



Strasbourg, 29 October 2015

CDDH-DC(2015)R5

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

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**DRAFTING GROUP ON HUMAN RIGHTS IN CULTURALLY DIVERSE SOCIETIES  
(CDDH-DC)**

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**Report**

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5<sup>th</sup> meeting  
27-29 October 2015

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**Item 1: Opening of the meeting and adoption of the draft agenda**

1. The CDDH Drafting Group on Human Rights in Culturally Diverse Societies (CDDH-DC) held its fifth meeting in Strasbourg from 27 to 29 October 2015. The Chairperson Ms Krista OINONEN (Finland) opened the meeting and welcomed the participants. The list of participants is contained in [Appendix I](#). The agenda as adopted appears in [Appendix II](#).

**Item 2: Keynote speech: Dr. Dorota Anna GOZDECKA, Lecturer, Senior Fellowship of the Higher Education Academy, Migration Law Program, Australian National University College of Law, Canberra (Australia), Project Director “Law and the Other in Post-Multicultural Europe”, Faculty of Law, University of Helsinki (Finland)**

2. Dr. Dorota Anna GOZDECKA presented under the heading “Challenges to culturally diverse societies in Europe” the results of her research work on accommodation of cultural and religious diversity which recently had led to the publication “Europe at the Edge of Pluralism”. She described the theory behind some of the issues examined by the Group and explained the practical implications. Her presentation gave rise to a lively exchange of views during which some of the concepts included in the guidelines were further explored. The Group thanked Dr Gozdecka for her relevant presentation.

**Item 3: Discussion on the finalisation of draft guidelines of the Committee of Ministers to member States on the promotion and protection of human rights in culturally diverse societies**

3. The Group examined the new text of the draft guidelines which had been revised in the light of the discussions at the last meeting in September as well as the comments submitted prior to that meeting. The Group made a number of changes to the text both with regard to the structure and the content of the guidelines (see Appendix III).

4. It also took into account the comments provided by the Gender Equality Division in the light of the Council of Europe Gender Equality Strategy 2014-2017.

5. The Group agreed to ask the Secretariat, under the supervision of the Chair, to prepare a consolidated final version of the draft guidelines by 9 November 2015 and to send it to all CDDH representatives as well as to the relevant Council of Europe bodies for comments by 16 November 2015.

6. At its next and last meeting (23-25 November 2015), the Group agreed to devote its first day to a last examination of the draft guidelines in the light of the comments received, it being understood that the rest of the meeting would be dedicated to the examination of the draft explanatory memorandum.

**Item 4: Discussion on the preparation of a draft explanatory memorandum to the guidelines of the Committee of Ministers to member States on the promotion and protection of human rights in culturally diverse societies**

7. During the examination of the draft guidelines the Group identified issues to be included in the draft explanatory memorandum. It agreed to devote most of its forthcoming meeting to an examination of the draft explanatory memorandum which the Secretariat was asked to update in the light of the changes made to the draft guidelines.

**Item 5: Adoption of the meeting report**

8. The Group adopted the provisional text of the meeting report.

**APPENDIX I****LIST OF PARTICIPANTS****BELGIUM / BELGIQUE**

Nina GALLE, Attaché, FOD Justitie Directoraat-generaal Wetgeving, Fundamentele Rechten en Vrijheden

**CROATIA / CROATIE**

Romana KUZMANIĆ OLUIĆ, Counsellor, Ministry of Foreign and European Affairs

**CZECH REPUBLIC / REPUBLIQUE TCHÈQUE**

Martin BOUČEK, Human Rights and Transition Policy Department, Ministry of Foreign Affairs

**FINLAND / FINLANDE**

Krista OINONEN (Chair/Présidente), Legal Counsellor, Deputy Director, Unit for Human Rights Courts and Conventions, Legal Service, Ministry for Foreign Affairs

**FRANCE** (Apologised - Excusé)**GREECE / GRÈCE**

Sofia KASTRANTA, Dep. Legal Adviser, Ministry of Foreign Affairs

**THE NETHERLANDS / PAYS BAS**

Monique STEIJNS, Ministry of Internal Affairs

**NORWAY / NORVEGE**

Liv Inger GABRIELSEN, Higher Executive Officer, the Legislation Department, Ministry of Justice and Public Security

**POLAND / POLOGNE**

Eliza SUCHOŹEBRSKA, Government Co-Agent of Poland before the European Court of Human Rights, Department of Proceedings before International Human Rights Protection Bodies, Ministry of Foreign Affairs

**PORTUGAL**

Paulo MARRECCAS FERREIRA, Juriste au Bureau de Documentation et de Droit Comparé de l'Office du Procureur Général de la République

