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PROJECT GROUP
"HUMAN RIGHTS AND GENUINE DEMOCRACY"
(CAHDD)

Final Activity Report

Draft Declaration on Genuine Democracy

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Draft Declaration on Genuine Democracy

1. Since 1991, the Council of Europe's annual programmes of intergovernmental activities have included a project entitled "Human rights and genuine democracy".

The description given of this project emphasised that it was intended to promote joint reflection and research on the problems facing European democracies. Its aim was to find solutions which respected human rights, to promote the establishment and optimum functioning of democratic institutions, and to increase the commitment of all sections of the community to democracy.

2. At the Deputies' 452nd meeting (February 1991), the Committee of Ministers instructed the Steering Committee for Human Rights (CDDH) to draw up a schedule of work for implementation of Project I.1 (Human rights and genuine democracy) containing, *inter alia*, an indication of objectives, methods, a timetable and the results expected. The CDDH adopted this schedule of work in May 1991 and submitted it to the Committee of Ministers (CM (91) 98, paras. 31-33 and Appendix IV).

The CDDH's schedule of work included, *inter alia*, the drafting of a Council of Europe Charter/Declaration on a genuine European democratic society based on the protection of human rights and the rule of law, which would describe "the democratic ideal of a Greater Europe in terms of its content and frame of remit".

3. At the Deputies' 461st meeting (September 1991), the Committee of Ministers approved this plan and asked the CDDH to "bear in mind in its future work the possibility of drawing up a draft text of a general nature on the foundations of pluralist democracy".

Also at that meeting, the Committee of Ministers decided to set up a Project Group "Human Rights and Genuine Democracy" (CAHDD), comprising representatives of: the Steering Committee for Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ), the European Committee on Migration (CDMG), the Steering Committee on the Mass Media (CDMM), the Steering Committee for Equality between Women and Men (CDEG), the Steering Committee on Local and Regional Authorities (CDLR), the Steering Committee on Social Policy (CDPS), the Committee of Legal Advisers on International Public Law (CAHDI), the European Steering Committee for Intergovernmental Co-operation in the Youth Field (CDEJ), the Council for Cultural Co-operation (CDCC), as well as of the Congress of Local and Regional Authorities of Europe (CLRAE). It also gave the Parliamentary Assembly and the European Commission for Democracy through Law the possibility of sending representatives to meetings of the Group. The Project Group broke new ground by decompartmentalising the activities of these various committees and tackling them within a single multidisciplinary setting.

4. The following terms of reference were given to the CAHDD:

"On the basis of the schedule of work drawn up by the CDDH (Steering Committee on Human Rights), as approved by the Committee of Ministers, the Project Group is entrusted to draw up a research and priority action plan for Project I.1. This plan must indicate for each of the elements it contains the body responsible and the completion date."

5. In the course of 1992, the CAHDD drew up a research and priority action plan on "Human rights and genuine democracy", indicating the action to be taken in the various fields and the bodies responsible for it. The CAHDD was instructed to submit to the Committee of Ministers annual interim progress reports on implementation of the plan by the steering committees and other bodies concerned.

The Project Group's research and priority action plan comprises four chapters: - Genuine democracy and the functioning of its institutions (democratic institutions and their functioning, parity democracy, local democracy); - The individual and the State based on the rule of law facing major challenges (protection of minorities, the fight against social exclusion, the fight against intolerance, racism and xenophobia, the rights of foreigners and immigration problems, asylum and political refugees, bioethics); - Teaching, education and culture in a genuine democracy; - The media in a democratic society.

6. At the Deputies' 480th meeting (September 1992), the Committee of Ministers approved the plan as a whole, and instructed the CAHDD to implement the following two proposals of activities:

- "Study of the causes of declining interest in public affairs and politics, in the old-established democracies of Western Europe and in the new democracies of Central and Eastern Europe (dwindling participation in public life, low turnouts at elections, proliferation of extra-parliamentary bodies, attitude of young people, etc.);
- Study of the establishment, functioning and structure of political parties (need for the multi-party system, ethics, participation by women and men, youth involvement, democracy within parties, representativeness, funding, relations between members of parliament and their constituents, etc.)."

