



Strasbourg, 24 November 2008

DH-DEV(2008)002

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

Meeting Report

37th meeting
The Hague, Friday 14 November 2008

Justice Department of the Netherlands
Schedeldoekshaven 100, 2511 EX The Hague

List of decisions taken by the DH-DEV at its 37th meeting

- The DH-DEV discussed possible follow-up to the Conference on “Human Rights in Culturally Diverse Societies: Challenges and Perspectives” held in The Hague on 12-13 November 2008. A number of members found that a declaration of the Committee of Ministers could potentially give a strong political message in this area, while others expressed their reservations.

- Other possible follow-up to the Conference was also examined, including the translation of the manuals of “hate speech” and the wearing of religious symbols in public areas, which were launched at the Conference, and the collection of good practices, notably in respect of the relation between the state and religions.

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

1. The Committee of Experts for the Development of Human Rights (DH-DEV) held its 37th meeting in The Hague (Justice Department of the Netherlands) on 14 November 2008, with Ms Camilla BUSCK-NIELSEN (Finland) as acting Chairperson. The list of participants can be found in [Appendix I](#). The agenda as adopted and the references to the working documents appear in [Appendix II](#).

2. Concluding remarks which were presented by Mr Jan HELGESEN (Chairperson of the European Commission for Democracy through Law, known as the Venice Commission) at the end of the Conference “Human rights in culturally diverse societies: challenges and perspectives” were distributed and can be found in [Appendix III](#). The draft elements for a Committee of Ministers’ declaration previously prepared within the framework of the Group on Human Rights in Multicultural Societies (GT-DEV-SM) appear in [Appendix IV](#).

Item 2: Discussion on the follow-up to the Conference “Human rights in culturally diverse societies: challenges and perspectives”

3. Members expressed their satisfaction with the Conference on Human Rights in Culturally Diverse Societies, held in The Hague on 12-13 November, and thanked both the Ministry of the Interior and Kingdom Relations of the Netherlands and the Council of Europe for having organised it. While speeches and discussions were found very interesting and stimulating, it was regretted that more time for debates had not been available. The concluding remarks presented by Mr Jan HELGESEN were noted with interest, but members also noted that these were his personal remarks rather than official conclusions, and that any published document should make this clear.

(i) A Committee of Ministers declaration as possible follow-up to the Conference:

4. Some members expressed doubts as to the necessity, appropriateness and timeliness of a political declaration, noting that sufficient human rights instruments already existed and that concrete outcomes existed on the subject such as the manuals on “hate speech” and the wearing of religious symbols in public areas, launched at the Conference, and the recently published Venice Commission Report entitled “Tackling blasphemy, insult and hatred in a democratic society”. The added value of a declaration repeating existing values and standards was also questioned, and concern was expressed by some members that any declaration that underlined the circumstances in which certain rights, such as freedom of expression and assembly, could be restricted had the potential to be misused in other international arenas, where European States were trying to promote or defend these rights. Finally, certain members recalled that the reference to “positive discrimination” made in para. 6 of the draft declaration prepared within the framework of the DH-DEV Working Group on Human Rights in a Multicultural Society (GT-DEV-SM) was not compatible with their understanding of human rights, if such discrimination was based on a person’s origin, race or religion. However, with the exception of this specific point, discussions focussed on the question of whether there should be a declaration and not on the content of the current draft.

5. On the other hand, a majority of members who expressed their opinion were of the view that such a declaration should not be ruled out and could potentially be a useful follow-up to the Conference in sending a strong political message. However, while some felt that the existing draft, as prepared within the framework of the GT-DEV-SM, constituted a sound starting point, members underlined that it would need further negotiation, including to take

into account the results of the Conference. It was noted that the GT-DEV-SM had only revised the preamble of the draft at its last meeting, but that members had been invited to send comments on the rest of the document after the Group's meeting, which had been reflected in the text but not discussed by the Group. The idea of a text referring not only to the rights included in the current draft (freedoms of expression, of religion and conscience, and of association and assembly) but to others (e.g. social and economic rights) was suggested. However, a number of members were of the opinion that, on the contrary, it would be advisable to keep it more general, given its political character, and not to attempt to list rights. It was generally felt that any draft declaration should take account of notions raised during the conference, such as the need for strong political leadership.

