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STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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Human Rights in Culturally Diverse Societies: study on the feasibility and added value of standard-setting or other work in this field

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Human Rights in Culturally Diverse Societies
Study on the feasibility and added value of standard-setting or other work in this field

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1. INTRODUCTION

1. At its 1127th meeting in November 2011 the Ministers' Deputies decided to give terms of reference of intergovernmental structures for the period 2012-2013. With regard to the Steering Committee for Human Rights (CDDH), the Deputies asked the CDDH under item "Expected results" that "studies are conducted to examine the feasibility and added value of standard-setting work regarding human rights in culturally diverse societies...;"

2. At its 73rd meeting in December 2011, the CDDH had an exchange of views on a roadmap to execute work on several themes mentioned in its terms of reference, amongst them "Human Rights in Culturally Diverse Societies". The CDDH instructed the Secretariat to elaborate a preliminary study on this topic, taking stock of existing instruments of the Council of Europe and other international bodies. This preliminary study[1] was examined by the CDDH at its 76th meeting in November 2012 where the Committee also held an exchange of views with Ms Eva SMITH ASMUSSEN, member and former Chairperson of the European Commission against Racism and Intolerance (ECRI).

3. Subsequently, the CDDH decided to examine in June 2013, in view of its adoption, a draft study on the feasibility and added value of standard-setting or other work in this field. It appointed Mr Morten RUUD (Norway) as Rapporteur on this activity. With a view to the preparation of this study, the CDDH gave the following guidance:

- The focus of the study should be on the added value of any further standard setting or other work in this field, and to this effect it should examine in particular the implementation of existing standards and of the findings of monitoring bodies, the execution of the relevant judgments of the Court, and the area of human rights training and education. In this context, the CDDH stressed the universality of human rights and decided not to focus on standard-setting in respect of the rights of particular vulnerable groups.

- The study should be based on the previous work of the CDDH in this field, in order to identify possible issues which have not yet been covered and, if so, define specific steps to be taken in their respect. In addition, consideration should be given to existing and on-going work within other sectors of the Council of Europe and in other international and regional organisations, in order to ensure complementarity and avoid any risk of duplication or overlapping in this field. Finally, the CDDH invited member states who have adopted national human rights action plans to forward a copy to the Secretariat along with information on other good practices at national level.[2]

2. IMPLEMENTATION OF EXISTING STANDARDS

4. The above-mentioned preliminary study on human rights in culturally diverse societies shows that the existing instruments at the European and international level are numerous covering many aspects of this vast topic. There are also new standard-setting initiatives recently carried out or currently underway, namely within the European Union such as the "Guidelines on the Freedom of Religion and Belief"[3] and the "Guidelines on Freedom of Expression Online and Offline, including the Protection of Bloggers and Journalists"[4] , and within the United Nations such as a possible "General Recommendation on racist hate speech" by the Committee on Racial Discrimination (CERD)[5]. In addition, the Guidelines for Review of

[1] Document CDDH(2012)018
[2] Document CDDH(2012)R76, para. 27
[3] Adopted by the Council of European Union on 24 June 2013.
[4] EU Strategic Framework on Human rights and Democracy with Action Plan attached adopted on 25 June 2012.
[5] As an outcome to thematic discussion on 28 August 2012 on "racist hate speech" in the context of the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Committee on the Elimination of Racial Discrimination will reflect on the possibility of initiating the preparation of a fourth General Recommendation on the subject of racist hate speech based on its understanding of article 4 and related articles in the Convention.

Legislation Pertaining to Religion or Belief, prepared by the European Commission on Democracy through Law (Venice Commission) and the OSCE/ODIHR in 2004, are currently under revision.

5. The preliminary study made reference to the 2011 report of the Group of Eminent Persons "Living together – Combining diversity and freedom in 21st–century Europe", which indicates that the problem is indeed not a lack of existing human rights standards in this field but the fact that they are not effectively implemented and enforced. The report poses the question why, in so many cases, this is not currently being done. The report further suggests that insecurity stemming from Europe's economic difficulties and sense of relative decline is one of the factors that lie behind the specific risks to Council of Europe values identified by the Group (rising intolerance; rising support for xenophobic and populist parties; discrimination; the presence of a population virtually without rights; parallel societies; Islamic extremism; loss of democratic freedoms; and a possible clash between "religious freedom" and freedom of expression).[6]

6. The economic crisis, which has a serious impact on most countries in Europe, tends to encourage recourse to extremism of difference forms; widespread economic difficulty is often accompanied by search for scapegoats.[7] These trends threaten to undermine the twin pillars on which the Convention is based: democracy and the rule of law.[8] In periods of severe economic downturn, which can result in greater social exclusion, minorities fulfil the role of scapegoats and are often the first to suffer.[9]

7. Scarce resources are regularly invoked by states as the main obstacle for the lack of implementation of human rights standards.[10] However, limited resources are no excuse for not meeting human rights obligations based on minimum standards and only in exceptional and limited circumstances will failure to comply with human rights requirement be justified by lack of resources.[11] Nor can it be an excuse for not elaborating, adopting or implementing realistic policies ensuring that such rights are fully enjoyed by all individuals in culturally diverse societies. In addition, many aspects of human rights related to identity, and particularly the recognition of pluralism in society, do not necessarily require a lot of resources.[12]

8. The respect of human rights standards, in particular in the social and economic field, is perhaps even more important in times of crisis where an increasing number of people are in need of economic security and social protection and states are under pressure to reduce state expenditure.[13] Human rights are generally considered as universal, indivisible and interdependent and all of them need to be upheld without exception.[14] However there are still standards of relevance for protecting and promoting human rights in culturally diverse societies contained in major Council of Europe legal instruments which have not yet been ratified by all member states. It might therefore be appropriate to encourage member states, which have not already done so, to accede to useful instruments such as Protocol 12 to the European Convention on Human

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[6] Report of the Group of Eminent Persons of the Council of Europe "Living together - Combining diversity and freedom in 21st-century Europe".

[7] These trends were highlighted at the seminar "Implementing the European Convention on Human Rights in times of economic crisis" organised by the European Court of Human Rights on 25 January 2013.

[8] *Ibid,* Background Paper, paras. 2 and 23.

[9] Janez LENARČIČ, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March 2013, Joint Statement "Austerity is no excuse for racism" published by ECRI, FRA and ODIHR.

[10] "Prevent violations through systematic work for human rights", speech by Thomas HAMMERBERG at the Conference on the Prevention of Human Rights Violations, Kyiv 20-21 September 2011, CommDH/Speech(2011)10.

[11] Recent seminar organised by the Court on the economic crisis, Background Paper, Conclusion.

[12] The *Ljubljana Guidelines on integration of diverse societies* (2012) published by the OSCE High Commissioner on National Minorities, III. Elements of an integration policy framework.

[13] See Declaration of the Committee of Ministers on the 50th anniversary of the European Social Charter adopted on 12 October 2011 at the 1123rd meeting of the Ministers' Deputies "underlining the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups".