7. For the purpose of implementing these two projects, the Secretariat General organised a seminar on "Disillusionment with democracy: political parties, participation and non-participation in democratic institutions in Europe" under CAHDD supervision, in co-operation with the Human Rights Centre at the University of Essex, which was held in Colchester (United Kingdom) from 8 to 10 July 1993.

The final report, presented by Professor Ivor Crewe of the Department of Government at the University of Essex (Doc. CAHDD (93) 5), includes proposals made at the seminar on a Council of Europe programme in this field. It discusses the desirability of the Council's preparing a declaration of intention, stressing the need to strengthen democratic institutions in Western Europe and their preservation in Central and Eastern Europe.

8. At the Deputies' 502nd meeting (December 1993), the Committee of Ministers extended the CAHDD's terms of reference to 31 December 1994, so that it could implement these two projects. A further extension, to 31 December 1995, was approved in 1994.

9. With a view to the preparation of the general reference text on the foundations of pluralist democracy, the CAHDD asked Mr Allan Rosas, Professor of Law at the University of Turku/Åbo (Finland) and Director of the Finnish Human Rights Institute, to prepare a study, following an outline which had been drawn up by CAHDD.

This study, and a draft text prepared by Mr Claude Debrulle, Chairman of the CAHDD, were submitted to a group of twenty independent experts from West, Central and East European countries at a European workshop, which was held at the Finnish Human Rights Institute in Turku/Åbo in May 1995.

10. At its meetings on 20 May and 5-6 December 1995, the CAHDD finalised the draft Declaration on genuine democracy.

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11. The political organisation which the Council of Europe embodies is the expression of European solidarity founded on a certain way of thinking, and on a certain ethical position. In the Statute of the Council of Europe, the signatory governments reaffirm their commitment "to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy".

12. In the European Convention on Human Rights, the signatory governments reaffirm "their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend".

13. In the course of the great changes which have marked Europe's recent past, the Council of Europe's principles and values - founded on human rights and fundamental freedoms - have spread throughout our continent. In the Declaration which they adopted at their meeting in Vienna on 9 October 1993, the Heads of State and Government of the Council's member States stressed that: "All our countries are committed to pluralist and parliamentary democracy, the indivisibility and universality of human rights, the rule of law, and a common cultural heritage enriched by its diversity. Europe can thus become a vast area of democratic security."

14. With the passing of time, pluralist parliamentary democracy at all levels has become an essential element in Europe's political identity, an integral part of a common heritage which cannot be preserved in static form, but is the product of an ongoing process of change which can never be regarded as finished or fully accomplished.

15. The fact that the Council of Europe's basic values are now facing new challenges and new threats both outside and inside European society makes it even more necessary to reaffirm, strengthen and develop them. These basic values must continue to guide and mark, in an ever-more practical sense, all the activities of the Organisation.

16. At this moment of the Council of Europe's development, pluralist and parliamentary democracy can best be strengthened and promoted by highlighting its essential features. Hence the belief that a Committee of Ministers declaration is needed to define and clarify the main elements in the three complementary and indivisible principles which are, in a context free from all ideological bias, the essential features of the Council's heritage: respect for universal and indivisible human rights, the rule of law, and genuinely democratic political regimes.

17. It has been thought useful therefore that the basic elements of genuine democracy should be brought together in a general reference text embodying the main points already included in the various Council of Europe instruments, the case law of the European Court and Commission of Human Rights, and texts adopted by the United Nations and the OSCE.

18. Both the Council of Europe's Statute and the Preamble to the European Convention on Human Rights speak of "genuine" and "effective" democracy, and the "rule of law", and it has now become essential to define those concepts and list the requirements and values they imply.

19. Clearly, the setting-up of the CAHDD, the preparation of the research and priority action plan for "Human Rights and Genuine Democracy" and of the draft Declaration on genuine democracy are all connected with the new prospects and challenges the Council faces following the arrival of a large number of new Central and East European democracies.