(ii) Other possible follow-up

6. It was suggested that wide dissemination of the manuals be carried out by the member states, including through their distribution and translation. The Secretariat provided practical information on how to proceed with translations of the manuals (Appendix V).

7. Some members supported the idea that it would be useful to collect good practices in member states, notably regarding the relation between state and religions. The example given during the Conference of guidelines on the subject as currently prepared by the Netherlands was found interesting in this respect.

8. Hesitations were expressed as to any possible revision of the Committee of Ministers' Recommendation No. R (97) 20 on "hate speech", which was suggested by one member, noting that it might not be advisable to attempt to give a more precise definition than the Court does.

9. It was also noted that many of the key issues raised at the Conference lay within the remit of other Committees of the Council of Europe. It was observed that the DH-DEV could nonetheless have an important role to play by contributing to better implementation of existing human rights standards which may be of particular relevance in culturally diverse societies.

10. The Secretariat informed members that the publication of proceedings of the Conference was planned for next year.

Item 3: Other business

11. The Secretariat informed members that the meeting report of the DH-DEV Group on Human Rights of Members of the Armed Forces, containing the draft recommendation, and the draft explanatory memorandum of this recommendation had been sent directly to the Steering Committee for Human Rights (CDDH) for calendar reasons, as the CDDH was to meet a week after the DH-DEV's meeting. It was recalled that the DH-DEV meeting had been organised right after the Conference on "Human Rights in Culturally Diverse Societies" for budgetary reasons.

Item 4: Date of next meeting

12. The dates for the next meeting will be fixed at a later stage by e-mail, in the light of the discussions to be held by the CDDH on the future of the Committee at its coming meeting (25-29 November 2008).

Appendix I

LIST OF PARTICIPANTS

MEMBER STATES

ALBANIA / ALBANIE

Ms Ledia HYSI, Director of Legal Affairs and Treaties Department, Ministry of Foreign Affairs

ANDORRA / ANDORRE – apologised / excusé

ARMENIA / ARMENIE

Ms Syuzanna TSATURYAN, Chief specialist, Ministry of Foreign Affairs, Legal Department, Republic Square

AUSTRIA / AUTRICHE

Mr Gerhard THALLINGER, Federal Chancellery, Legal Service Dr./Legal Counsellor

AZERBAIJAN / AZERBAIDJAN

Mr Otari GVALADZE, Senior Adviser, Administration of the President of the Republic of Azerbaijan, Department for Co-ordination of Law Enforcement Agencies

BELGIUM / BELGIQUE

M. Philippe WERY, Attaché, SPF Justice, Service des Droits de l'Homme

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

Mr Maksim STANIŠIĆ, Assistant Minister, Ministry for Human Rights and Refugees BiH

BULGARIA / BULGARIE – apologised / excusé

CROATIA / CROATIE

Ms Romana KUZMANIĆ OLUIĆ, First Secretary, Department for the UN and Human Rights, Ministry of Foreign Affairs and European Integration

CYPRUS / CHYPRE

Ms Eleonora NICOLAIDES, Senior Counsel of the Republic, Office of the Attorney-General, Law Office of the Republic of Cyprus

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

Mr Martin BOUČEK, Deputy Director, Department of Human Rights, Ministry of Foreign Affairs

DENMARK / DANEMARK

Mr Emil Paldam FOLKER, Head of section, The Danish Ministry of Justice

ESTONIA / ESTONIE

Mr Kalle KIRSS, Lawyer, Ministry of Foreign Affairs

FINLAND / FINLANDE

Ms Camilla BUSCK-NIELSEN, Acting Chair of the DH-DEV / Présidente ad interim du DH-DEV, Legal Officer, Ministry of Foreign Affairs, Legal Service

FRANCE

Mme Marie MONGIN-HEUZE, Rédacteur, Direction des Affaires juridiques – sous-direction des droits de l'homme - , Ministère des Affaires Etrangères

DH-DEV(2008)002

GEORGIA / GEORGIE – apologised / excusé

GERMANY / ALLEMAGNE

Ms Katja BEHR, Regierungsdirektorin, Unit of the Agent for Human Rights, Federal Ministry of Justice

GREECE / GRECE

Mme Sofia KASTRANTA, Rapporteur, Special Legal Department, Ministry of Foreign Affairs