[14] In its judgment of the case *Demir and Baykara v. Turkey* from 2008, the Grand Chamber confirmed that the Court could refer to articles of the Revised Social Charter and the case-law of the European Committee of Social Rights even if the state concerned had not ratified this treaty, as one among a number of factors to take into account when interpreting the provisions of the European Convention on Human Rights, which alone are directly applicable.

Rights[15], the Revised European Social Charter and its Additional Protocol to the Charter Providing for a System of Collective Complaints, the Framework Convention on the Protection of National Minorities, the European Charter for Regional or Minority Languages, the European Convention on Nationality[16], the Convention on the Participation of Foreigners in Public Life at Local Level, the Convention on Cybercrime and its Protocol on Xenophobia and Racism. These are also international legal instruments that the European Commission against Racism and Intolerance (ECRI), the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC), the European Committee of Social Rights (ECSR) as well as the Council of Europe Commissioner for Human Rights based on the findings of their monitoring work (see below) often recommend member states to sign and ratify, if they have not already done so.

3. IMPLEMENTATION OF THE FINDINGS OF MONITORING BODIES

9. Implementation standards[17] contained in general guidelines or recommendations stemming from monitoring bodies such as ECRI, ECSR and ACFC play an important role for the protection and promotion of human rights in culturally diverse societies.

European Commission against Racism and Intolerance (ECRI)

Duty of national authorities to promote equality and prevent discrimination

10. ECRI has constantly recommended to member states the inclusion of a duty on public authorities to promote equality and prevent discrimination in carrying out their functions. The aim of such a duty is to place anti-discrimination and equality at the heart of the activities of public authorities so that it is reflected in their policy making, service delivery, regulations and their enforcement, as well as employment practices. As indicated in General Policy Recommendation No. 7, the specific obligations incumbent on public authorities under this duty should be spelled out as clearly as possible in the law.[18] Public authorities should be required to draw up and implement equality plans which set out how they are going to implement these specific obligations, including through training and awareness-raising, monitoring, setting equality targets, etc. Even more important, there should be a mechanism for enforcing this duty, preferably a national specialised body whose role should be spelled out clearly in legislation and accompanied by attribution of adequate and relevant powers. So far only a very small number of member states have placed a duty on public authorities to promote equality and prevent discrimination in carrying out their functions.[19]

[15] Protocol 12 contains provisions similar to those of the UN International Convention on the Elimination of All Forms of Racial Discrimination, to which all Council of Europe members states are parties, PACE report from 2009 on "Honouring of obligations and commitments by Monaco" (para. 132).

[16] The Convention uses the term "nationality" as a synonym to "citizenship".

[17] "Implementation standards" (as opposed to "norms standards" which describe human rights standards that are adopted by states and are legally binding) are used to describe material outputs adopted by independent expert bodies for the clarification and interpretation of norm standards and to describe measures that can be taken by states to bring national human rights law and practice into conformity with the norm standard. It is clear that implementation standards developed by the Council of Europe expert bodies only may gain legal relevance if a state or a group of states explicitly or implicitly decide that they wish to be bound by them, or if the European Court builds on the implementation standards in its case-law. Standard-setting through monitoring? *The role of Council of Europe expert bodies in the development of human rights,* Renate KICKER and Markus MÖSTL. Council of Europe Publishing, October 2012, pp. 108-109, 147.

[18] ECRI's General Policy Recommendation No. 7, para. 8 and the Explanatory Memorandum, para 27.

[19] "The Challenges ahead for European anti-discrimination legislation: an ECRI perspective", by Giancarlo Cardinale, lawyer at the European Commission against racism and Intolerance (ECRI), Council of Europe, published in *European Anti-Discrimination Law Review*, Issue No. 5, July 2007, pp. 33-34. See for example ECRI reports (fourth monitoring cycle): the Czech Republic adopted on 2 April 2009, paras. 27-28; Armenia adopted on 7 December 2010, para. 25; Turkey adopted on 10 December 2010, para. 34; Andorra adopted on 21 March 2012, para. 41; Liechtenstein adopted on 5 December 2012, para. 31.

National legislation to combat racism and racial discrimination[20]

11. Furthermore, in the vast majority of member states, a number of important public functions are only covered by general anti-discrimination provisions (for example by constitutional provisions) which, moreover, are often not enforced in practice. This is true also for most of those countries where a comprehensive anti-discrimination legislation is in force, since these functions fall, as a rule, outside the scope of such legislation. These public functions include vital areas such as the activities of the police, border control officials and immigration authorities. One of the challenges facing anti-discrimination legislation is precisely to bring these activities under its scope of application, as recommended by ECRI in its General Policy Recommendation No. 7.[21] ECRI's country reports indicate that racial discrimination in policing is not only a widespread phenomenon in Europe[22], but one with important negative repercussions on minority-group members' feeling of belonging to and accepted by society. [23]

Hate speech

12. In its country-by-country monitoring work, ECRI has in the past noted several problems as concerns hate speech and the measures taken by the authorities to combat it:

- lack of legislation against hate speech
- legislation which needs to be strengthened or fine tuned
- legislation which needs to be properly applied.

The latter two problems are the most frequently encountered. However, ECRI has also noted situations, whereby legislation on hate speech is disproportionately used against minority groups or used against them for the wrong reasons. In these situations, ECRI would normally recommend either that legislation be adopted or that it be strengthened or that it be properly applied. In the third type of situation, it would recommend that training on the relevant national and international norms be provided to judges, prosecutors, lawyers and the police as lack of awareness and/or knowledge of these norms is one of the main reasons for the lack of application of relevant legislation. It would also recommend awareness-raising of the public in general of the negative effects of hate speech for minorities and society in general. ECRI also recommends that measures be taken to raise minority groups' awareness concerning existing legislation against hate speech and their rights and take measures to assist them in protecting their rights.[24]

In its fifth monitoring cycle ECRI will focus on priority issues such as anti-discrimination legislation, hate speech, violence and integration.

Discrimination in particular against Roma

13. High-profile incidents in several member states in recent years have again drawn attention to the worsening of the situation of Europe's Roma population, which continues to face widespread discrimination, intolerance and stigmatisation, particularly in public discourse. ECRI's dramatic country-by-country findings prompted it to release a General Policy Recommendation No.13 on combating anti-Gypsyism and discrimination against Roma. In this text ECRI requested the authorities of all member states to adopt no less than 90 measures, including encouraging Roma victims of violence and other forms of crime – as well as police misconduct - to lodge complaints and calling on the media to avoid inflammatory reporting. Lack of access to decent housing is another major problem for Roma coupled with eviction without notice or appropriate rehousing. ECRI, accordingly, called upon member states to consider, among