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Maria ORESHINA, Second Secretary, Department for humanitarian cooperation and human rights, Ministry of Foreign Affairs

**SLOVAK REPUBLIC/REPUBLIQUE DE SLOVAQUIE**

Branislav KADLEČIK, generálny štátny radca / General State Counsellor, Ministerstvo spravodlivosti SR, Ministry of Justice

**SPAIN / ESPAGNE**

Oscar SÁENZ DE SANTA MARÍA GÓMEZ-MAMPASO, Head Senior State Attorney at the Ministry of

**SWITZERLAND / SUISSE**

Dominique STEIGER LEUBA, Collaboratrice scientifique, Département fédéral de justice et police, Office fédéral de la justice

**TURKEY / TURQUIE**

Muhammed Mustafa COŞAR, Rapporteur Judge, Ministry of Justice

Nuri UZUN, Rapporteur Judge, Ministry of Justice

Ayşen EMÜLER, Experte Juridique – Ministère des Affaires Etrangères, Représentation Permanente de la Turquie auprès du Conseil de

**UNITED KINGDOM / ROYAUME UNI**

Ekim BIREROGLU, Council of Europe Human Rights Policy | Ministry of Justice

**UKRAINE**

Larysa DIR, Director of the Ukrainians Worldwide, Cultural and Humanitarian Cooperation Department, Ministry of Foreign Affairs

**KEYNOTE SPEAKER**

Dr Dorota Anna GOZDECKA, Lecturer, SFHEA, ANU College of Law, Migration Law Program Australia

**OBSERVERS/OBSERVATEURS**

**HOLY SEE / SAINT SIEGE**

Mgr Paolo RUDELLI, Mission permanente du Saint-Siège auprès du Conseil de l'Europe

**MEXICO / MEXIQUE**

Diego SANDOVAL PIMENTEL, Deputy Permanent Observer, Permanent Mission of Mexico to the Council of Europe

**Conference of european Churches (CEC) / Conférence des églises européennes (KEK)**

Maria POMAZKOVA , LL.M., Legal Consultant on Human Rights issues

**Conference of INGOs of the Council of Europe / Conférence des OING du Conseil de l'Europe**

Jean-Bernard MARIE

**SECRETARIAT**

**DG I – Human Rights and Rule of Law / Droits de l’Homme et Etat de droit  
Council of Europe / Conseil de l’Europe**

Alfonso DE SALAS, Secretary to the CDDH / Secrétaire du CDDH, Head of Division / Chef de Division,  
Human Rights Intergovernmental Cooperation Division / Division de la coopération  
intergouvernementale en matière de droits de l’Homme

Merete BJERREGAARD, Administrator / Administratrice, Human Rights Intergovernmental  
Cooperation Division / Division de la coopération intergouvernementale en matière de droits de  
l’Homme, *Secretary of the CDDH-DC / Secrétaire du CDDH-DC*

Corinne GAVRILOVIC, Assistant/Assistante  
Human Rights Intergovernmental Cooperation Division / Division de la coopération  
intergouvernementale en matière de droits de l’Homme

**INTERPRETERS / INTERPRÈTES**

Rémy JAIN  
Lucie DE BURLET  
Isabelle MARCHINI

## APPENDIX II

## AGENDA

**Item 1: Opening of the meeting and adoption of the agenda**

**Item 2: Keynote speech: Dr. Dorota Anna GOZDECKA, Lecturer, Senior Fellowship of the Higher Education Academy, Migration Law Program, Australian National University College of Law, Canberra (Australia), Project Director “Law and the Other in Post-Multicultural Europe”, Faculty of Law, University of Helsinki (Finland)**

**Discussion on the finalisation of draft guidelines of the Committee of Ministers to member States on the promotion and protection of human rights in culturally diverse societies**

<b><u>Reference documents</u></b>	
Report of the 4 <sup>th</sup> meeting of the CDDH-DC, 8-10 September 2015	CDDH-DC(2015)R4
<b><u>Working documents</u></b>	
Draft guidelines on the promotion and protection of human rights in culturally diverse societies, prepared by the CDDH-DC	CDDH-DC(2015)05Rev3
<b><u>Information document</u></b>	
Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights	CDDH(2015)R83 Addendum

**Item 3: Discussion on the preparation of a draft explanatory memorandum to the guidelines of the Committee of Ministers to member States on the promotion and protection of human rights in culturally diverse societies**

