormously in the last decades, but it still remains a present problem. The aim is that these principles are not only foreseen in international conventions or other legal acts, but to be realized in practice. The main objectives of the paper are: 1. To give a broader picture of all international instruments for the realization of equality, 2. To show what measures are taken to realize the principle of equality. Methodology: for the realization of the paper, I have based the collection of information from secondary sources, such as various authors who have spoken about equality and the most important international instruments that sanction the principle of equality. Qualitative methods have been used and the collected information will be analyzed, drawing the relevant recommendations and conclusions. First, what equality is will be determined, then continuing with the interpretation of international acts for the realization of equality and protection from discrimination.*

**Keywords:** principle of equality, non-discrimination, convention, human rights

### 1. Introduction

Equality has taken on different meanings in different periods of time depending on political, economic and social developments. Many researchers have focused on the definition of equality and freedom, on their features and evolution. We will come across rough definitions, but we will also come across different ways, elements or means of achieving equality.

On the other hand, we have non-discrimination, a prevailing principle in international legal instruments and the internal order of states. It is a key element, the realization of which leads to equality and the exercise of fundamental rights and freedoms in full form. We see the cases reviewed by the ECJ, a significant place is occupied by issues related to discrimination in all its elements. Nowadays, various social and political actors are fighting hard for equality, freedom and non-discrimination.

Human beings are by nature unequal in strength, talent and other attributes are clearly not units of equal weight in their societies. Inequalities are naturally reinforced by social and economic circumstances which, as people begin life, place some at an advantage over others. As people move forward, many factors operate separately to favor some and disadvantage others. As the thousands of constituent units of a society continue to thus change their positions in relation to each other, absolute equality among them even in one characteristic or for a moment is obviously impossible. Much

greater is the impossibility of maintaining general equality for any period, however short. A permanent state of equality is only a distant dream.<sup>1</sup>

Equality does not mean identical treatment. This is because while people are different in speech, capacity and need.<sup>2</sup> One of the greatest strides in the twentieth century in the struggle for equality has been the recognition that characteristics based on race, sex, color or ethnic origin should not in themselves constitute relevant differences that justify inferior treatment.<sup>3</sup> Equality and non-discrimination are prerequisites for the enjoyment of fundamental rights and freedoms. Their guarantee is a process that faces many challenges, therefore it remains essential that fundamental rights and freedoms are not only theoretical and illusory, but practical and effective.<sup>4</sup> The principle of the rule of law is one of the fundamental elements of democracy as a form of government. The guarantee through constitutional norms and other legal acts are necessary conditions for the functioning and development of a free society, for peace and social security, respect the best of human rights and fundamental freedoms.<sup>5</sup> The equality of citizens as a classical principle affirmed since the era of the first liberal declarations has today become a principle present in all contemporary constitutions.<sup>6</sup>

## 2. International Instruments for the Principle of Equality

### 2.1 International acts on equality and non-discrimination

Among the main instruments to promote equality and justice we can mention:

*Universal Declaration on Human Rights*<sup>7</sup> constitutes one of the most important international acts for the protection of fundamental rights and freedoms. The principle of equality, non-discrimination and fundamental freedoms are provided for in some of its articles. More specifically in article 1 it is stated: All people are born free and equal in terms of dignity and rights. They are endowed with reason and conscience and should behave towards each other in a brotherly spirit.

Continuing further with Article 2: Everyone is entitled to all the rights and freedoms declared in this Declaration without any distinction as to race, color, sex, language, religion, political opinion or any other opinion, national or social origin, wealth, birth or any other legal status. Furthermore, no distinction shall be made on the basis of the political, legal or international status of the country or territory to which any individual belongs, whether such country or territory is independent, or is under trusteeship or non-self-governing or under any other limitation of sovereignty. And Article 7: Everyone is equal before the law and has the right to be equally protected by the law, without any discrimination. Everyone has the right to equal protection against any discrimination that would violate this Declaration, and against any incitement to such discrimination.

*United Nations Convention on the Elimination of All Forms of Racial Discrimination*<sup>8</sup> This Convention was approved on January 4, 1969. It talks about the equal exercise of human rights and discrimination. Article 1 provides:

In this Convention, the term "racial discrimination" means any distinction, exclusion, limitation or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, in equal basis, human rights and fundamental freedoms in the political, economic, social, cultural or any other area of public life.