[20] That is discrimination on grounds of "race", colour, language, religion, nationality or national or ethnic origin.
[21] General Policy Recommendation No. 7, para. 7 and the Explanatory Memorandum, para. 26.
[22] See ECRI reports (fourth monitoring cycle): Poland adopted on 28 April 2010, para. 161; France on 29 April 2010, para. 139; Azerbaijan adopted 23 March 2011, para.130; Italy adopted on 6 December 2011, para. 180; Croatia adopted 20 June 2012, para. 222.
[23] Giancarlo CARDINALE in *European Anti-Discrimination Law Review*, Issue No. 5, July 2007, pp. 33-34.
[24] *Relevant Council of Europe Standards and Policies on the Prohibition and Prevention of "hate speech"*, document prepared by the ECRI Secretariat as a Council of Europe contribution to a UN expert's workshop on the prohibition of incitement to national, racial or religious hatred (Vienna, 9-10 February 2011). The document provides examples of situations of lack of proper legislation against hate speech and situations in which legislation against hate speech needs to be strengthened or fine-tuned. It also gives examples of review of improper legislation against religious hatred and situations in which legislation needs to be properly applied.

other steps, legalising long-tolerated Roma sites, even if they have been built in breach of town planning regulations.[25]

Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC)

State's responsibility

14. For some countries the ACFC has observed that while appropriate measures have been taken at the national level, local authorities failed to act properly. For this reason, during the first and second cycles, the Committee reminded the States Parties that they were also accountable for the implementation of the provisions of the Framework Convention on the Protection of National Minorities by the local and regional authorities. Moreover, it stressed the regulatory role of the state in implementing policies and measures to protect minorities, especially by ensuring consistency in the legislation and implementation of policies throughout the territory.

Scope of application

15. Due to the absence of a generally recognised legal definition of the term "national minority", the scope of application of the Framework Convention remains one of the most controversial issues related to its implementation. While recognising that States Parties have a margin of appreciation in determining the scope of application of the Convention on the condition that such decisions are exercised in accordance with general principles of international law and the fundamental principle set out in Article 3, the ACFC has nevertheless found that the scope of application as interpreted by the states is problematic in a number of Contracting Parties. Firstly, the Committee is of the opinion that the citizenship criterion can be a legitimate requirement in relation to certain measures taken in accordance with the principles of the Framework Convention, for instance as regards certain political rights that persons belonging to national minorities enjoy. However a generally applicable citizenship criterion is, nevertheless, problematic in relation to several other guarantees enshrined in the Framework Convention, such as those in Article 4 (anti-discrimination) and Article 6 (tolerance and intercultural dialogue). [26]

16. The criterion of citizenship is also an issue that is often raised in the context of debates on the application of the Framework Convention to "new minorities". Some states have opted for a very open approach in this respect and do not apply any citizenship criterion. Other states have opted for restricting the scope of the application of the Framework Convention to its citizens only and, in general, to persons belonging to "traditional" minorities.[27]

17. However, the problem persists in State Parties in which a substantial number of persons belonging to national minorities for various reasons do not have the citizenship of the state party concerned. Therefore, they do not enjoy the protection resulting from the provisions of the Framework Convention. In such cases, the ACFC has recommended removing all obstacles to the acquisition of citizenship and taking measures to remedy the remaining problems of statelessness. Moreover, it called upon the states' authorities to adopt a flexible approach as regards the personal scope of application of the Framework Convention, and to avoid using the criterion of citizenship when deciding on who should benefit from its protection.[28]

[25] Annual Report on ECRI's activities covering the period from 1 January to 31 December 2011, CRI (2012)23, para. 4.
[26] PACE doc 12109 "Minority protection in Europe: best practices and deficiencies in implementation of common standards", report of the Committee on Legal Affairs and Human Rights, 20 January 2010.
[27] *Ibid.*
[28] *Ibid.*

Effective participation

18. In the current third cycle of reporting, the ACFC has focused on effective participation in socio-economic and cultural life and in public affairs and language rights.[29] In its monitoring work the Committee has drawn on its thematic commentary on Article 15 which requires the States Parties "to create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them". The lack of participation in socio-economic life has been raised in a number of country opinions, notably with regard to the Roma, who face problems ranging from their low participation in the labour market, lack of access to healthcare and housing segregation. The lack of effective participation in social and economic affairs is obviously closely related to the lack of participation in public affairs, and vice versa.

The economic crisis

19. Similarly to ECRI, the ACFC found in its monitoring of States Parties that the economic crisis facing Europe, has led to an increase of intolerance against all kinds of minorities throughout Europe and has negatively affected the situation of national minorities including the Roma, who often are among the socially disadvantaged groups. In this connection, the ACFC noticed the increasing use of the internet to spread hate speech and discriminatory wording and attacks, even in countries which until now were spared minority problems.[30]

European Committee of Social Rights (ECSR)

20. The articles in the Revised European Social Charter of particular relevance for the enjoyment of human rights in culturally diverse societies are Article 1§2 (protection from discrimination in employment), Article 19 (the right of migrant workers and their families to protection and assistance) and Articles 16 and 31 (the right to housing) as well as Article E (protection from discrimination).[31]

Protection from discrimination

21. Article 1§2 prohibits discrimination in employment on grounds *inter alia* of race, colour, religion, national extraction etc. Article E also requires that there may be no discrimination with respect to achievement of the various substantive rights contained in the ESC.

22. When examining Article 1§2 in 2012 the Committee found 22 states not to be in conformity with this provision, the majority of violations concerned excessive restrictions on the access of foreigners to employment and inadequate legislation prohibiting discrimination on grounds other than sex. Article E has been invoked in very many collective complaints, in particular in those regarding housing for Roma and travellers (see below). The decisions of the ECSR in many of the complaints demonstrate that there is considerable discrimination against certain vulnerable groups which prevents them from accessing their rights.

[29] Alan PHILLIPS, Former President of the Advisory Committee of the FCMM: "Ten years of Implementing the FCNM" published on the website on 9 March 2011 by rightsofminorities .
[30] Professor Rainer HOFMANN, former President of the Advisory Committee in Minority report, European Centre for Minority Issues (ECMI) Advisory Council Conference 2012.
[31] See also the preliminary study on Human Rights in Culturally Diverse Societies -taking stock of existing instruments of the Council of Europe and other international bodies, document CDDH (2012) 018.

The right of migrant workers

23. The application of certain aspects of Article 19 has traditionally been and still is problematic for many States Parties with its guarantee of equal treatment of migrant workers and their families in respect of employment, trade union membership and accommodation (19§4), with its right to family union (19§6) and with its safeguards against expulsion (19§8).

24. In respect of family union, the Committee found violations in respect of 10 countries in 2011 on one or more of the following grounds:

- excessive length of residence requirements before a migrant worker can be joined by his/her family;
- overly restrictive rules for the calculation of the economic means of migrant workers;
- requirements that spouses and children of migrant workers sit language tests before or after entering the country.