HUNGARY / HONGRIE

Mr Zoltán TALLÓDI, Co-agent of the Ministry of Justice and Law Enforcement before the ECHR

ICELAND / ISLANDE – apologised / excusé

IRELAND / IRLANDE – apologised / excusé

ITALY / ITALIE

Ms Maria Vittoria PONTIERI, Viceprefetto aggiunto, Ministero dell' Interno, Direzione Centrale per le Politiche dell'Immigrazione e dell'Asilo

LATVIA / LETTONIE

Ms Liene KONDRATJUKA, Third Secretary, Ministry of Foreign Affairs

LIECHTENSTEIN – apologised / excusé

LITHUANIA / LITUANIE

Mr Valdas SAKALYS, Third Secretary, Ministry of Foreign Affairs

LUXEMBOURG – apologised / excusé

MALTA / MALTE

Mr Mark PACE, Deputy Permanent Representative, Permanent Representation of Malta to the Council of Europe

MOLDOVA

Ms Diana PASCARU, Counsellor, Ministry of Foreign Affairs and European Integration, Council of Europe and Human Rights Directorate

MONACO

M. Jean-Laurent RAVERA, Counsellor, Cellule des Droits de l'Homme et des Libertés Fondamentales, Département des Relations Extérieures

MONTENEGRO

Mr Danilo BRAJOVIC, Directorate for OSCE and COE, Ministry of Foreign Affairs of Montenegro

NETHERLANDS / PAYS-BAS

Ms Liselot EGMOND, International Law Division, Ministry of Foreign Affairs

Ms Pien M. VAN DEN EIJDEN, Lawyer, Constitutional Affairs and Legislation Department

NORWAY / NORVEGE

Mr Michael REIERSEN, Higher Executive Officer, The Royal Norwegian Ministry of Justice and the Police

POLAND / POLOGNE

Ms Monika EKLER, Legal Expert, Ministry of Foreign Affairs, Human Rights Division

PORTUGAL – apologised / excusé

ROMANIA / ROUMANIE

Mr Octavian STAMATE, First Secretary, Ministry of Foreign Affairs of Romania

RUSSIAN FEDERATION / FEDERATION DE RUSSIE – apologised / excusé

SAN MARINO / SAINT-MARIN – apologised / excusé

SERBIA / SERBIE

Ms Gordana MOHOROVIC, Senior Advisor, Head of Division for Implementation of Human Rights Conventions, Ministry for Human and Minority Rights

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

Mrs Jana VNUKOVÁ, Director of International Relations and Human Rights Department, International Law & European Law Section, Ministry of Justice

SLOVENIA / SLOVENIE – apologised / excusé

SPAIN / ESPAGNE

M. Ignacio BLASCO, Chef du Service Juridique des droits de l'Homme

SWEDEN / SUEDE

Ms Anna ERMAN, Legal Adviser, Ministry for Foreign Affairs

SWITZERLAND / SUISSE

Mme Dominique STEIGER LEUBA, Collaboratrice scientifique, Section droits de l'homme et Conseil de l'Europe, Département fédéral de justice et police

"The Former Yugoslav Republic of Macedonia" / "l'Ex-République yougoslave de Macédoine" – apologised / excusé

TURKEY / TURQUIE – apologised / excusé

UKRAINE

Ms Marianna BETSA, Second Secretary of the Embassy of Ukraine to the Kingdom of the Netherlands

UNITED KINGDOM / ROYAUME-UNI

Mr Ian NAYSMITH, Senior Policy Adviser, Department for Communities and Local Government

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OTHER PARTICIPANTS

Conference of European Churches / Conférence des Eglises européennes

Mr John MURRAY, Associate staff member, Conference of European Churches, Church and Society Commission

DH-DEV(2008)002

Holy See / Saint-Siège

M. Florian KOLFHAUS, Observateur Permanent Adjoint, Mission Permanente du Saint-Siège

Steering Committee for Human Rights (CDDH) / Comité directeur pour les droits de l'Homme (CDDH)

Mr Roeland BÖCKER, Government Agent to the European Court of Human Rights, Ministry of Foreign Affairs

Steering Committee on the Media and New Communication Services / Comité directeur sur les médias et les nouveaux moyens de communication (CDMC)

Ms Bissera ZANKOVA, Media expert, State Agency for Information Technologies and Communications