20. The text could be considered one of the most comprehensive attempts to put into evidence the link between human rights and democracy: as background on one hand, the respect for human rights closely connected with commitment to democracy, and on the other hand genuine democracy based on fundamental freedoms. In other words, democracy is not just a backdrop - but the only political context in which these rights can be protected and developed.

21. Moreover, interdependence of human rights and democracy, which has been affirmed at world level since the World Conference on Human Rights (Vienna, 1993), is a restatement of a conviction already expressed in the Preambles to the Council of Europe's Statute and to the European Convention on Human Rights in 1949 and 1950.

22. The need for such a text has repeatedly been stressed in the past. One should mention the initiatives taken by the President of the Republic of Austria, Mr Kirschlager, and Mr van der Klaauw, then Chairman of the Committee of Ministers, and of the Parliamentary Assembly's colloquy on the concept of democracy (1983).

At the colloquy in Thessaloniki (September 1987) it was emphasised that a text of this kind, using elements taken from the case law of the European Court and Commission of

Human Rights, was urgently required.

Similarly, Resolution No. 2 on the legal heritage of the Council of Europe, adopted at the 17th Conference of European Ministers of Justice (Istanbul June 1990), recommends that the Committee of Ministers "adopt a Declaration solemnly reaffirming the fundamental character, within the present context of European integration, of pluralist democracy, the rule of law and human rights".

Assembly Resolution 800 (1983) on the principles of democracy and the conclusions of the Strasbourg conferences on parliamentary democracy have also provided the main inspiration for the draft Declaration on Genuine Democracy.

23. This text meets a number of needs.

Above all, when countries apply to become members of the Council of Europe, the only elements on which the Council can draw in deciding what standards they must satisfy to join are relatively scattered - and the new text could serve, among other things, as a basis for negotiations on admission.

24. Moreover, the text addresses the essential questions which need answering in Europe, and in particular within the Council of Europe, today:

- what are the basic principles of democracy?
- what are the minimum conditions for any member country to remain within the Organisation?
- what are the aims of any joint project concerning democracy?

25. The text's pedagogic function must also be emphasised. The Declaration could in fact have a general educational role, helping other countries throughout the world to adjust their concepts of democracy. It could also become a reference text in countries where democrats are struggling against dictatorship.

26. The draft starts with a preamble, goes on to state the principles and values of genuine democracy and to define the political, economic, social and cultural conditions on which it depends, and concludes by recalling the international dimension of democratic principles.

27. The text attached to this report is submitted to the Committee of Ministers for adoption.

DRAFT DECLARATION OF THE COUNCIL OF EUROPE ON GENUINE DEMOCRACY

The member States of the Council of Europe,

Having regard to the Statute of the Council of Europe as well as to the relevant texts adopted within the Council of Europe, as listed in the appendix hereto;

Requesting member States which have not yet ratified the conventions included in this list to do so as soon as possible;

Believing that a genuine democracy is a political, legal and cultural system based on respect for human rights, the rule of law and access for everyone to participation in public life;

Aware that democracy entails an active commitment on the part of citizens as well as governments to the values of equality, social inclusion, tolerance and respect for diversity;

Acknowledging that education is the key means of developing democratic values in the young and wishing to encourage them to exercise fully the rights and assume the responsibilities of citizenship,

Hereby adopt the present Declaration applicable to member States and their citizens as well as guiding States wishing to accede to the Council of Europe and their citizens, its essence being as follows:

- . genuine democracy is based on respect for certain principles and values;
- . certain conditions must be met if these values and principles are to be realised and further developed in practice.

A - PRINCIPLES AND VALUES OF GENUINE DEMOCRACY

I. HUMAN DIGNITY

Genuine democracy has the purpose to ensure the inalienable dignity and equal value of every person.

II. EQUALITY AND NON-DISCRIMINATION

- a. All individuals shall be equal under the law and shall be entitled to the equal protection of the law without any discrimination.

Equality of women and men is a fundamental criterion of democracy which should be ensured in all areas of public and private life.