25. As regards expulsion, the Committee found that in certain countries migrant workers may be expelled on grounds that go beyond those permitted in the Charter. This was the case, for example, where expulsion was grounded in having recourse to social welfare, for being homeless, for substance abuse or having committed petty crimes. The Committee also condemned instances of expulsion of Roma and Sinti people under circumstances which were not compatible with the Charter. [32]

The right to housing

26. The right to housing is no doubt one of the most crucial social rights and almost all of the countries having accepted this provision were found to have problems with aspects of its application. The Committee's case-law on Article 31 has developed mainly in the context of collective complaints[33] and a good deal of the problems identified had to do with follow-up by states – or rather the lack of it – to the Committee's previous decisions in collective complaints. This was notably the case with respect to adequate housing under 31§1 where the Committee reiterated its findings in several collective complaints that in some countries a large number of dwellings were sub-standard lacking suitable amenities, and in particular that there had been insufficient progress as regard the eradication of sub-standard housing conditions for a large number of Roma. Under 31§2 concerning reduction of homelessness, there was an insufficiency of measures taken to reduce homelessness. In some countries eviction of Roma and Sinti continued to be carried out without the necessary procedural safeguards and without proper re-housing solutions. Finally, under 31§3 on affordable housing, a significant shortage of social housing in some countries led to conclusion of non-conformity as had lack of equal treatment of foreigners in respect of social housing and access to housing benefits. On the whole, the substandard housing conditions of many Roma were one of the main recurring issues in the Committee's conclusions in 2011.[34]

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27. At present, there exists no general overview of the findings and recommendations of the Council of Europe monitoring bodies which could be used to evaluate the level of implementation and follow-up in member states. In order to make better use of the results of the monitoring bodies in the interest of member states, the Secretary General has proposed to the Committee of Ministers to create a matrix with the findings of the monitoring and evaluation mechanisms including the judgments of the European Court of

[32] Activity Report 2011 of the European Committee of Social Rights, pp. 21-22.
[33] *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Decision on Merits of 25 June 2010; *Centre on Housing Rights and Evictions (COHRE) v. France*, Decision on Merits of 28 June 2011; *European Roma Rights Centre (ERRC) v. Portugal*, Decision on Merits of 30 June 2011; *European Roma and Travellers Forum (ERTF) v. France,* Decision of Merits of 24 January 2012, *International Federation of Human Rights (FIDH) v. Belgium*, Decision of Admissibility of 22 March 2012.
[34] Activity Report 2011 of the European Committee of Social Rights, pp. 22-23.

Human Rights.[35] Such a tool would serve as a way to identify common and dominant trends throughout Europe, which would be useful for politicians and decisions-makers and would allow the Council of Europe to better adjust its programme of activities. The Secretary General reiterated his proposal at the 123rd Ministerial Session of the Committee of Ministers on 16 May 2013 where he provided a preliminary overview of the main challenges concerning the compliance with key Council of Europe standards.[36] The Committee of Ministers shared in principle this approach and encouraged the Secretary General to pursue efforts aimed at optimising the functioning and coordination of the monitoring mechanisms, as well as a better use of their conclusions. It instructed the Deputies to discuss the proposals which the Secretary General will make to this end, while fully respecting the independence of these mechanisms, and invited the Secretary General to present to it on a regular basis an overview of human rights, democracy and the rule of law in Europe, based on the findings of the monitoring mechanisms. This overview will be accompanied by proposals for action to be taken by the Organisation. The CDDH could reflect further on possible ways to facilitate the implementation of recommendations of Council of Europe monitoring bodies in particular when they are related to the enjoyment of human rights in culturally diverse societies.

4. EXECUTION OF THE RELEVANT JUDGMENTS OF THE COURT

28. The execution of Court's judgments of relevance for human rights and culturally diverse societies has led to legislative and administrative reforms in the countries concerned. Sometimes the actions plan for implementing the judgments have obliged the countries to organise awareness-raising and training activities (including translation and dissemination of the Court's judgments[37]) for different categories of professionals and parties concerned (the police, judges, prosecutors and civil servants in the administration at national and local level, etc.). For some judgments the implementation has been speedy whereas in other cases the execution has been slower, and sometimes the judgments have taken up to several years to implement.

29. There are still a number of relevant judgments of the Court which have not yet been executed or which have only been implemented partially.[38] The relevant judgments – sometimes covering a group of cases and other times important isolated cases - concern areas such as:

- violence against persons of ethnic origin in particular Roma (either racially motivated ill-treatment or failure to inquire whether or not possible racist motives may have played a role)[39]
- non respect of the right to conscientious objection to military service[40]
- freedom of thought, conscience and religion (non-respect of the right not to disclose religious convictions)
- freedom of expression (restrictions on the publication of information relating to ethnic population)[41]

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[35] A proposal of the Secretary General "Strengthening compliance with obligations" - SG/Inf(2013)6 with issues for consideration was submitted for Committee of Ministers' thematic debate on "Ways to improve the impact of the Council of Europe monitoring mechanisms" on 13 March 2013.

[36] Overview by the Secretary General: Democracy, human rights and the rule of law in Europe: strengthening the impact of the Council of Europe's activities, document SG/Inf (2013) 15, Appendix. The preliminary overview reflects the following main challenges in respect of *Discrimination against vulnerable groups, especially Roma*: "Absence of comprehensive anti-discrimination legislation/effective enforcement thereof, lack of reliable statistics, lack of effective participation in public affairs at local level; lack of media access, lack of access to education, segregation in education and housing, ethnically divisive or stigmatising political discourse, racism in sport and workplace, poverty and marginalisation, social exclusion compounded by prejudice and discrimination, ethnic profiling".

[37] See also High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration, para. A9d)i) .

[38] 6th Annual Report of the Committee of Ministers 2012 on the supervision of the execution of judgments and decisions of the Court. See also PACE doc 12455, "Implementation of judgments of the European Court of Human Rights", report of the Committee on Legal Affairs and Human Rights, 20 December 2010.

[39] *Nachova and Others v. Bulgaria* [GC], judgment of 6 July 2005, Enhanced supervision; *Bekos and Koutropoulos v. Greece,* judgment of 13 December 2005 and *Petropoulou-Tsakiris v. Greece* , judgment of 6 December 2007*; Barbu Anghelescu v. Romania* and other similar cases, judgments of 5 October 2010, Enhanced supervision; *Moldovan and Others v. Romania*, judgment of 5 July 2005, Enhanced supervision.

[40] *Ülke v. Turkey* and other similar cases, judgment of 24 January 2006, Enhanced supervision.

[41] *Incal v. Turkey*, judgment of 9 June 1998, Enhanced supervision.

- freedom of assembly and association (ban on parades[42]; refusal to register or dissolution of associations[43])
- right to education (discrimination against Roma children)[44]
- electoral rights (discrimination of persons of Roma and Jewish origin)[45]

30. The encountered delay by some countries in the execution of certain judgments often disclose the existence of major systematic or structural problems at the domestic level[46] and usually generating a significant number of repetitive cases. The CDDH recalls that the Interlaken Declaration, followed by the Izmir and Brighton Declarations, specify that priority should be given to full and expeditious compliance with the Court's judgments.[47] Member states should in principle take into account the case-law of the Court and also draw from the conclusions of Convention violations by other states, where the same problem of principle exists within their own legal system[48]. The CDDH notes that its on-going work on the reform of the Court includes several items that will have an impact on the implementation on human rights in culturally diverse societies, notably *i.* guidance to member states on how to avoid repetitive cases; and *ii.* whether more effective measures are needed in respect of states that fail to implement Court judgments in a timely manner.