<b><u>Reference documents</u></b>	
Report of the 4 <sup>th</sup> meeting of the CDDH-DC, 8-10 September 2015	CDDH-DC(2015)R4
<b><u>Working document</u></b>	
Elements for preparing a draft explanatory memorandum to the guidelines on the promotion and protection of human rights in culturally diverse societies, prepared by the Secretariat	CDDH-DC(2015)07Rev
Comments received from CDDH-DC members and member States	CDDH-DC(2015)10
<b><u>Information document</u></b>	

Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights	CDDH(2015)R83 Addendum
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**Item 4: Adoption of the meeting report**

**Item 5: Organisation of the work for the next meeting, 23-25 November 2015**

**Item 6: Other business**



## APPENDIX III

## DRAFT GUIDELINES AS REVISED DURING THIS MEETING

**DRAFT**  
**GUIDELINES OF THE COMMITTEE OF MINISTERS TO MEMBER STATES**  
**ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**  
**IN CULTURALLY DIVERSE SOCIETIES**

*[Preamble]*

[i.] The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

[ii.] Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting common standards and developing actions in the field of human rights;

[...] **Recalling the member states' obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the ~~Convention for the Protection of Human Rights and Fundamental Freedoms~~ European Convention on Human Rights (1950, hereinafter "the Convention") and its Protocols, and their obligations arising, as far as they have ratified them, from the European Social Charter (opened for signature in 1961 and revised in 1996, hereinafter "the Charter"), as well as from other European and international human rights instruments which are mentioned in the explanatory memorandum;**

[...] **Taking into account the relevant recommendations, resolutions and other documents of European and international organisations which are mentioned in the explanatory memorandum;**

[xiv.] ~~Recalling~~ **Reaffirming** the principle of equal dignity of all human beings from which derives the principle of equal enjoyment of human rights by all members of society;

[xv.] Reaffirming that all human rights and fundamental freedoms are universal, indivisible, and interdependent and interrelated, and their full enjoyment, without discrimination on any ground, by all members of society needs to be promoted, protected and respected;

[xvi.] Recalling that pluralism, which is one of the foundations of our democratic societies, is **also** built upon **the respect of human rights** and genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious and other beliefs, artistic, and socio-economic ideas, works and concepts ~~as far as compliance with human rights is concerned;~~

[xvii.] Conscious of the increasing cultural diversity in European societies and underlining that diversity is a source of enrichment which calls for mutual understanding and respect of **each the other**;

{xviii.] Underlining that managing cultural diversity in full respect for the principles of democracy, rule of law and human rights is a common challenge for all societies throughout Europe and beyond, ~~and that integration strategies are only effective and sustainable with appropriate~~ **account of diversity strategies in society; and that integration strategies are ineffective and unsustainable without appropriate diversity strategies;**

[xix.] Underlining that living in a democratic society entails responsibilities and duties with regard to other persons and groups;

[xx.] Being convinced that through social cohesion the capacity of society to ensure the welfare of all its members, minimising disparities and avoiding polarisation will be strengthened; **Add more elements on “social cohesion”**

[xxi.] Being aware that education, **including human rights education**, plays an essential role in preventing the rise of violence, **stigma**, racism, extremism, xenophobia, **all forms of** discrimination and intolerance;

[xxii.] adopts **the following guidelines and invite member states to:**

- **take all appropriate measures, when reviewing their relevant legislation and practice, to apply the principles set out in the guidelines** ~~inviting member states to take~~ **apply** ~~them into account when implementing binding standards of relevance for the promotion and protection of human rights in culturally diverse societies and~~

- ensure ~~that~~ the dissemination of ~~they~~ **the guidelines and the explanatory memorandum** ~~are widely disseminated~~ among all **relevant** authorities ~~responsible for their implementation~~, at the state, regional and local level, as well as to civil society;

[xxiii.] agrees to examine, within the Committee of Ministers, follow-up given by member states to the present guidelines five years after their adoption.

## **I. Purpose and scope of the guidelines**

[1.] The purpose of the present guidelines is **to provide practical advice on how** to ensure the effective implementation of the existing standards on the promotion and protection of full and equal enjoyment of all human rights and fundamental freedoms by all members of the society, and to promote respect for their inherent dignity 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 without discrimination on any grounds.