The equal enjoyment or exercise of human rights and fundamental freedoms of groups or individuals shall not be considered racial discrimination, provided that such measures do not, as a consequence, lead to the retention of special rights for different racial groups and that they will not have been continued after the objectives for which they were obtained have been achieved.

*Convention on the Elimination of All Forms of Discrimination against Women* is a UN instrument that has been ratified by all EC Member States. The Convention on the Elimination of All Forms of Discrimination against Women is a UN instrument that has been ratified by all EC Member States. It constitutes an agreement of all parties of the state to

<sup>1</sup> S Sarath Mathilal de Silva, "The Concept of Equality: Its Scope, Developments and International Legal Regime", *Journal of the Royal Asiatic Society of Sri Lanka*, 2016, New Series, Vol. 61, No. 2

<sup>2</sup> Ibid

<sup>3</sup> Sandra Fredman, "Discrimination Law", Published in the United States by Oxford University Press Inc., New York, 2011, page 14

<sup>4</sup> Aurela Anastasi; Luan Omari, "Constitutional right", Tirana, 2010

<sup>5</sup> Zaganjori.Xh, Anastasi.A, Methasani.E." *The rule of law in the Constitution of the Republic of Albania* ", Adel Print, 2011, page 17

<sup>6</sup> Aurela Anastasi, "Equality and gender justice", Tirana, 2021, page 81

<sup>7</sup> *The Universal Declaration of Human Rights*

<sup>8</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, 4 January 1969

respect, protect, promote and fulfill the human rights of women in all circumstances. Parties to CEDAW are legally bound, first, to eliminate all forms of discrimination against women in all areas of life, and, second, to guarantee the full development and advancement of women so that they can exercise and enjoy their human rights and fundamental freedoms in the same way as men. This includes taking measures to eradicate the stereotypical roles of women and men; guaranteeing equal participation of women in public life; guaranteeing equality before the law; and eliminating discrimination in employment.

CEDAW provides that affirmative action measures must not be considered discriminatory (Article 4). Further, States are required to take appropriate measures to "modify social and cultural patterns of behavior of men and women ... which are based on ideas of inferiority or superiority ... or on stereotypical roles for men and women " (Article 5).

While CEDAW is not directly applicable for the purposes of the Court's decision-making, it is often cited as a reference in the Court's jurisprudence, and informs the decision-making of domestic judiciaries regarding sex-based discrimination. As a result, there is now a high degree of normative overlap between CEDAW and the Convention. Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention")

The Istanbul Convention is a legally binding international instrument that aims to tackle violence against women and domestic violence in all EC member states. She recognizes that violence against women comes from gender stereotypes, bias and discrimination, which are very widespread issues in Western Balkan societies. All Western Balkan countries have ratified the Istanbul Convention and thus have undertaken the obligation to harmonize their laws in accordance with its provisions in order to facilitate the prevention of and protection against violence against women and domestic violence.

Prevention of violence, protection of victims, prosecution of perpetrators and the need for integrated policies at the national level are the four pillars of the Istanbul Convention. Basically, these measures are based on the principle that violence against women is a violation of human rights and a form of discrimination against women. According to the Istanbul Convention, gender-based violence against women is distinguished from other types of violence, since gender-based violence is both the cause and the result of the unequal power relations between women and men that lead to the underwritten status of women. in the public and private spheres. Consequently, the Istanbul Convention aims to eradicate violence against women and domestic violence in the context of advancing equality between women and men.

*The Framework Convention for the Protection of National Minorities* is the first legally binding multilateral instrument dedicated to the protection of national minorities around the world, and its implementation is monitored by the only international commission dedicated exclusively to minority rights.