5. HUMAN RIGHTS TRAINING AND EDUCATION

31. A major building block of systematic work on human rights implementation is human rights education, training and awareness-raising.[49] Increased awareness of the Convention standards is ensured through training of officials working in the justice system, responsible for law enforcement or responsible for the deprivation of a person's liberty.[50] Similarly, in order to ensure the effective protection of social rights in domestic courts there is a need to train judges, lawyers and civil servants to ensure that they apply the law, as far as social rights are concerned.[51] There is also a need to ensure that human rights training is provided at all levels – central, regional and local.[52]

32. Intercultural education is essential for the promotion of cohesive democratic societies in which human rights and diversity are respected.[53] This is all the more so in the context of crisis currently experienced by Europe and the many challenges which it has to face, particularly the disturbing upsurge of racism, intolerance and extremism.[54] The CDDH recalls that when concluding their thematic debate in 2012 on the question "*Living together implies having a level of common competences as regards intercultural and democratic dialogue, as well as a system of attitudes, behaviour and common values. Can these be taught?*" the Ministers' Deputies were not in favour of drafting a new legal instrument on the matter although they considered that the Council of Europe should play a leading role in respect of intercultural

[42] *Alekseyev v. Russia*, judgment of 11 April 2011, Enhanced supervision.
[43] *Bekir-Outra v. Greece* and other similar cases, judgment of 11 January 2008, Enhanced supervision; *Association of Citizens Radko and Paunkovski v. the former Yugoslav Republic of Macedonia*, judgment of 15 January 2009, Enhanced supervision.
[44] *D. H. and Others v. the Czech Republic*, judgment of 13 November 200, Enhanced supervision; *Oršuš and Others v. Croatia*, judgment of 16 March 2010.
[45] *Sejdić and Finci v. Bosnia and Herzegovina*, judgment of 22 December 2006, Enhanced supervision.
[46] Judgments disclosing major structural and/or complex problems as identified by the Court and/or by the Committee of Ministers deserve increased efficiency under what is called "enhanced supervision".
[47] Interlaken Declaration, para 7, and its Action Plan, para 5.
[48] Interlaken Action Plan, para 4c
[49] Support to training on the Convention standards is provided to member states through the European Programme for Human Rights Education for Legal Professionals (HELP Programme).
[50] Izmir Declaration, Follow-up Plan, para. B1c ; Brighton Declaration, para A 9 v) and vi).
[51] Allocation by Mr Mevlüt ÇAVUŞOĞLU, President of the Parliamentary Assembly of the Council of Europe, at the ceremony of 50th anniversary of the European Social Charter on 18 October 2011.
[52] For example see above para. 14 on the findings of ACFC in this respect.
[53] The Council of Europe has for many years been active in promoting the intercultural dimension in education, for example through the development of intercultural competencies as a core element of school curricula and by organising ad by supporting mobility-related and intercultural learning projects for and with young people.
[54] Summing up of the Committee of Ministers' thematic debate in June 2012 on the question "Living together implies having a level of common competences as regards intercultural and democratic dialogue, as well as a system of attitudes, behaviour and common values. Can these be taught?", document DD(2012)620.

education. They supported nevertheless the collection and dissemination of national experience and good practices in this field.

33. Moreover, the CDDH considers it essential that human rights education use concrete and accessible language and employ participatory learning methods. Guidelines and recommendations from intergovernmental or expert bodies may serve as a good basis for human rights training and education. These instruments should also be translated into the language(s) of as many member states as possible. Also, the CDDH manuals in the field of human rights in culturally diverse societies, namely the manuals on "hate speech" and the "wearing of religious symbols in public areas" as well as the earlier booklet on "conscientious objection to compulsory military service", may indeed be used for training purposes.[55] The CDDH may consider further drafting of new guidelines or updating the existing manuals, but in such case the intended recipients and the content should be thoroughly discussed and defined so as to render such documents as practical and pedagogical as possible. In addition, good practices from member states should be include, whenever feasible, to make them as concrete as possible.

6. POSSIBLE FOLLOW-UP TO PREVIOUS WORK OF THE CDDH

a) Human rights in culturally diverse societies

34. Since the international conference on "Fundamental Rights in a Pluralist Society" organised by the Netherlands' Chairmanship of the Committee of Ministers in November 2003, the CDDH, and in particular its Committee of Experts on Human Rights Development (DH-DEV), has dealt with the topic of human rights in culturally diverse societies. This work led to the holding of a second seminar in the Hague in 2008 entitled "Human Rights in culturally diverse societies – challenges and perspectives". As a follow-up to the seminar the DH-DEV prepared a draft declaration on human rights in culturally diverse societies which the CDDH transmit to the Committee of Ministers who adopted it on 1 July 2009. When the DH-DEV proposed to the CDDH the elaboration of a political declaration on the topic it was understood that this would not exclude the drawing up of guidelines or a recommendation at a later stage.

35. Any new instrument could stress the fact that cultural diversity is a growing phenomenon that remains a reality of European societies of today. The Court has stated that diversity should not be perceived as a threat but as a source of enrichment[56]. The Framework Convention on the Protection of National Minorities also refers to this in its preamble. Moreover, the positive aspect of creating a diverse workforce offering employers an unlimited pool of talents - the basis of any successful business - was stressed by ECRI in 2012 in its General Policy Recommendation No. 14 on combating racism and racial discrimination in employment. A new instrument could take into account the development of the concept of "reasonable accommodations" in cultural and religious matters[57], a concept applied by the Court[58] and explicitly referred to in its recent case-law[59]. Any possible work in this field could take into

[55] In particular the Manual on hate speech is frequently used for conference and training seminars. Recently it served as a background document for the Conference in Budapest in November 2012 on "Tackling online hate speech" and at the preceding training course for online activists from across Europe on identifying and countering hate speech. The manual was also distributed at the seminar in October 2012 in Strasbourg to prepare for the launching of the Youth Campaign on hate speech. Furthermore the Manual was included among the background documents for the Conference "Right-wing Extremism and Hate Crime: Minorities in Europe and Beyond," organised by the Norwegian Ministry of Foreign Affairs, and funded by EEA grant and Norway grants (Oslo, 14-15 May 2013).

[56] *Timishev v. Russia*, para. 56.

[57] E. BRIBOSIA, J. RINGELHEIM and I. RORIVE, "Reasonable Accommodations for Religious Minorities: A Promising Concept for European Antidiscrimination Law", 17 MJ (2010), p. 154; M. ELÓSEGUI ITXAS: "El Concepto jurisprudencial de Acomodamiento Razonable: El Tribunal Supremo de Canadá y el Tribunal Europeo de Derechos Humanos ante la Gestión de la Diversidad Cultural y Religiosa en el Espacio Público" (The concept of reasonable accommodations in the case-law: the Supreme Court of Canada and the European Court of Human Rights concerning the management of cultural and religious diversity in public spaces) (2013).