[2.] **The present guidelines and the explanatory memorandum seek to address the worrying number and magnitude of** ~~They provide practical advice on how to tackle the human rights challenges which in culturally diverse societies are nowadays facing in Europe and beyond such as ensuring equal enjoyment of human rights without discrimination, the preservation of~~ **enhancing** social cohesion and the right of vulnerable or minority groups to ~~participate in public life with a view to ensuring integration and respect for diversity, which are based on the analysis of findings by Council of Europe monitoring bodies;~~

~~[3.] Having regard to the full respect of the principle of self-identification and binding norms of personal data protection, the present guidelines serve all members of a culturally diverse society, including in particular those whose diverse identities constitute, alone or in interaction with other factors, such as perceptions and attitudes, an obstacle to the full and equal enjoyment of their human rights and fundamental freedoms and their full and effective participation in society on an equal basis.~~

### ~~III. II. Relevant general principles~~

#### *[Positive obligations]*

[14.] In ensuring their obligation to secure to everyone within their jurisdiction effective enjoyment of all human rights enshrined in the European Convention on Human Rights and its Protocols and in all other binding human rights treaties,

[15.] Member states should ensure that **respect of human rights** ~~are~~ **is** an essential basis for policies and action of public authorities as ~~well as a common value basis for relations between individuals and between groups in socially inclusive societies;~~

A state is not only under a negative obligation to refrain from interference with protected rights but in some cases it is also required to take active steps (find exact wording from caselaw)

member states, as the ultimate guarantors of the principle of pluralism, should promote equal opportunities and good relations between different groups throughout all ~~its~~ **their** policy-making and in carrying out all ~~its~~ **their** activities.

#### *[Human rights as a common basis]*

#### *[Limitations]*

[16.] In the event of an ~~exceptional~~ **particular** need to restrict (add from caselaw) full and equal enjoyment of human rights and fundamental freedoms on condition that such **restrictions** are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others, member states should strive at limiting ~~any~~ restriction to situations where the interest in question is pressing, is proportional in its magnitude to the freedom value being limited, and cannot be accomplished in some less burdensome manner.

#### *[Balancing of rights]*

[17.] Member states should strive to find a fair balance between conflicting interests resulting from the exercise of various competing human rights and fundamental freedoms.

#### *[Margin of appreciation]*

[18.] Member states are afforded a ~~wide~~ **certain** margin of appreciation in determining the steps to be taken to ensure compliance with the Convention **when they are balancing competing fundamental rights**

Look at Protocol 15 and explanatory memo

reference to a tradition cannot relieve them of their obligation to respect the rights and freedoms enshrined in the Convention and its Protocols. (religion)

Bearing in mind that Due to the diversity of approaches of States in Europe in the sphere of cultural and historical development and on the significance of religion in society (religion)

In order to determine the scope of the margin of appreciation, member states should take into account what may be at stake namely the need to maintain true pluralism, which is inherent in the concept of a democratic society.

*[Living together]*

[19.] Member states should consider the preservation of the conditions of “living together” when ensuring the protection of the rights and freedoms of others. More detail from PACE

### ✚ III.Relevant fundamental freedoms

[4.] Member states should ensure that freedom of thought, conscience, and religion, freedom of expression, freedom of assembly and association, which are among the foundations of democratic societies and instrumental for the pluralism which characterises them, are adequately and effectively guaranteed in their legal systems to all persons within their jurisdiction without discrimination on any ground and that these national provisions are properly enforced.

A. Freedom of thought, conscience and religion

~~*[Freedom of thought, conscience and religion]*~~

[5.] Member states should bear in respect that freedom of thought, conscience and religion, protected under Article 9 of the European Convention on Human Rights encompasses two components:

- the freedom of thought, conscience and religion as a matter of individual conscience (internal freedom), including the freedom to hold or not to hold or change one’s religion or belief. This freedom in its internal dimension is an absolute right and may not be limited under any circumstances.
- the freedom to manifest one’s religion or belief (external freedom), which is exercisable in community with others, in public and within the circle of those whose faith one shares, but can also be asserted alone and in private. It includes the right to manifest one’s religion or belief in worship, teaching, practice and observance. This freedom to manifest one’s religion or belief may be subject to **certain** limitations, but **only** to those which, **as are** prescribed by law, constitute necessary measures, in a democratic society, in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. These limitations must be in accordance with international standards and must be strictly interpreted.

*[Reasonable accommodation]*

[7.] **When exercising their margin of appreciation** member states ~~should~~ **are invited to** seek “reasonable accommodation” with a view to guaranteeing equality that is effective, and not merely formal, in the right to freedom of religion.<sup>1</sup>

*[Duty of neutrality and impartiality]*

~~[6.] In exercising their regulatory power in their relations with the various religions (or branches of the same religion), member states should ensure that their neutrality and impartiality remains inclusive and diversity-friendly.~~

**In exercising their regulatory power in their relations with the various religions (or branches of the same religion), member states have a duty to remain neutral and impartial should ensuring inclusiveness and diversity. This duty is incompatible with any power on their part to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed. States should refrain from taking sides in religious disputes and ensure mutual tolerance between opposing groups.**

~~*[Respect for the autonomy of religious communities]*~~ **Legal status and autonomy of religious communities**