- b. All discrimination based on sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, or any other status shall be prohibited.
- c. Genuine democracy guarantees all persons equal and effective protection against all these forms of discrimination and ensures full equality of opportunity for all citizens.
- d. Any provisional measure aimed at correcting existing imbalances or hastening the achievement of equality shall not be deemed discriminatory.

III. RESPECT FOR DIVERSITY AND TOLERANCE

- a. The principles of pluralism and tolerance require that each person's cultural and linguistic identity, as well as his or her freedom of choice as regards, in particular, religious or philosophical beliefs, shall be respected to the extent that they are compatible with human rights.
- b. Genuine democracy must stand firm against those who seek its destruction, in particular those advocating racial hatred, anti-semitism, xenophobia and persecution on religious or ideological grounds, those who debase the human being and those who advocate violence or terrorism.
- c. The activities of any organisation which opposes the democratic order through violence or the encouragement of violence shall be sanctioned by the law.

IV. UNIVERSALITY AND INDIVISIBILITY OF HUMAN RIGHTS

- a. Human rights and fundamental freedoms are inherent in the individual; their protection is the primary responsibility of States. Respect for, and full enjoyment of, human rights and fundamental freedoms are the bases on which liberty, justice and peace are founded.
- b. Civil, political, economic, social and cultural rights are universal, indivisible and interdependent.
- c. Any derogation from obligations related to respect for human rights shall remain strictly within the limits provided for in international and European law on human rights. Such derogations are by definition of an exceptional nature and shall be applied and interpreted restrictively.

V INTERDEPENDENCE OF HUMAN RIGHTS, DEMOCRACY AND DEVELOPMENT

- a. Genuine democracy and human rights are two intrinsically connected concepts which cannot exist without each other. Political rights and freedoms form part of human rights, just as respect for human rights is essential to the establishment and maintenance of a democratic system. The creation of a democratic culture contributes to the creation of a human rights culture, and vice versa.
- b. A genuine democracy must maintain a balance between the requirements of the general interest of the community and the need to safeguard the fundamental rights of every individual.
- c. Democracy, development and respect for all human rights and fundamental freedoms are interdependent and mutually enhancing.

VI. THE RULE OF LAW

The principles of the rule of law include in particular:

- respect of the principles relating to human rights and fundamental freedoms provided for in international law and in particular in the European Convention on human rights;
- respect for a constitutional order implementing fundamental rights and of the conformity of laws to this constitutional order;
- the fact that the government and other public authorities are subject to the law;
- legal certainty, which includes the principle of accessibility to the law and the principles of predictability and proportionality in the application of the laws;
- the refusal of impunity which implies that:
 - i. in the event of violation of the rule of law, it shall lie with the State and the international community to ensure that such violation does not go unpunished;
 - ii. gross violations of human rights, in particular, torture, genocide, ethnocide and systematic rape and massacre should be condemned and its perpetrators punished.

VII GOVERNMENT ACCOUNTABILITY

In a genuine democracy those in authority are accountable to all citizens on whose behalf they exercise power and to their representatives.

B - CONDITIONS ON THE POLITICAL LEVEL FOR THE REALISATION OF A GENUINE DEMOCRACY

I. CITIZEN PARTICIPATION

1. PARTICIPATION IN PUBLIC AND POLITICAL LIFE

- a. Genuine democracy presupposes the sharing of power as well as freedom based on solidarity.

Genuine democracy shall permit and encourage full and equal participation of woman and man in the democratic process, including balanced representation at all levels of decision-making.

- b. Every citizen has a right to participate in the conduct of public affairs, either directly or through freely chosen representatives, at European, national, regional and local level, as well as to vote and to be elected.

Every citizen has a right to participate in associative life.

- c. Every person has a responsibility for the promotion of and respect for human rights and democratic values.

- d. Genuine democracy has a duty to encourage and recognise work performed by non-governmental organisations or by any voluntary association, whether national or international, working for the protection of human rights and democratic institutions.

- e. Every foreigner residing legally in a country has the right to participate in public and associative life, at least at local level.

2. FREE AND FAIR ELECTIONS

- a. Periodic elections to political office are an essential means of enabling the will of the people to be expressed.