[58] It follows that the state may, under certain circumstances, be under an obligation to allow for a differential treatment to ensure in fact equal enjoyment of rights by all individuals. This may require the introduction of appropriate exceptions to a general norm to accommodate for diversity. In *Bayatyan v. Armenia* from 2011 the Court stated that respect on the part of the state towards the beliefs of a minority religious group by providing them with alternative opportunity in accordance with their conscience might, far from creating unjust inequalities or discrimination, ensure cohesive and stable pluralism and promote religious harmony and tolerance in

account the results of the study on cultural and religious diversity of contemporary societies conducted within the Directorate General of Social Cohesion of the Council of Europe.[60]

36. On the other hand, a new instrument could recall that human rights is the basis for democratic societies and must not be set aside due to cultural or religious practices and customs amounting to human rights abuses, such as forced marriages, so-called "honour crimes"[61] or genital mutilations[62]. A necessary condition for respect of diversity is respect for human rights, the rule of law and democratic principles. Cultural or religious practices or traditions cannot be invoked to prevent individuals from exercising their basic rights or from participating actively in the society. This is particularly important regarding the prohibition of gender-based or other forms of discrimination, the rights and interests of children, and the freedom to practice or not to practice a particular religion.

37. Any new instrument on human rights in culturally diverse societies could also refer to the principles emerging from the Court's case-law on the prohibition of discrimination[63], as set out in Article 14 of the Convention and in its Protocol 12, which includes both direct and indirect discrimination[64]. Also the Revised European Social Charter includes a transversal provision on non-discrimination, Article E. This might encourage member states, which have not already done so, to sign and ratify Protocol 12 to the Convention and the Revised European Social Charter.

38. It might be worth noting that to ensure effective protection against discrimination the European Court applies in its case-law the principle of sharing of the burden of proof.[65] This principle is also referred to in ECRI's General Policy Recommendation No. 7.[66] Furthermore, the EU Directives on non-discrimination provide explicitly for a sharing of the burden of proof[67]. This means that if a person claims to have been discriminated against, it falls to the defendant to show that he or she did not discriminate unlawfully against the person.[68]

39. At the same time a possible new instrument on human rights in culturally diverse societies could also refer to the relatively new concept of multiple discrimination (e.g. on gender and religious

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society. In the case of *Cha'are Shalom Ve Tsedek v. France* from 2011 the Court also recognised that the fact of establishing exceptions to certain provisions of general application on the basis of a religious difference may constitute a measure adopted by the state to ensure effective respect for freedom of religion.

[59] In a dissenting opinion, in the case of *Francesco Sessa v. Italy* from 2004, three out of seven judges estimated that a reasonable accommodation to defer the audience on a non-religious festival day would have been more appropriate. The dissenting judges considered that although an adjournment of the hearing might have given rise to certain administrative inconveniences such as, for example, the need to notify the parties involved of a new date this would be the price to pay if freedom of religion were to be respected in a multi-cultural society. In the recent case *Eweida and Others v. the United Kingdom* from 2013 explicit reference was made to the term "reasonable accommodations", para. 48.

[60] The result of this research is contained in the publication entitled "Institutional accommodation and the citizen: legal and political interaction in a pluralist society", December 2009.

[61] See examples of honour-based crimes in study on "Crimes of the Community – honoured-based violence in the UK" by James BRANDON and Salam HAFEZ, Centre for Social Cohesion, 2008.

[62] The UN General Assembly adopted for the first time, in December 2012, a resolution aimed at ending female genital mutilation, A/RES/67/146 "Intensifying global efforts for the elimination of female genital mutilations".

[63] As indicated in the case Sander v. the United Kingdom from 2000, in the context of culturally diverse societies the eradication of racism has become a common priority goal for all Contracting States. In *Nachova and Others v. Bulgaria* from 2005 the Court established a clear link between combating racism and promoting a vision of a democratic society based on respect for diversity. Based on the premises that "racial discrimination is a particularly invidious kind of discrimination"[63] and that "racial violence is a particular affront to human dignity"[63], it requires "special vigilance and a vigorous reaction as stated by the Court in the latter case and in the case *Timishev v. Russia* from 2005.

[64] *Thlimmenos v. Greece* [GC], judgment of 6 April 2000, para. 44.

[65] See for example *Nachova and Others v. Bulgaria ,* para. 147*; Timishev v. Russia*, para. 39. In *D.H. and Others v. the Czech Republic* from 2007 the Court established explicitly that intent was not a requirement in cases of indirect discrimination and that an allegation of indirect discrimination shifts the burden of proof to the state.

[66] ECRI's GPR No. 7 para. 11 and explanatory memorandum para. 29

[67] Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin, Art. 8; Directive 2000/78/EC on equal treatment in employment and occupation, Art. 10. Also applied in the context of gender equality, Directive 2006/54/EC, Art. 19.

[68] It appears however from a Legal Seminar on 4 October 2011 "Approaches to Equality and Non-discrimination Legislation inside and outside the EU" that a minority of EU member states have not yet transposed the Directives' provision in a fully compliant way into their legislation and the practical implement of the sharing of the burden of proof is not always consistent, Discussion Paper - Workshop 4: *Burden of Proof*.

grounds)[69] which is of interest when a person may not succeed in establishing discrimination solely on one single ground but only when combining two or more grounds.

40. Furthermore an appendix could be added to a possible new instrument with good examples from member states such as the development of national human rights action plans which either through a comprehensive or a specific plan would ensure the implementation of human rights in culturally diverse societies.[70]

41. Any work in this field should take into account the "The Ljubljana Guidelines on integration of diverse societies" published by the OSCE in November 2012. While so far the emphasis of the OSCE's work has been on the specific *rights* of minorities, these guidelines emphasise the need to *integrate* minorities into society and also outline the responsibility of the overall society and minority communities.

42. A possible new Council of Europe instrument should however avoid any duplication of the 2011 Handbook on European non-discrimination law elaborated by the European Union Agency for Fundamental Rights (FRA), in co-operation with the European Court of Human Rights. Nor should a new instrument duplicate any of the relevant general policy recommendations of ECRI and thematic commentaries of the ACFC.