[8.] Member states are reminded of their obligation to ensure that all religious communities which respect shared fundamental values are able to benefit from appropriate legal status **and autonomy** guaranteeing the exercise of freedom of religion.<sup>2</sup>

[9.] Member states should ensure that religious communities and their members, are able, in compliance with the **national** law, to practice their faith publicly and freely in places of worship designed for that purpose by themselves or in other places accessible to the general public, in accordance with their own rites and customs.<sup>3</sup>

*[Education of children in conformity with their parents’ religious and philosophical convictions]*

[10.] Member states should respect the right of parents to provide their children with an education in conformity with their religious and philosophical convictions

**two sentences**

while guaranteeing the fundamental right of children to education in a critical and pluralistic manner in accordance with **Article 2 of Protocol no. 1 to the European Convention on Human Rights**<sup>4</sup>;

*B. Freedom of expression*

<sup>1</sup> PACE Resolution 2036 (2015) on tackling intolerance and discrimination in Europe with a special focus on Christians, §6.2; PACE Resolution 2076 (2015) on freedom of religion and living together in a democratic society, §8.

<sup>2</sup> PACE Resolution 2076 (2015) on freedom of religion and living together in a democratic society, §12.

<sup>3</sup> PACE Resolution 2076 (2015) on freedom of religion and living together in a democratic society, §13.1.1.

<sup>4</sup> PACE Resolution 2036 (2015) on tackling intolerance and discrimination in Europe with a special focus on Christians, §6.2.3.

*[Freedom of expression]*

[11.] Freedom of expression, ~~protected by Article 10 of the European Convention on Human Rights,~~ equally constitutes one of the essential foundations of a **democratic and** pluralist society and one of the basic conditions for its progress and for the development of every human being. This right includes freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. ~~Freedom of expression is essential for the fulfilment and enjoyment of a wide range of other human rights, including the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs.~~ It is essential for the fulfilment and enjoyment of a wide range of other human rights, including the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs.

**Add what it entails**

Member states should ensure that freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that may criticise, offend, shock or disturb the state or any sector of the population. **Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.**

The exercise of the rights ~~provided for in paragraph 2 of this article~~ **of freedom of expression** carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by **national law** and are necessary **in a democratic society**: For the protection **in the interests** of national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, For respect **for the protection** of the rights or reputations of others, **for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.**

**Members states should remember that “hate speech”, 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”<sup>5</sup>.** ~~inciting to hatred, violence and discrimination against a specific individuals or groups of on any ground,~~ will not be protected under the European Convention of Human Rights **(link to Articles 15 and 17)**. **Member states should try to define hate crime and combat it.**

<i>A. Freedom of peaceful assembly and association</i>
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[12.] Freedom of peaceful assembly and association, ~~protected under Article 11 of the European Convention on Human Rights,~~ is crucial to the functioning of a **pluralist and democraeytic society** and instrumental for individuals to collectively address and resolve challenges and issues that are important to society and for the realisation enjoyment of all human rights.

[...] Member states should encourage the participation of individuals **and groups** in the democratic process through the creation of a favourable environment conducive to the work of associations and political parties in which individuals may interact freely with each other and pursue common objectives collectively.

<sup>5</sup> However, at present no internationally recognised definition of hate speech exists.

[13.] Member states should avoid unduly interfering with this freedom, and also secure its effective enjoyment even in the sphere of relations between individuals.

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Consider whether we need something on the right to respect for private and family life and self-identification

D. Equality and non-discrimination
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*More detail on discrimination (Art 14 + Protocol 12)*

~~[Equality and action against all forms of discrimination~~ **National legislation on the prohibition of discrimination]**

[20.] Member states should take ensure that their ~~constitutional and national~~ legislative systems recognise and provide ~~adequate~~ **full** and effective guarantees of the ~~right~~ **principle** to equality and the prohibition of discrimination to all members of society **and to participate on an equal basis with others in society.**

~~[Promotion of the principle of equality]~~

[21.] Member states should ensure the preservation and promotion ~~of a culturally diverse society based on the principle of~~ equality and the right of individuals to be free from all forms of discrimination on any ground.

~~[Indirect discrimination~~ **Positive action]**

[22.] Member states should take all appropriate measures to ensure a differential treatment of persons whose situations are **significantly** different including some positive action.

