

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

CDDH-EXP(2018)04

26/04/2018

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

---

**DRAFTING GROUP ON FREEDOM OF EXPRESSION  
AND LINKS TO OTHER HUMAN RIGHTS**

**(CDDH-EXP)**

**Notes on the consideration of possible follow-up work  
prepared by the Secretariat**

## **Introduction**

1. The CDDH-EXP members are invited already at this stage, when drafting the “Guide to good practices on the way of reconciling freedom of expression and other human rights and freedoms, in particular in culturally diverse societies”, to consider whether there would be a need for follow-up work in the area of freedom of expression and links to other human rights.

2. It would seem appropriate first to identify the possible topics which could be considered for follow-up work, and only as a second stage decide which kind of non-binding instrument would be most suitable (e.g. recommendation, guidelines, declaration or manual).

## **Freedom of expression and links to other human rights**

3. Several topics fall within the area of freedom of expression and links to other human rights. Some have been included in the current draft Guide to good practices as specific focus areas namely *a.* freedom of expression and political discourse, *b.* fake news (disinformation), *c.* hate speech and *d.* blasphemy.

4. As freedom of expression is a constantly evolving field, mainly due to the technological developments, there could well be new emerging topics which would need to be explored from the human rights perspective. One such area is artificial intelligence (A.I.), a topic which at present is being approached from different angles of the Council of Europe’s field of action. In the case of freedom of expression the topic would concern A.I. speech<sup>1</sup>, a question which currently the Steering Committee on Media and Information Society (CDMSI) is exploring.

### *a. Freedom of expression and political discourse*

5. The European Commission for Democracy through Law (Venice Commission) has undertaken relevant work on freedom of expression and freedom of association, in particular with regard to the prohibition and dissolution of political parties and analogous measures. The European Commission against Racism and Intolerance (ECRI) has also focused on political discourse in its work on hate speech. Furthermore, the European Union Agency for Fundamental Rights (FRA) has published a report on incitement in media content and political discourse in EU Member States.

### *b. Fake news (disinformation)*

6. Fake news (disinformation) is a highly topical issue which the CDMSI is following closely and which *inter alia* has connections to its work related to the roles and responsibilities of internet intermediaries and quality journalism in the digital age. Moreover, the EU is currently working on preparing a European code of practices to counter disinformation.

### *c. Hate speech*

7. Hate speech is a topic on which several sectors of the Council of Europe are currently working, in particular ECRI which recently prepared a new General Policy Recommendation No. 15 (GPR No. 15) on hate speech.

8. The CDMSI has also prepared reports and a fact sheet on hate speech. In addition, the Council of Europe’s youth sector is responsible for “No Hate Speech Movement” composed of national campaigns in most member States as well as in Jordan, Morocco and Tunisia.

9. Hate speech is also a topic which the Parliamentary Assembly of the Council of Europe (PACE) has focused on in its work. In 2017 PACE adopted a resolution and recommendation on “Ending cyberdiscrimination and online hate”.

10. Both PACE and ECRI draw attention to the lack of an internationally agreed definition of hate speech. In its recent resolution, PACE calls on member States “to work together to ensure that

---

<sup>1</sup> A.I. speech refers to any speech created autonomously by a machine or a programme without human supervision or control.

harmonised and comprehensive **definitions** of hate speech can be applied in cases of online hate”.<sup>2</sup> Moreover, in its recommendation PACE asks the Committee of Ministers “to review and update its Recommendation No. R (97) 20 on “hate speech”, in order to ensure that it continues to provide an effective basis for combating all forms of this phenomenon, including where it occurs online, and that it covers all the grounds on which victims may be targets of hate speech”.<sup>3</sup>

11. Furthermore, in GPR No. 15 ECRI proposes to develop and strengthen **cooperation** between States in tackling the transfrontier dissemination of hate speech, whether offline or online. Although cooperation is foreseen within the framework the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), it is limited to racist and xenophobic material and does not cover online hate based on other motivations such as gender, sexual orientation or gender identity, disability, age or other criteria.

12. Finally, it should be mentioned that the EU has worked on the topic from the perspective of “Countering illegal hate speech online”, and the OSCE has focused on the topic from the angle of hate crime.

#### *d. Blasphemy*

13. PACE has adopted several recommendations and resolutions on the freedom of expression and respect for religious beliefs and protection of religious communities.<sup>4</sup> Furthermore, the Venice Commission has focused on blasphemy, religious insult and incitement to religious hatred. Today most European countries have abolished national legislation penalising blasphemy. However at the global level the topic is still an issue of conflict.

#### **Human rights in culturally diverse societies**

14. Since 2003 the CDDH has carried out work in the area of human right in culturally diverse societies. The outcome of this work includes a CDDH report on hate speech from 2008 and the publication of a manual on hate speech in 2009, prepared by Anne Weber.

15. In increasingly diverse societies of Europe the Committee of Ministers has highlighted the need to balance fundamental freedoms in the light of the competing interests of individuals and groups of individuals in the society (see “Declaration by the Committee of Ministers on human rights in culturally diverse societies”<sup>5</sup> and “Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies”.<sup>6</sup>)

16. All human rights are equally important and their enumeration in the European Convention on Human Rights follow a logical sequence starting with the right to respect for privacy and family life, followed by freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association. There is sometimes a misunderstanding that freedom of expression should enjoy higher protection than other freedoms probably due to across Atlantic influences. In this connection, ECRI has recalled that “the right to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, policy and practice as mutually supportive human

<sup>2</sup> PACE Resolution 2144 (2017) para. 7.1.2.

<sup>3</sup> PACE Recommendation 2098 (2017) para. 3.1. In its reply to the recommendation, the Committee of Ministers recalls that the principles of “hate speech” set out in its Recommendation Rec(97)20 “apply to both offline and online environments and cover the dissemination of all forms of hate speech through media of all kinds. The Committee therefore considers that Recommendation Rec(97)20 remains a valuable tool to assist member States in combating hate speech, but recognises the importance of further exploring ways to remove barriers to its implementation, including through ECRI’s general policy recommendations and country monitoring recommendations, as well as lessons learnt from the No Hate Speech Campaign Movement and education and youth policy measures.”

<sup>4</sup> E.g. PACE Recommendation 1805 (2007) on “Blasphemy, religious insults and hate speech against persons on grounds of their religion.

<sup>5</sup> Adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers’ Deputies.

<sup>6</sup> Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers’ Deputies.

rights” and that “the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression”.<sup>7</sup>

### **Conclusion**

17. Any need for follow-up work on topics related to freedom of expression and links to other human rights, in particular those included in the draft Guide to good practices, could be taken into account by the CDDH when preparing its future work activities for the next biennium 2019 and 2020. In any event, any such follow-up work would need to take into account the related work of other international and regional organisations, and would need to be carried out in close cooperation with other relevant bodies of the Council of Europe in order to avoid any risk of overlapping with the existing work being carried out.

---

<sup>7</sup> ECRI GPR No. 15, Explanatory Memorandum, §36.