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Appendix II

AGENDA

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

Item 2: Discussion on the follow-up to the Conference “Human rights in culturally diverse societies: challenges and perspectives”

(i) Working documents

- Report of the 2nd meeting of the Group on Human Rights in a Multicultural Society (GT-DEV-SM) GT-DEV-SM(2008)003
- Activity report on human rights in a multicultural society CDDH(2007)011 AddII
- Conclusions from the conference

(ii) Information documents

- DH-DEV Terms of Reference DH-DEV(2008)001
- Excerpts from the Report of the International Conference on Fundamental Rights in a Pluralistic Society (The Hague, 20-21 November 2003) DH-DEV(2006)004
- Council of Europe White Paper on Intercultural Dialogue

Item 3: Other business

Item 4: Date of next meetings

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Appendix III**Draft concluding remarks prepared by Mr Jan Helgesen
(subject to further editing by Mr Helgesen)****Conference “Human rights in culturally diverse societies: challenges and perspectives”
The Hague, 12-13 November 2008**

Diversity is a non negotiable feature of modern society, whether one likes it or not, whether one views it as an asset or as a problem. Diversity is there, and will not go away. There is no use trying to counter it or trying to demonstrate that it has downsides.

Diversity is a dynamic phenomenon, developing as society develops. It is a contextual phenomenon too, specific to a specific place and period. This does not mean that States do not face very similar issues.

As enriching as cultural diversity is, managing it is a challenge. It is so, because recognising everyone’s equal entitlement to individual rights and freedoms inevitably leads to tensions. These are only inherent and healthy in a society, provided that they are adequately and proactively managed.

What is needed now is “courage intellectual” and political courage.

In recent years, societies seem to be experiencing more difficulties in handling such diversity-generated tensions. A certain degree of fear – fear for one’s security as well as fear of losing one’s identity - confusion, lack of orientation can be observed. This has been exploited by certain politicians who have invoked past liberal achievements with anti-liberal purposes; on the other hand, confused young people have been radicalised by extremist groups which have dissociated them even more from mainstream society.

I shall leave the abstract and theoretical out, and be more focussed on concrete issues.

What is the role of national authorities in this context? This is indeed the crucial question: how should we take forward the various challenges that have been identified during the two days of our conference? There have been some specific suggestions to which I will turn later, but I believe there are also some general points which can legitimately be drawn from our discussions.

First of all, I think we have to be honest and admit that many Council of Europe member states, if not all of them, are confronted with very concrete and serious problems. There is no point in denying them for reasons of political correctness, this will only allow the problems to get worse.

All European States face similar dilemmas which I would qualify as human rights policy questions.

These are questions of human rights *policy* because on the one hand European human rights law as embodied in the case law of the ECtHR, while establishing some important and helpful legal parameters and principles for addressing issues such as limits to freedom of expression or the place of religion in a democratic society, does leave a fairly broad margin of

appreciation to state parties as to the policy choices that need to be made when it comes to managing diversity in today's societies.

These are policy choices for a second reason too. In the modern, globalised world, there is also a strong international and foreign policy dimension to decisions that are made by national authorities in matters of immigration, integration and accommodating (or not accommodating) cultural diversity.

I would only recall the outcry the Danish cartoons issue gave rise to in the Muslim world. In reply to those who believe that this was a one-off situation which will not re-occur in the future, I would simply refer to the ongoing debates in the UN General Assembly about the so-called question of defamation of religions. This debate is very much alive as shown by the special session on this subject at the UN Headquarters in New York during the same days as our conference in the Hague.

In addition, we have heard that while the law is an essential instrument for drawing the limits to tolerance, purely legal approaches are not sufficient or even helpful to address many concrete problems in this area. As we have heard, many of the issues arise out of wrong perceptions and lack of trust amongst different groups.

Against this background, there are basically two possible approaches to tackling these issues.

The first one is the "wait and see" approach: an essentially passive approach, through which tolerance ends up equating with indifference, and different groups end up cohabiting in parallel, closed realities.

The second approach, which has been largely supported by the participants in this conference, is a proactive one, calling for "make it happen" strategies. This approach requires that leadership *be committed to* diversity, and sees it not just as an issue to tackle, but instead as an asset to exploit in order to achieve a more cohesive, more culturally rich and more prosperous society.