**(take from caselaw (DH case) and Protocol 12)**

~~[Multiple discrimination]~~

~~[23.] Member states should take effective measures to prevent multiple discrimination, particularly against the most vulnerable groups of the population whenever it occurs, for example when it concerns discrimination against women and girls. Member states should foster a climate of their respects and their integration into society~~

**Member states should recognise that individuals may require effective measures to address the problem of multiple discrimination, particularly against the most vulnerable groups of the population**

~~[Equality between women and men]~~

[27.] Members states should ensure equality of women and men **and** the systematic integration of an dimension in the framework of securing human rights and fundamental freedoms ~~of individuals and groups~~ **in culturally diverse societies.**

## Gender Equality Division's comment

*[Elimination of discrimination in all its forms ~~and harassment~~ in all areas of life]*

[24.] Member states should take all necessary measures to eliminate **in law and practice** ~~de jure and de facto~~ discrimination on any grounds in all areas of life such as employment, education, healthcare, culture, housing, access to public goods and services, access to justice and both in the public and private sectors. ~~They should adopt the relevant national legislation and law enforcement mechanisms which ensure the effective protection of rights and full equality in practice.~~

*[Combating racism] **move to next chapter***

[25.] Add sentence on “**take all appropriate measures to criminalise and prosecute**” (from additional protocol)

Member states should ensure special vigilance and a vigorous reaction from public authorities and civil society to any act of racial and xenophobic nature, including those committed through computer systems (**memo: add on and off-line, case against Estonia**), which is a particular affront to human dignity.

[26.] Member states should ensure that all available means are used to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.

To this end, member states should namely provide measures for the dissolution of organisations, including political parties, which promote racism, xenophobia, extremism or any other form of intolerance and provide measures to suppress their public financing of such organisations. Efforts should be taken to ensure these provisions are effectively enforced. **ECRI, Werner v. Austria, look at sports violence**

*[Law enforcement measures]*

[28.] Member states should ensure that law enforcement measures do not result in **the violation of human rights and ostracising and discriminating against particular individuals or any groups in society. This includes measures taken in the framework of the fight against terrorism and other security measures**

**Member states should ... management of migration.**

#### **IV. Countering hatred and violence**

*[Countering stereotypes]*

[29.] Member states should promote mutual respect and diversity and counter negative stereotypes, prejudices and any form of intolerance.

***[Criminalisation of hate crime]***

**Member states should ensure that hate speech inciting to hatred, violence and all forms of discrimination and the use of violence** ~~threats, insults, defamation~~



**against specific groups or individuals on any ground is prohibited by law.**

**ECRI GPR 7**

*[Prohibition of advocacy of religious hatred]*

[30.] Member states should combat ~~should ensure that~~ any **forms of** advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is prohibited by law.

### **Training – to a separate paragraph**

*[Protection of the right to life and prohibition of torture and ill-treatment]*

[31.] Member states are required to take **reasonable and effective** measures and policies designed to ensure that individuals within their jurisdiction are not subjected to attacks violating their right to life protected under Article 2 or to ill-treatment contrary to Article 3 of the European Convention on Human Rights including such actions administered by private individuals.

~~This protection calls for reasonable and effective measures and policies, including with regard to members of vulnerable or minority groups, in order to prevent attacks or ill-treatment of which the authorities were or ought to have been aware.~~

[32.] Member states should **combat** all acts of violence and ill-treatment targeting members of vulnerable and minority groups and bring perpetrators to justice. They should ensure that their national authorities **conduct prompt and** effective investigations into such incidents, **meeting the requirements of the fundamental rights enshrined in Articles 2 and 3 of the Convention], even in the absence of an express complaint if there are sufficiently clear indications that an attack or ill-treatment might have occurred.**

### *Training – to a separate paragraph*

Member states should ensure that members of the judiciary, law enforcement agencies and other relevant services have access to trainings regarding the relevant international standards.

[33.] Member states should consistently ~~condemn~~ **combat** any violence against women and girls, including "honour" killings, female genital mutilation, **early** and forced marriages, as well as violence against persons on the basis of their sexual orientation or gender identity including situations when violence is perpetrated under the pretext of a religious **and cultural** prescription or practice. They should promote initiatives, including legislation, to prevent and criminalize such violence.<sup>6</sup>

### **Add comments Gender Equality Division**

[34.] When investigating and prosecuting violent criminal offenses member states have an utmost duty to take all appropriate legislative, administrative and other measures to unmask any racially xenophobic or religiously motivated ill-treatment and to establish whether or not hatred or prejudice might have played a role in the events, even when the ill-treatment is inflicted by private individuals.

<sup>6</sup> EU Guidelines on the promotion and protection of freedom of religion and belief, 'Violence', §30 f: "Consistently condemn any violence against women and girls, including "honour" killings, female genital mutilation, early and forced marriages, as well as violence against persons on the basis of their sexual orientation or gender identity including situations when violence is perpetrated under the pretext of a religious prescription or practice. The EU shall promote initiatives, including legislation, to prevent and criminalize such violence".