43. Further work on human rights in culturally diverse societies could constitute a useful contribution to the Council of Europe's follow-up work to the 2011 report of the Group of Eminent Persons *Living together – Combining diversity and freedom in 21st–century Europe*. It should take into account the guiding principles at the beginning of part two of the Group's report which constitute a sort of handbook for diversity (see also above para. 5). Account should also be taken of the "Living Together Handbook"[71] from 2009 on Council of Europe standards on media's contribution to social cohesion, intercultural dialogue, understanding, tolerance and democratic participation.

b) Hate speech: limits to freedom of expression

44. At present there is no universally accepted definition of the term "hate speech", despite its frequent usage. Only the Committee of Ministers' Recommendation 97(20) provides a simple definition of hate speech[72]. Though most states have adopted legislation banning expressions amounting to "hate speech", definitions differ slightly when determining what is being banned (see also above paragraph 12 on ECRI and hate speech). However as stated at the Council of Europe Conference in Budapest in November 2012 on "Tackling on-line hate speech" there is no transatlantic consensus on the delegitimation of "hate speech" and there are also differences between Council of Europe member states themselves. Moreover

[69] Although the concept of multiple discrimination has not yet achieved a distinct legal status, the challenges it poses to civil society are recognised among political institutions and civil society organisations (e.g. the Parliamentary Assembly in *Resolution 1887 (2012) on multiple discrimination against Muslim women in Europe: for equal opportunities*). While existing EU directives relating to equality do not expressly oblige EU member states to treat multiple discrimination as a distinct category of discrimination, the concept is covered by secondary EU law. The Racial Equality Directive and the Employment Equality Directive recognise it as a conceptual and factual reality. Furthermore, a legal definition of multiple discrimination would enter into EU law should the European Parliament accept proposed amendments to the *draft Horizontal Directive prohibiting discrimination beyond employment on the grounds of sexual orientation, age, disability and religion or belief.*

[70] Several member states have adopted comprehensive human rights action plans (Azerbaijan, Croatia, Finland, Lithuania, Norway, Moldova, Spain, Sweden…. Greece is expected to adopt a plan in 2013). Such plans can either be developed at the governmental level or at the NHRI level as it is the case in Scotland which currently is in the process of drawing up a plan for the end of 2013. The Commissioner for Human Rights has underlined the importance of coordinating human rights planning with the budgetary process to secure proper funding, Speech by Thomas HAMMERBERG at the Conference on the Prevention of Human Rights Violations "Prevent violations through systematic work for human rights" (Kyiv, 20-21 September 2011) CommDH/Speech(2011)10. On this aspect see also the report of Commissioner, Nils MUIŽNIEKS, on his visit to Finland in June 2012, CommDH(2012)27.

[71] The handbook also includes a section on "Hate speech and racism".

[72] According to the resolution "the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin." In this sense, "hate speech" covers comments which are necessarily directed against a person or a particular group of persons. The term is also found in European case-law, although the Court has never given a precise definition of it. The Court simply refers in some of its judgments to "all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)."

some Council of Europe member states have made reservations and declarations in respect of Article 4 of the International Convention on the Elimination of All forms of Racial Discrimination, referring to the conciliation of the obligations imposed by this article with the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association.[73]

45. In this context, the DH-DEV studied in the past issues related to freedom of expression and in particular the balancing of this right with other convention rights.[74] While focusing on hate speech the Committee prepared a report which was appended to its activity report on human rights in a multicultural society. This work led to the publication of the Manual on hate speech by Anne WEBER commissioned by the CDDH in 2008.

46. The concept of hate speech, in relation to racial violence or as opposed to permissible criticism of a religion is still very much an issue of conflict in culturally diverse societies. The Manual on hate speech contains a chapter on the special case of attacks on religious beliefs. Speeches of a religious nature hold a special place in the European case-law since the Court traditionally grants states a wide margin of appreciation in this area. For this reason there could be a need for providing guidance to member states on this matter.

47. In 2008 the Venice Commission adopted a report "on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred" which provides an extensive comparative analysis of the legislation of the Council of Europe member states on these offences as well as conclusions and recommendations as to whether there is a need for specific supplementary legislation in this area, whether criminal legislation is adequate or effective for the purpose of bringing in the appropriate balance between the right of freedom of expression and the right to respect for one's beliefs and whether there are alternatives to criminal sanctions. This Venice Commission's report should be taken into account in any further work on this topic.

48. The CDDH could consider providing further guidance on how to find a proper balance between freedom of expression and protection against hate speech and in particular how to reconcile prohibition of discrimination with freedom of expression (including in the media) and freedom of religion. To this end, the CDDH could consider drawing up guidelines or a recommendation, taking notably into account the Venice Commission's conclusions, or updating the Manual on hate speech[75]. The aim of a new instrument would be to clarify the concept of hate speech and provide guidance to policy makers, experts and society on the criteria followed by the Court in its case-law relating to the right of freedom of expression.

49. Possible work by the CDDH on the above issues would represent a useful contribution to the on-going Council of Europe Youth Campaign on hate speech on-line and any follow-up work thereto[76]. The report of the Eminent Persons also referred to a growing number of Internet users who are abusing the Web to spread racist or xenophobic propaganda, and to incite others to hatred and violence – to such an extent that the Internet has now become probably the most powerful dissemination tool for hate

[73] See in particular the reservations or declarations made by Austria, Belgium, Ireland, Italy and the United Kingdom, which emphasize the importance attached to the fact that Article 4 provides that the measures laid down in subparagraphs (a), (b) and (c) should be adopted with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights that are expressly set forth in Article 5 of the Convention.

[74] The seminar in The Hague in 2008 examined the question of the "How to find a proper balance between freedom of expression and protection against 'hate speech'?"

[75] An updated version of the manual include the recent case law e.g. *Féret v. Belgium*, judgment of 16 July 2009; *Aksu v. Turkey* [GC], judgment of 13 March 2012; *Hizb Ut-Tahrir and Others v. Germany*, admissibility decision of 12 June 2012. It could add a useful executive summary with the principles emerging from the Court's case-law and expand the appendix with more examples of national measures and initiatives.

[76] The Council of Europe's Youth Campaign against Hate Speech Online launched in March 2013 aims at raising awareness of the phenomenon and will run over two years. The focus of the Campaign will be on equipping young people and youth organisations to act against hate speech. It will not focus on legislating against it but on supporting human rights training. At the Conference in Budapest in November 2012 on "Tackling on-line hate speech" it was concluded that once the youth campaign was over, the Council of Europe should play a sustained role as co-ordinator of the wider campaigning effort against hate speech online.

speech and creating fear[77]. ECRI and ACFC as well as the Commissioner for Human Rights have found that hate speech is a growing phenomenon in Europe which is difficult to tackle. The CDDH agrees that there is in principle no difference between hate speech on- and offline and consequently no need for specific legal standards on the matter whereas education and training on the use of internet in a manner compatible with human rights is of utmost importance[78]. Any risk of overlapping with the activities conducted under the "Internet Governance 2012-2015 Council of Europe Strategy" should of course be avoided.

50. Any possible further work on this issue could also take into account the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, adopted in October 2012 as a follow up to a series of expert seminars, in 2008 and 2011, on Articles 19 and 20 of the International Covenant on Civil and Political Rights. Account should also be taken of the EU initiative to prepare "Guidelines on freedom of expression online and offline, including the protection of bloggers and journalists" which is scheduled to begin in 2013.

c) Freedom of thought, conscience and religion

51. The DH-DEV studied issues related to freedom of religion, focusing notably on the wearing of religious symbols in public areas. This work led to the publication of a manual on the topic prepared by Malcolm D. EVANS. The report draws on the DH-DEV activity report on "Human rights in a multicultural society"[79], to which was attached an appendix on the wearing of religious symbols in public areas.