"Diversity leaders' must publicly express and show their commitment to diversity. They must lead by example.

They must treat diversity management as a matter of "democratic technique"; it will be natural in a democracy to have concrete problems and tensions. Leaders must not be afraid of these, and must not allow these to be inflated by those who want to exploit them (whether by populists, by extremists or by the media).

A Human Rights approach vigorously pursues equal rights and dignity to all, including gender equality and respect for the rights of LGBT people. This Human Rights approach in practice implies that reciprocal concessions have to be made, all will have to accept certain restrictions in the interest of society as a whole. To express it with the words of the White Paper on Intercultural Dialogue, it requires respect for the individual as a human being, reciprocal recognition (in which this status of equal worth is recognised by all) and impartial treatment (where all claims arising are subject to rules that all can share).

Adopting a human rights approach does not mean that each and every problem should be treated as a question of fundamental principles; many questions should rather be addressed in a pragmatic manner, playing down the issue, lowering the stakes and finding practical

solutions (example of the separate kitchen in a bank allowing to cater for the different culinary habits).

Leaders should, very importantly, help to overcome the fear and lack of mutual trust, both of the majority population towards minorities, and of minorities towards the majority. They should resolutely open avenues for dialogue, promote mutual understanding and help develop a common language. This will lower the thresholds of sensitivity to criticism and develop mutual trust. Dialogue is necessary at all levels but is especially important at the local level. The CoE White Paper on Intercultural Dialogue contains very constructive ideas. It stresses the need to create “meeting places” as well as occasions to meet, in order to avoid that parallel societies coexist with no interaction among each other. Many of these meeting places are actually at the local level.

As I said before, leaders should publicly show their understanding and commitment to fostering intercultural dialogue. They should in particular promptly take public position on burning issues, because refraining from doing so may cause the situation to escalate. (example of the Dutch government reaction to the Fitna situation as opposed to the reaction of the Danish government after the cartoons were published).

Culturally diverse societies are confronted with several challenges.

Firstly, opening up to new cultures should not mean giving up dominant cultures, but instead developing and enriching them. Authorities face the challenge of explaining this to all the stakeholders in order to remove fear and create an interest in intercultural dialogue.

Europe is committed to democracy, the rule of law and respect for human rights. These values are essential to our societies and are the non negotiable framework for managing diversity. While some specific traditional practices are not compatible with Human Rights principles, most of the specific needs of different groups can be accommodated within this framework without any difficulty. There can be scope for different interpretations of what certain human rights principles require in specific situations, when this is the object of consensus within the society. However, the existing normative framework of international and European human rights law must be respected by all.

Universality of human rights must be firmly upheld, but universality of *all* human rights, including economic and social rights. Many problems relating to cultural diversity are problems of social justice and non realisation of social and economic rights for some sectors of the population.

In addition, it is absolutely essential that effective measures are taken to combat discrimination and racist attitudes. Living together as equals. In order to be effective, data collection remains essential to discover the extent of discrimination and to devise policies to counter it.

Finally I should like to pull together some of the many recommendations which were made during the discussions.

I do not want to duplicate the work of the three rapporteurs, so I will confine myself to a few points only.

The point I made earlier about the need for proactive leadership is also reflected in some of the specific recommendations.

The need for the State to engage in dialogue includes dialogue with religious communities. State neutrality vis-a-vis religion should not mean state passivity or indifference.

As concerns criminal law, incitement to hatred should be prosecuted to the extent that it causes harm to individuals or groups and incites to violence. The Council of Europe could consider clarifying the concept of hate speech as opposed to permissible offensive criticism of a religion.

In addition, the suggestion was made for the Council of Europe to prepare a checklist of all the principles to be taken into account, in the light of the Strasbourg case-law, for decision-makers confronted with questions of whether and how to respond to particular statements that fuel tensions.

Clearly the media play a crucial role, for better or for worse, as regards tensions in society. They can fuel tension or deflate it, they can be, or not be, a channel for promoting dialogue and tolerance. National media regulatory authorities should abide by national diversity policies and possibly reflect the diverse composition of society.

Self-regulation by the media should be further encouraged, and it is vital to ensure that the cultural diversity of society be duly reflected among the media professionals. Access to the media for minorities should be ensured.