~~In order to adopt appropriate measures to prevent and combat such hate crimes member States undertake to cooperate among themselves and within the framework of international organisations and initiatives.~~

~~[Non-expulsion~~ **International protection**]

[35.] Member states should **bear in mind that respect of the right to life and prohibition of torture may also encompass** ~~provide~~ protection against expulsion if there are substantial grounds to believe that a person if deported would face a real risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention for instance in view of persecutions based on race, religion, nationality, membership of a particular social groups and political opinion.

**[...] In order to adopt appropriate measures to counter hatred and violence prevent and combat such hate crimes and prevent persecutions member States should undertake to cooperate among themselves and within the framework of international organisations and initiatives.**

Add Gender Equality Division's comments, include in memo

## VI. V. Participation, dialogue and social inclusion

Look at CM (2014)1

Look at CM Rec (2007)14

### [Consultation]

[36.] Member states ~~should~~ **are encouraged**, as far as possible, **to** enable all members of society, including non-governmental organisations, to participate in the process of drafting, commenting, passing and reviewing legislation and implementing measures so as to ensure inclusivity and the explicit recognition of the diversity within the societies.

*Go back to original text*

### [Participation in the democratic process]

[37.] Member states should adopt specific strategies and targeted policies to ensure that everyone has adequate opportunities to effectively participate in democratic decision-making, which is an essential condition for **social cohesion**. To this end, they should consider providing ~~residents who are not nationals~~ migrants, who are not nationals of their country of residence, the right to vote and stand for election at the local level, provided they fulfil the same legal requirement as apply for nationals.] **migrants, who are not nationals of their country of residence, the right to vote and stand for election at the local level, provided they fulfil the same legal requirement as apply for nationals. Member states should take necessary steps through a specific and active information policy to promote equal opportunities, including the provision of full information about civic rights and duties, for foreign residents and to promote good relations between all residents, whatever their nationality. Any policy or action designed to promote youth participation must ensure that the cultural environment is one of respect for young people and must also take into account their diverse needs, circumstances and aspirations.**

### [Representation in public administration and decision-making bodies]

[38.] Member states should strive for adequate representation of ~~the~~ diverse groups in their society, including vulnerable groups and also persons belonging to minorities, in all ~~relevant~~ structures of public administration and decision-making bodies.

They should, to the extent possible, ensure that public administration, **judiciary, law-enforcement agencies and executive bodies** (*insert in first sentence*) represent the diversity of society.

### [Inclusion and effective participation]

[39.] Member states should **ensure/strive for** effective participation on an equal footing by all members of society, including vulnerable group and ~~also persons belonging~~ minorities, in public affairs and in social, economic and cultural life, which is a fundamental right in itself but also an essential precondition for equal opportunities in practice.

*[Cultural, social and economic participation]*

[40.] Member states should formulate and implement policies in relevant areas, such as education and training, culture, employment, **access healthcare, housing and access to public goods and services**, in order to support effective participation in these fields on an equal footing and inclusion for all members of society, which is essential for successful integration.

*[Reasonable accommodation Inclusion in the workplace]*

[41.] Member states should provide diversity training and advisory services for public and private employers concerning tolerance and non-discrimination in the workplace. **This should include advice as regards policies of reasonable accommodation of religious and belief diversity in the workplace.**<sup>7</sup>

*[Promotion of intercultural dialogue]*

[42.] Member states should encourage and support intercultural dialogue, including its religious dimension, to promote a spirit of ~~tolerance~~ **inclusion** and create an open and respectful exchange of views between ~~all members~~ **individuals, groups and associations with different cultural backgrounds** in culturally diverse societies on the basis of mutual respect and understanding. **To this end they should take concrete action towards creating an enabling favourable environment for religious bodies.** (Elisa provides text)

**VII. VI. Safeguards and remedies***[Access to rights]*<sup>8</sup>

[43.] Member states should implement concrete measures, and **raise awareness thereof and to enable everyone to effective enjoyment and exercise of their rights in culturally diverse societies without discrimination on any ground. (move to discrimination). Look for more wording from rec on access to rights of young people**

*[Access to justice]*<sup>9</sup>

[44.] Member states should ensure ~~to~~ all persons without discrimination on any grounds the access to justice and effective remedies **as well as equal legal protection** before national authorities ~~as guaranteed in Article 13 of the Convention~~ in cases where their human rights are violated. **In order to ensure that this access to justice and remedies is provided on equal footing in culturally diverse societies member states are encouraged to consider establishing appropriate legal aid schemes.**

*Free Legal aid for persons in material need. See CM recs for agreed language*

**[...] after para 44 Member states are encouraged to establish accessible procedures and promote alternative dispute resolutions processes such as mediation, conciliation and arbitration in the context of culturally diverse societies.**

<sup>7</sup> *Interim report on the Elimination of all forms of religious intolerance*, submitted by the Special Rapporteur on freedom of religion or belief to the 69<sup>th</sup> session of General Assembly on 5 August 2014, A. Recommendations addressed to State institutions, §77.