- b. Such elections shall be based on universal and equal suffrage and held by secret ballot. They shall take place in circumstances guaranteeing the possibility of a genuine choice for the electorate and respect for its opinion and ensuring the proper conduct and legality of procedures, as well as the legality of election results. All elections shall be free and fair, in accordance with international and European standards.

- c. The presence of international observers and of the international press shall not be considered an interference in the internal affairs of the State.

3. POLITICAL PARTIES AND OTHER ASSOCIATIONS

- a. Associations are necessary for the proper functioning of democracy; they provide the people with a means of expression.

The right to freedom of association includes the right to create new associations with political goals, including political parties. The role of these parties is to be partners in political debates and to facilitate political choices.

A genuinely democratic society presupposes the existence of a multi-party system.

b. The setting up of political parties or other groupings shall be free in accordance with the law. Their banning should only be possible in cases mentioned under item A-III (b) of this Declaration.

c. The funding of political parties shall be regulated by law.

4. FREEDOM OF EXPRESSION

Freedoms of thought, expression, information and communication are essential requirements for the functioning and progress of a democratic society and the development of each human being.

5. THE ROLE OF THE MEDIA

a. The freedom and independence as well as the pluralism and diversity of the media are essential for the functioning of a democratic society.

b. The media's responsibility for ensuring respect for other rights and freedoms, in particular for human dignity, is an essential counterpart of media freedom. Infringements to human dignity and, in particular, incitement to racial hatred, xenophobia or any other form of discrimination cannot be justified on any grounds.

c. Free circulation of information and ideas across frontiers must be guaranteed and are an important factor in promoting understanding between nations, closer relations between peoples and the mutual enrichment of cultures.

6. RESPECT FOR PERSONS BELONGING TO MINORITIES

Genuine democracy, while based on the principle of majority rule, must at the same time secure the fundamental rights of persons belonging to minorities.

II. LOCAL AND REGIONAL SELF-GOVERNMENT

Self-government on a local and regional level is an important element of genuine democracy. Such a form of government contributes to the strengthening of a democratic Europe based on the principle of subsidiarity and decentralisation on all levels at which power is exercised.

The right to take part in the conduct of public affairs applies also to local and regional authorities which should enjoy effective autonomy.

III. EXERCISE OF POWER IN A STATE GOVERNED BY THE RULE OF LAW

1. SEPARATION OF POWERS

a. Democracy requires the separation of powers between the legislature, executive and judiciary.

b. The role of the legislature, as representative of the electorate, is to draw up and pass legislation, to vote taxes and to hold the executive to account. To this end the legislature must possess independent powers of investigation and scrutiny and must enjoy immunity from executive pressure or coercion.

c. The executive, in implementing and upholding the law, shall be answerable to the people by virtue of its accountability to the legislature.

The executive must, in particular, ensure that the law is strictly applied by the police and the other institutions entrusted with the respect of the law. They are accountable for their activities to the community through its representatives.

d. Judicial authority shall be exercised by the courts; their decisions shall be executed by the competent public authorities of each member State.

The independence of judges shall be safeguarded. They shall be impartial and give their rulings within a reasonable time. The decisions of judges shall not be influenced by the interests of the executive, the legislature or any other public authority or private group.

The independence of lawyers shall be recognised and protected, especially with regard to the conditions of their access to the profession and the performance of their duties.

2. IMPARTIALITY OF THE STATE

a. Genuine democracy presupposes the impartiality of the State with respect to the religions and beliefs of citizens.

b. The State must never be identified with the interests or values of a specific group.

3. EFFECTIVE PROTECTION AGAINST VIOLATIONS OF FUNDAMENTAL RIGHTS

a. Every person whose recognised rights and freedoms have been violated is entitled to an effective remedy before a national body, preferably of a judicial nature, even where the violation was committed by persons acting in the course of their official duties.

b. Every democratic State must offer any person within its jurisdiction the opportunity of submitting an individual complaint to an international body in the event of a violation of their fundamental rights.

c. Every democratic State must provide for setting up the office of ombuds or commissioner or some similar national institution to which all persons living in the territory of the State may have direct, easy and effective access.