Genuine participation and inclusion of all groups in decision-making processes is essential for any democratic society, for engaging all sectors of society in the common life of the community, in short for living together. As we said earlier, perceptions and feelings are important in the management of cultural diversity. Members of minority groups should be able to feel at home in society. An interesting suggestion was made to the Venice Commission that it should look into the constitutions of member states in order to examine to what extent their wording is sufficiently open to the realities of cultural diversity.

Freedom of assembly and association are essential vehicles for such participation. There is a lack of implementation of ECHR principles in this area by national and local authorities. Training of local authorities and law enforcement agencies, including in the management of diversity, in member states appears to be a priority need which should be duly considered by the CoE.

A concrete suggestion to the Council of Europe is to provide a forum for exchanging good practice between the member states as regards religious freedom in culturally diverse societies (example of Dutch guidelines to municipalities on cemeteries and accommodating funeral rites).

As was repeated many times, education is absolutely key to reaching mutual understanding and making intercultural dialogue possible. This includes education about all religions from an objective point of view. Schools should become more reflective of the realities of cultural diversity.

Strong political leadership is the essential precondition for ensuring that all these measures address the causes and not the symptoms of the difficulties which intercultural dialogue has experienced.

One concrete step towards such moral leadership which could be considered is the drawing up of a general declaration of the Committee of Ministers on Human Rights in culturally diverse societies. I believe that this question is already being examined by the competent inter-governmental bodies of the Council of Europe.

I wish to thank Dutch Ministry of the Interior, DGHL and the many staff in Strasbourg and the Hague who worked very hard to make this happen.

I also thank the interpreters for making intercultural dialogue possible during our conference. Thank you all for your attention and your very active participation.

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Appendix IV

**Revised draft elements for a Committee of Ministers' declaration,
prepared the DH-DEV Group on Human Rights in Multicultural Societies
(GT-DEV-SM)**

Please note that at its last meeting, due to lack of time, the Group only revised the Preamble to the Declaration. This draft takes however into account further comments sent by the members of the Group after the meeting.

The Committee of Ministers of the Council of Europe,

[Preamble]

- [1] Noting the existence of culturally diverse societies in Europe;¹
- [2] Recalling 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;²
- [3] Reaffirming that all human rights are universal, indivisible, interdependent and interrelated;³
- [4] Being convinced that the existing international human rights standards provide a solid common value basis for social cohesion and the peaceful and harmonious development of societies;⁴
- [5] Recalling that pluralism, which is one of the foundations of our democratic societies, is built on the genuine recognition of and respect for diversity⁵ [and, consequently, that democracy cannot simply mean that the views of a majority must always prevail; a balance must be achieved which ensures the fair and proper treatment for all;⁶ ⁷
- [[*] Emphasises that in democratic societies pluralism goes hand in hand with the principle of the prohibition of discrimination, and the values of tolerance and broadmindedness, and calls on member states to promote these values;]⁸
- [[6] Underlining the reciprocal rights and duties of the members of the majority and minorities which make up society;]⁹

¹ CDDH Activity Report on Human Rights in a multicultural society, CDDH(2007)011 Addendum II, para. 9

² Universal Declaration on Human Rights, Preamble.

³ United Nations, Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993.

⁴ CDDH Activity Report on Human Rights in a multicultural society, CDDH(2007)011 Addendum II, para. 19.

⁵ Gorzelik and Others v. Poland, judgment of 17 February 2004(Grand Chamber), para. 92.

⁶ Leyla Şahin v. Turkey, judgment of 10 November 2005 (Grand Chamber), para. 108; Bączkowski and others v. Poland, judgment of 3 May 2007, para. 63.

⁷ The Belgium and Cypriot Group members suggested to delete the part of the sentence in square brackets.

⁸ The Belgium Group member suggested to move this principle from the operative part (para. 1) to the preamble.

⁹ The Belgium Group member suggested to delete this sentence.

