

Signing and Ratification of Protocol no.12 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms

The European Convention on Human Rights (ECHR) endorses the general principle of equality and non-discrimination as a fundamental element of international human rights law¹. Protocol No. 12 supplements the Council of Europe's European Convention of Human Rights, to which Malta is a party to, by raising the principle of equality to a right in itself.

Nonetheless, this provision is limited in scope, since it prohibits discrimination only with regard to the "enjoyment of the rights and freedoms" set forth within the said Convention. The problem with this provision is that it is not an independent prohibition of discrimination covering all the necessary social spheres, that is, areas developed following the Convention do not enjoy this legal protection. Protocol No. 12, opened to signature by the Member States of the Council of Europe on 4 November 2000, was created with the intention to rectify the situation and broaden the field of application of the aforementioned relevant provision in the Convention. The Protocol thus reaffirms the principle that all persons are equal before the law and that they are thus entitled to equal protection of the law, and resolves to take further steps to promote this through the collective enforcement of a general prohibition of discrimination.

The Protocol's general non-discrimination clause therefore affords protection beyond that afforded by the Convention. In particular, this Protocol protects persons who are discriminated against:

- In the enjoyment of any right specifically granted to an individual under national law;
- In the enjoyment of a right inferred from a clear obligation of a public authority under national law;
- By a public authority in the exercise of discretionary power;
- By any other act or omission by a public authority.

Through a cabinet memo dated 10 November 2015, prepared by MSDC, Cabinet was invited to discuss and approve the contents of the said memo. On 17 November, Cabinet approved the signature and ratification of this Protocol.

¹ Article 14, ECHR

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1 – General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2 – Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

Article 6 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance or approval;
- c. any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- d. any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each Member State of the Council of Europe.