## 2.2 European and EU acts on equality and non-discrimination

*European Convention of Human Rights* 9. There are several key legal mechanisms adopted by the EC regarding non-discrimination, the main one of which is the ECHR. Article 14 of the Convention, which prohibits discrimination, states: "Enjoyment of the rights and freedoms set forth in this Convention shall be ensured without any distinction based on such grounds as sex, race, color, language, religion, political or other opinion, national or social origin, affiliation in a national minority, wealth, birth or any other status."<sup>10</sup>

The list of prohibited grounds of discrimination in Article 14 is not exhaustive: while it does not explicitly exclude other relevant grounds such as sexual orientation, disabilities and age, these have been assessed by the Court as falling within the text "other statuses". of the article. Consequently, the Court is free to add them to the list of prohibited grounds. Article 14 of the ECHR only prohibits discrimination and guarantees equality "in the enjoyment of the rights and freedoms" mentioned in the Convention. Consequently, the Court is only competent to review complaints of discrimination under Article 14 when they fall under one of the other rights protected by the Convention, so Article 14 does not exist independently. In practice this means that the Court examines a claim under Article 14 only in relation to another substantive provision of the Convention or when it is engaged through another provision.<sup>11</sup>

However, the application of Article 14 does not presuppose a violation of one or several other articles of the Convention. In order to apply Article 14 in a given case, it is sufficient that the facts of the case fall within the framework of another substantial provision of the Convention or its Protocols. The framework principle allows for a wider application of Article 14 by relieving the applicant/s of the obligation to prove a violation of another right. This means that a measure

<sup>9</sup> *European Convention on Human Rights*

<sup>10</sup> *Article 14, European Convention on Human Rights*

<sup>11</sup> *Ivana Jelić, Hannah Smith, " Gender Equality and Discrimination on the Basis of Sex ", AIRE Centre, 2022*

which in itself conforms to the criteria of the article that restricts the right or freedom in question may still violate that same article when read in conjunction with article 14, because it is discriminatory in nature. Prohibition of discrimination enshrined in Article 14 also applies to the enjoyment of rights which the State voluntarily decides to provide, beyond the scope of its obligations under the Convention, as long as these rights fall within the general scope of an Article of the Convention.<sup>12</sup>

*Protocol No. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms*, Bearing in mind the fundamental principle that all persons are equal before the law and are entitled to equal protection of the law, Determined to take further steps to promote the equality of all persons through the collective application of a the general prohibition of discrimination within the framework of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950. Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures to promote a full and effective equality, provided that these measures have a reasonable and objective justification, Have agreed as follows:<sup>13</sup>

Article 1 states: "The enjoyment of every right provided by law must be ensured without any discrimination based on reasons such as sex, race, color, language, religion, political or any other opinion, national or social origin, belonging in a national minority, wealth, birth or any other situation. No one should be discriminated against by a public authority for any of the reasons provided for in paragraph 1."

The Protocol prohibits discrimination in relation to 'the enjoyment of any right provided for by law' and 'by a public authority'. So it is broader in scope than Article 14, which prohibits discrimination only in relation to the rights guaranteed by the ECHR itself.

Following the ratification of Protocol 12 by the Western Balkan states, claimants in the region can now appeal to the ECtHR and seek protection from discrimination in relation to any right guaranteed by domestic/national law and in relation to any action by any public authority.

Commentary on the Explanatory Report of Protocol No. 12 states that Article 1 of Protocol No. 12 deals with discrimination:» in the enjoyment of any right granted especially to an individual under national law;» in the enjoyment of a right which can be derived from a clear obligation of a public authority under national law, i.e. when a public authority has an obligation under national law to behave in a certain way; by a public authority in the exercise of discretionary power (for example, granting certain subsidies); and» by any other act or omission by a public authority (for example, the conduct of law enforcement officials in controlling a riot).

Explanatory Report of Protocol No. 12 also states that the Protocol applies to relations between private persons, when these would normally be regulated by the state. The court has confirmed that Article 1 of Protocol No. 12 introduces a general prohibition of discrimination and a "self-sustaining" right not to be discriminated against, and that Article 1 of Protocol No. 12 extends the scope of protection not only covering "every right defined by law", but also beyond it. This follows from paragraph 2 of Article 1 of Protocol No. 12, which provides that no one can be discriminated against by a public authority.