[7] Recognising that diversity is a source of enrichment to be protected as an essential element of every democratic society¹⁰ and should not be invoked to justify human rights infringements or restrictions;

[8] Recognising the importance of intercultural [and interfaith [and inter-philosophical]]¹¹ dialogue and taking into account the White Paper on Intercultural Dialogue [...];

[9] Underlining that human rights are not only an essential basis for policies and action of public authorities, but [are also] [can also be] meaningful for relations between individuals and groups in socially cohesive societies;

[Operative Part]

1. Emphasises that in democratic societies pluralism goes hand in hand with the principle of the prohibition of discrimination, and the values of tolerance and broadmindedness, and calls on member states to promote these values;

[On human rights as a value basis for the integration of diversity]

2. Emphasises that, in order to reconcile respect for different identities with social cohesion and avoid isolation and alienation of certain groups, it is indispensable for every member of our democratic societies to regard human rights and fundamental freedoms as a common [value] basis for all: no cultural or religious practices or traditions can be invoked to prevent any individual, on any ground, from exercising his or her basic rights or from participating actively in the society;¹²

3. Stresses the obligation for member states, as the ultimate guarantors of the principle of pluralism,¹³ to secure the effective enjoyment of human rights, especially those enshrined in the European Convention on Human Rights and its protocols, and that this obligation is of particular importance for persons holding unpopular views or belonging to, or being supposed to belong to, minority groups, be they ethnic, national, religious, based on sexual orientation or other, because they are more vulnerable to discrimination;¹⁴

4. Calls on [political][opinion] leaders to speak and act in such a way as to foster a climate of respect through dialogue based on a common understanding of universally recognised human rights and on member states to adopt practical measures to that effect, such as support for expressions which respect and promote tolerance and democratic values, information campaigns, human rights education and training courses promoting cultural sensitivity, knowledge of other cultures, as well as awareness of prejudice and discrimination;¹⁵

[On the prohibition of discrimination and racism]

¹⁰ Nachova and Others v. Bulgaria, judgment of 6 July 2005 (Grand Chamber), para. 145, referring to the Framework Convention on the protection of national minorities.

¹¹ The Belgium and Cypriot Group members member suggested to delete the part of the sentence in square brackets.

¹² CDDH Activity Report on Human Rights in a multicultural society, CDDH(2007)011 Addendum II, para. 13.

¹³ Informationsverein Lentia and Others v. Austria, judgment of 24 November 1993, para. 38.

¹⁴ Wilson & the National Union of Journalists and Others v. the United Kingdom, judgment of 2 July 2002, para. 41; Ouranio Toxo v. Greece, judgment of 20 October 2005, para. 37; Bączkowski and others v. Poland, judgment of 3 May 2007, para. 64.

¹⁵ CDDH Activity Report on Human Rights in a multicultural society, CDDH(2007)011 Addendum II, para. 27.

5. Emphasises that the preservation and promotion of a democratic society based on respect for diversity requires resolute action against all forms of intolerance, discrimination, and xenophobia. Racial violence is a particular affront to human dignity, and requires special vigilance and a vigorous reaction from public authorities;¹⁶

6. Recalls that the right not to be discriminated against may require, where appropriate, a differential treatment of persons whose situations are significantly different¹⁷ to ensure in practice equal enjoyment of rights by all;¹⁸

7. Reiterates that law enforcement measures, including those taken in the framework of the fight against terrorism,¹⁹ should not result in ostracising and discriminating against particular sections of the population;²⁰

[On freedoms of expression, association, assembly, thought, conscience and religion]

8. Recalls that freedom of expression, freedom of assembly and association, and freedom of thought, conscience and religion are among the foundations of democratic societies and are instrumental for the pluralism which characterises them.²¹ In this respect, the Committee of Ministers draws particular attention to the following:

- i. [In pluralist societies [it is natural that]²² some human rights, such as the right to freedom of thought, conscience and religion[, the right to freedom of expression] and the prohibition of discrimination might occasionally [compete / be in conflict with the rights and interests of others] [come into play concurrently]. In such a context, it is important that states strike a fair balance between the different rights and interests at stake while ensuring that any restriction be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim;]²³
- ii. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every human being. It 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 offend, shock or disturb the state or any sector of the population.²⁴ At the same time, the exercise of freedom of expression is not without any duties and responsibilities, and “hate speech” inciting to hatred, violence and discrimination against a specific group of individuals on ethnic, national, religious, sexual orientation or other grounds, will not be protected under Article 10 ECHR;²⁵

¹⁶ Nachova and Others v. Bulgaria, judgment of 6 July 2005 (Grand Chamber), para. 145.

¹⁷ Thlimmenos v. Greece, judgment of 6 April 2000 (Grand Chamber), para. 44.