52. Although the Court's case-law in this area has evolved[80] there is still no consensus on this question at the European level. However the question of the wearing of religious symbols in public areas is only a limited area within the broader theme of freedom of religion. The CDDH could consider the need for further work on freedom of thought, conscience and religion in particular in the light of the conclusions of the Committee of Ministers' thematic debate on freedom of religion and religious minorities in December 2012. It agrees with the Ministers' Deputies that it would be useful as a first step to prepare a concise document containing a compilation of existing Council of Europe standards in this field. Such an action would be fully in line with the readiness of the Organisation to offer its expertise in the field of the protection of the freedom of thought, conscience and religion and share its experience in fostering standards of protection of persons belonging to religious minorities.[81]

53. Any work in this field should take into account the Guidelines for Review of Legislation Pertaining to Religion or Belief prepared by the Venice Commission and the OSCE/ODIHR in 2004, which are currently under revision, as well as the Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools prepared by the OSCE/ODIHR in 2007. It should also take into account the work recently undertaken by the EU to finalise the "Guidelines on the Promotion and Protection of Freedom of Religion and Belief".[82] It should therefore be recommended to undertake any work in this field only once such work, and in particular the revision of the Venice Commission and OSCE/ODIHR guidelines, is completed, in order to fully take it into account.

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[77] In 2012 the European Union Fundamental Rights Agency (FRA) published a report on "Minorities as Victims of Crime" which shows that hate crime is an everyday reality across the EU.
[78] Conclusion of the Budapest conference.
[79] Document DH-DEV(2007)002.
[80] For example *Ahmet Arslan and Others v. Turkey*, judgment of 22 February 2010; *Lautsi v. Italy [GC]*, judgment of 18 March 2011; *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013.
[81] This was also stated in the Committee of Ministers' reply, adopted at the 1121st meeting of the Ministers' Deputies (21 September 2011), to PACE Recommendation 1957 (2011) on violence against Christians in the Middle East, para. 3.
[82] As with other EU guidelines, the Guidelines on freedom of religion and belief are not binding and serve as a practical tool to help EU representations in the field better advance its human rights policy. They are based on international standards adopted at the UN level and make reference to Article 9 of the Convention and to other Council of Europe standards. According to the Guidelines adopted on 24 June 2013 the EU will promote freedom of religion and belief at the level of the OSCE and the Council of Europe, paras 65 and 68. Furthermore the European External Action Service, in coordination with member states and in cooperation with civil society, will develop training materials by the end of 2013, para. 67.

d) Freedom of assembly and association

54. The Hague Conference in 2008 examined the question of "exercise of the rights to freedom of association and peaceful assembly by persons and groups with varied identities: how to ensure proper public participation?" and concluded that there is a lack of implementation of principles on freedom of assembly and association by national and local authorities which are essential vehicles for participation. The report on the execution of the judgments of the European Court of Human Rights in 2012 shows that this is still the case (see above paragraph 30).[83]

55. Any future work on human rights in culturally diverse societies could include issues on freedom of assembly and association which are important rights ensuring dialogue between the national authorities and civil society, participation of minorities and self-identification, all crucial elements for promoting pluralism and democracy.[84]

56. Account would need to be taken to the "Guidelines on Freedom of Assembly" prepared by the OSCE/ODIHR in consultation with the Venice Commission and updated in 2010 as well as the "Handbook on Monitoring Freedom of Peaceful Assembly" published by OSCE/ODIHR in September 2011. Attention should also be paid to possible further work of the Venice Commission and OSCE/ODIHR on the preparation of Joint Guidelines on Freedom of Association.

7. CONCLUSIONS AND RECOMMENDATIONS

57. As laid out above in paragraph 5, the problem is not lack of existing human rights standards in the field of culturally diverse societies, but the fact that they are not effectively implemented and enforced. The CDDH therefore considers, first and foremost, that any further action in the field of human rights in culturally diverse society should take into account that the main matter of concern in this area is the insufficient implementation of existing standards and of the findings of relevant monitoring bodies. For this reason, it welcomes on-going discussion in the Committee of Ministers on the Secretary General's proposals on ways to improve the impact of the Council of Europe monitoring bodies. The CDDH considers, therefore, that further intergovernmental work in the field of human rights in culturally diverse societies should be based on the aforementioned considerations and aim at providing further guidance in the implementation of existing standards and findings.

General guidance

58. Should the Committee of Ministers consider that such action should address the topic of human rights in culturally diverse societies in general, it may envisage the elaboration of general guidelines on the promotion and protection of human rights in culturally diverse societies, with a possible specific focus on the issues related to human rights education and training, or of a more practical instrument such as a handbook presenting principles and their application through good practices.

59. These initiatives could serve as a basis and source of inspiration for member states in their efforts to take legislative or other measures, and could be accompanied by an encouragement to the organisation of assistance and capacity-building activities in member states to facilitate the implementation of relevant instruments and recommendations by monitoring bodies. They would contribute to the work on intercultural dialogue and integration issues, which is currently being undertaken within the Council of Europe and beyond.

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[83] The former Commissioner for Human Rights, Thomas HAMMERBERG has also in 2010 expressed concern of the violation of the right to freedom of assembly and association "Pride events are still hindered – this violates freedom of assembly" (Viewpoint of 2 June 2010); "Freedom to demonstrate is a human right – even when the message is critical" (Viewpoint of 26 October 2010).

[84] In June 2012 the UN Special Rapporteur on Freedom of Assembly and Association presented his first thematic report on "Best practices that promote and protect the rights to freedom of peaceful assembly and of association". He has also undertaken his first country visit to Georgia and the second visit will be to the United Kingdom. It would seem too early to draw any conclusions from the work of the UN Special Rapporteur yet.

Specific guidance

60. As an alternative, the Committee of Ministers could consider focusing on specific areas within the vast field of human rights in culturally diverse societies such as the following:

a) Freedom of thought, conscience and religion

61. In line with the proposals made during the thematic debate in the Committee of Ministers on freedom of religion and religious minorities, the Committee of Ministers could consider preparing a document compiling the existing Council of Europe standards relating to the principles of freedom of thought, conscience and religion and the link to other convention rights, in particular freedom of expression. It may also provide guidance as to the development of the concept of "reasonable accommodations" in cultural and religious matters. A compendium of good practices applied in the member states could be supplemented to this document. Such work would serve as a good basis for determining whether there is a need for further standards in this field. Any initiative in this area should however take into account and contribute to the visibility of existing and on-going work in the Council of Europe, particularly by the Venice Commission.

b) Freedom of expression and hate speech

62. As a lower priority, in the light of the increase of hate speech exacerbated by the development of new communication technologies allowing for broader dissemination, the Committee of Ministers could consider the elaboration of guidelines or of a new recommendation on the issue of hate speech, or updating the 2008 Manual on hate speech in the light of new challenges. Such work would take into account the new case law on the matter and could contribute to the on-going Council of Europe activities on hate speech. This activity would have a lower degree of priority than the former.