<sup>8</sup> Put in the context of culturally diverse societies.

<sup>9</sup> Put in the context of culturally diverse societies.

*[Sharing of the burden of proof]*

[45.] Member states should apply the principle of sharing of the burden of proof to ensure effective protection against discrimination.

~~which means that if a person claims to have been discriminated against and establishes before a court or any other competent authority facts allowing for the presumption of discrimination, it falls to the defendant to show that he or she did not discriminate unlawfully against the person.~~<sup>10</sup> **Move to the memo**

**ECRI GPR 7 “administrative and civil law”**

*[Access to information and consultation]*<sup>11</sup>

[46.] Member states should explore ways of ensuring the effective right of everyone, without discrimination on any ground, to have access to sufficient information about his or her rights and should take all the necessary legislative, administrative and other measures to give effect to this right.

#### **VIII. VII. Other relevant actors**

*[The role of National Human Rights Institutions]*

[47.] Member states should ~~consider to~~, in accordance with **the Paris Principles (not all member states, use same language as the Brussels declaration)**, **establish if they have not yet done so national legislation, develop, facilitate and ensure sufficient financing of effective National Human Rights Institutions and ensure the pluralism of their membership and their independence. They should also ensure the existence of appropriate conditions for the fulfilment of their hr mission, including sufficient funding.** ~~If this is not already the case they should consider establishing~~ **They should consider establishing branches of such institutions at the regional or local level as well to facilitate easy access to justice for those whose rights have been violated. They should encourage National Human Rights Institutions to pay appropriate attention to supporting the respect of human rights in the context of culturally diverse societies.**<sup>12</sup>

*[The role of civil society]*

[48.] Member states should take concrete action towards creating an enabling favourable environment for civil society, including human rights defenders, and make consultation and collaboration with civil society a common practice when drafting policies and action plans at

<sup>10</sup> 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 where 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; ECRI's GPR No. 7 para. 11 and explanatory memorandum para. 29 ; . 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.

<sup>11</sup> Put in the context of culturally diverse societies.

<sup>12</sup> Put in the context of culturally diverse societies.

the national, regional and local levels **aimed at** with a view to protecting and promoting human rights in culturally diverse societies.

*[The role of the media and information society]*

[49.] **Member states are reminded that** the media and information society **should** play an active role in promoting mutual understanding, respect and cultural diversity and in countering negative stereotypes, prejudices and any form of intolerance.

*[Responsibility of opinion leaders]*

[50.] Opinion leaders, in particular political leaders and religious leaders, should speak and act resolutely in such a way as to foster a climate of mutual understanding, respect and diversity ~~through intercultural dialogue including interreligious dialogue~~ based on a common understanding of universally recognised human rights.

#### **~~IX~~ VIII. Other relevant measures**

*[National strategies]*

[51.] Member states should adopt a strategic approach towards the human rights challenges of culturally diverse societies.

*[Indicators]*

[52.] Member states should consider developing human rights indicators to measure the impact of their measures taken **in the context of culturally diverse societies**. The review process should include an assessment in terms of participation, inclusiveness and transparency.

*check*

*[~~National~~ action plans]*

[53.] Member states should ~~also~~ encourage regional and local authorities to adopt a strategic approach towards the human rights challenges of culturally diverse societies by integrating the relevant issues into the related **national** action plans. Adequate systems should be established for monitoring the provision of health care, education or social services and social aid, whether provided by private or public actors, using a human rights-based approach.

*[Human rights education]*

[54.] Member states should adopt practical measures **formal and non-formal** to promote education, including human rights education and training, as a key to combating ~~ignorance~~, **intolerance** breaking down stereotypes, developing intercultural dialogue, including interreligious dialogue, building trust and mutual respect and promoting sincere support for the shared values of living together.<sup>13</sup>

*Perhaps more detail in memo*

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<sup>13</sup> PACE Resolution 2076 (2015) on freedom of religion and living together in a democratic society, §11.

*Para 11 of PACE Rec "living together"*

*[Human rights awareness-raising]*

[55.] Member States should assess and address the needs of public officials **and other professionals** ~~and other professionals who deal with the international human rights of others~~ to ensure that they have a thorough and up-to-date knowledge of the human rights standards and instruments including relevant national ~~legislation~~ **law and practice** in their field of competence.