¹⁸ See CDDH Activity Report on Human Rights in a multicultural society, CDDH(2007)011 Addendum II, para. 21; OSCE/ODIHR/Venice Commission Guidelines for review of legislation pertaining to religion or belief, II. L, 2004.

¹⁹ Guidelines on human rights and the fight against terrorism and ECRI General Policy Recommendation No. 8.

²⁰ ECRI General Policy Recommendation No. 1.

²¹ E.g. Handyside v. UK, judgment of 7 December 1976, para. 49.

²² The Belgian and Cypriot Group members suggested to delete the part of the sentence in square brackets.

²³ The Hungarian Group member suggested to delete this paragraph.

²⁴ Handyside v. UK, judgment of 7 December 1976, para. 49.

²⁵ ECtHR case-law, and ECRI General Policy Recommendations Nos. 1, 7 and 11.

- iii. Freedom of thought, conscience and religion is one of the most vital elements that go to make up the identity of believers and their conception of life, but is also a precious asset for atheists, agnostics, sceptics and the unconcerned. In democratic societies where several religions and beliefs coexist, it may be necessary to place restrictions on freedom to manifest one's religion or beliefs in order to reconcile the interests of various groups and ensure that everyone's beliefs and convictions as well as the rights of non-believers are respected;²⁶
- iv. [The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. Such interaction occurs notably through the enjoyment of freedom of association and peaceful assembly by all. States should not only avoid unduly interfering with this freedom, but also secure its effective enjoyment even in the sphere of relations between individuals. This presupposes that states not only avoid stirring up confrontational attitudes in cases where there are tensions between different groups, but that they adopt a conciliatory stance;]²⁷
- v. Member States should encourage the participation of individuals in the democratic process through the creation of an environment conducive to the work of associations and political parties in which individuals may interact freely with each other and pursue common objectives collectively.²⁸

[On 'hate speech' and religious symbols]

9. Draws attention to the factors on 'hate speech' and 'the wearing of religious symbols in public areas' appended to this declaration which are drawn from the Court's case-law and which offer guidance to member states and their authorities on how to achieve a fair balance between the different rights and interests at stake.

* * *

²⁶ Kokkinakis v. Greece, judgment of 25 May 1993, para. 33; Dahlab v. Switzerland, decision of 15 February 2001; Leyla Şahin v. Turkey (Grand Chamber), judgment of 10 November 2005, para. 106.

²⁷ The Hungarian Group member suggested to delete this paragraph.

²⁸ Gorzelik and Others v. Poland, judgment of 17 February 2004 (Grand Chamber), para. 92.

Appendix V

**Information concerning the publication of the manuals on
the Wearing of Religious Symbols in Public Areas
and
“Hate Speech”**

Bilingual manuals in English and French will be published in co-operation with Council of Europe Publishing early 2009. Until then they are only available as a co-edition published by a partner publisher (Kluwer) for the needs of this conference in their original languages, English for the wearing of religious symbols in public areas and French for “Hate Speech” (link: <http://book.coe.int/EN/index.php?PAGEID=124&lang=EN>).

You will find more information on the Council of Europe Publishing website and as well as the Human Rights Law and Policy Division (websites: <http://book.coe.int> and http://www.coe.int/t/e/human_rights/cddh/Default.asp).

We invite you to contact Mr Charalambos Papadopoulos (charalambos.papadopoulos@coe.int) for all translation and copyright questions.

The following link provides information concerning rights, permissions and translations:
<http://book.coe.int/EN/index.php?PAGEID=19&lang=EN>

Ministries of Council of Europe member states will receive a 30 % discount for the bilingual manuals they would like to order.

We would also like to suggest that your Governments inform not only medias and ministries concerned, but also any educational institutions about the importance of these manuals, referring to the Manual Factsheets which can be found on the following websites:

Religious symbols: http://www.coe.int/t/DC/Files/Source/FS_religsymbols_en.doc ;

“Hate Speech”: http://www.coe.int/t/DC/Files/Source/FS_hate_en.doc

Special Council of Europe events file:
http://www.coe.int/t/dc/files/events/2008_cultural_diversity/default_EN.asp

Conference Website:
http://www.coe.int/t/e/human_rights/cddh/3._Committees/08.%20Hague%20conference/defaultconference.asp#TopOfPage

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