To decide whether Article 1 of Protocol No. 12 is applicable, it is first necessary to determine whether the complaint falls within one of the four categories mentioned in the Explanatory Report, which are listed above. The prohibited grounds of discrimination under Protocol 12 are identical to those of Article 14. Similarly, while the list does not expressly include relevant grounds such as sexual orientation, disability, age, these fall within the text of

*European Social Card*. Together with the Convention and the Protocols, the European Social Charter, another EC human rights treaty, guarantees basic social and economic rights as counterparts to the ECHR's protection of broadly civil and political rights. Along with the Convention and Protocols, EC legislation and guidance on non-discrimination laws derive from a number of different instruments. For example, the European Social Charter, the EC's other human rights treaty, guarantees fundamental social and economic rights as counterparts to the ECHR's protection of broadly civil and political rights.<sup>14</sup>

The European Social Charter contains a dominant provision in Article E, regarding non-discrimination, which provides: The enjoyment of the rights provided for in this Charter shall be ensured without discrimination of any cause such as race, color, sex, language, religious belief, political or other opinion, national origin or social origin, health, association with a national minority, birth or other status.<sup>15</sup>

<sup>12</sup> Ivana Jelić, Hannah Smith, " Gender Equality and Discrimination on the Basis of Sex ", AIRE Centre, 2022, page 26

<sup>13</sup> Protocol No. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>14</sup> Ivana Jelić, Hannah Smith, " Gender Equality and Discrimination on the Basis of Sex ", AIRE Centre, 2022

<sup>15</sup> Article E, European Social Charter

### *EU Charter about the rights fundamental*<sup>16</sup>

In this document provisions about equality and non-discrimination are the provided in articles 20 -23. Where else positively it is said :

#### Article 20

Equality before the law

Everyone is equal before the law.

#### Article 21

Non-discrimination

1. Any discrimination based on any basis such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation will be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination based on nationality shall be prohibited.

#### Article 22

Cultural, religious and linguistic diversity. The Union will respect cultural, religious and linguistic diversity.

#### Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality does not prevent the preservation or adoption of measures that provide specific advantages in favor of the underrepresented sex.

According to EU law, the aforementioned non-discrimination directives are subject to the principle of objective justification. This means that, in some cases, the CJEU may find that there has been differential treatment but that it is acceptable. In the context of employment law, the ECtHR has been reluctant to accept the justification of differential treatment as a result of the employer's economic issues. On the other hand, it has allowed a wide margin of discretion in cases based on the goals of social and employment policies with fiscal implications.

*Council Directive 79/7/EEC on the progressive application of the principle of equal treatment for men and women in matters of social security*

The Directive provides for the implementation of the principle of equal treatment for men and women in terms of access to employment, professional training and promotion, and working conditions. It provides that, with the aim of ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, purpose and regulations for its application. The application of the principle of equal treatment in matters of social security does not affect the provisions related to the protection of women in the field of childbirth; while, in this

respect, Member States may adopt specific provisions for women to remove existing cases of unequal treatment. In Article 1 it is stated: The purpose of this directive is the progressive implementation, in the field of social security and other elements of social protection, of the principle of equal treatment equal for men and women in matters of social security.

Among other international acts of the EU for the realization of the principle of equality, we can mention:

Directive about Equal Treatment 76/207/EEC (9 February 1976); Directive 2000/78/ EC , Establishing a general framework for equal treatment in employment and occupation, of 27 November 2000; Directive 2006/54/EC, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), of 5 July 2006; Directive 2004/113/EC, Implementing the principle of equal treatment between men and women in the access to and supply of goods and services, of 13 December 2004; Directive 2000/43/EC, implementing the principle of equal treatment between persons regardless of racial or ethnic origin, of 29 June 2000.

### **3. Conclusions**

The principle of equality is an integral part of the main agendas of discussions at the international level by the most important institutions. The international instruments for the realization of equality and to fight discrimination are always in continuous development, being harmonized with the initiatives of different countries. These initiatives are not only

<sup>16</sup> *Charter of fundamental rights of the European Union (2000/C 364/01)*

individual but also in joint coordination. The concept of equality and freedom has evolved extremely many last decades, but it still remains a present problem. Equality has taken on different meanings in different periods of time depending on political, economic and social developments. Many researchers have focused on the definition of equality and freedom, on their features and evolution.

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