4. **DEROGATIONS FROM OBLIGATIONS RELATED TO RESPECT FOR RIGHTS**

a. Where the life of the nation is threatened, any exceptional measures taken on an emergency basis shall be aimed solely at preserving the democratic system, upholding the rule of law and protecting human rights and fundamental freedoms, including political rights and freedoms.

b. Where the executive authorities are legally empowered to take a decision to impose a state of emergency, this decision shall be subject to approval and review by the legislature. The measures taken shall not be exempt from judicial review under ordinary law. A state of emergency shall not be conducive to a regime of martial law.

C - ECONOMIC, SOCIAL AND CULTURAL CONDITIONS FOR THE REALISATION OF A GENUINE DEMOCRACY

I. ECONOMIC DEVELOPMENT

a. Genuine democracy develops economic systems based on free and fair competition and aimed, amongst other things, at achieving sustainable economic growth, prosperity, social justice, the development of employment and the rational use of economic and environmental resources.

b. Any economic system must promote not only economic growth but also the development and self-fulfilment of every individual and the social development of the community aiming at a global sustainable development.

c. Genuine democracy must ensure the legal protection of property as a right encompassing duties toward society.

II. SOCIAL DEVELOPMENT

1. A GENUINE DEMOCRACY MUST BE A SOCIAL DEMOCRACY

a. Democracy cannot be genuine unless it has a social dimension.

The lack of respect of fundamental social rights threatens legal and political equality, foundation of any democracy.

- b. Social debates and collective bargaining are elements of social development. Trade Unions and other social partners should be able to play fully their role.

2. PROTECTION FROM MARGINALISATION OR EXCLUSION

- a. Democracy can be measured by the way in which it treats those who are excluded from society.

- b. Any genuine democracy has a duty to take concrete measures to eliminate extreme poverty, economic, social and cultural deprivation and marginalisation, in particular:

- by giving persons in difficulty the means to obtain information and make themselves heard;

- by providing such persons with comprehensive services including appropriate training to enable them to develop their abilities.

II. CULTURAL DEVELOPMENT

1. RIGHT TO EDUCATION

- a. Genuine democracy involves giving effect to the right to education, as an integral part of human rights, with a view to permanent education.

- b. Education in human rights, in the values and practice of democracy and in active and responsible citizenship is an essential part of the education system which must be provided not only as part of compulsory general education but also in other forms or at other levels of publicly-funded education and permanent education. It concerns in particular members of the judiciary, the police and the armed forces and in general those who are expected to ensure respect for the rights of individuals.

- c. The right of parents to ensure that their children receive an education in keeping with their religious and philosophical convictions must be guaranteed to the extent that this is compatible with human rights and respects the right of the child to her or his own development.

2. PARTICIPATION IN CULTURAL LIFE

- a. Genuine democracy presupposes that everyone should have access to, and be able to participate actively in, cultural life and social communication without any discrimination.

- b. All cultural communities, including those disadvantaged on account of their size, their specific cultural or religious characteristics or their conditions of existence, shall be entitled to pursue their own cultural policy without prejudice to human rights and rights of other communities.

D - THE INTERNATIONAL DIMENSION OF DEMOCRATIC PRINCIPLES

- a. Democratic principles must play an ever-increasing role in the conduct of European and international affairs. Every democracy has a duty to support States in a process of transition to democracy as well as a duty of solidarity with those who are oppressed or live in conditions harmful to their development.
- b. Every genuine democracy must defend democratic principles. A genuine democracy should promote human rights protection and democratic principles in its international relations.
- c. The protection of universal human rights is an essential responsibility of the international community and of each of its members, and no State may invoke the principle of non-interference in its internal affairs when instances of abuse of human rights are reported.
- d. Preserving and welcoming, on an equal footing and in permanent structures, the democracies which will make Europe a vast area of democratic security must remain one of the major objectives of the Council of Europe. Consequently, democracies are invited to commit themselves to the principles and values contained in the present Declaration.

APPENDIX

Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its Protocols;

European Social Charter (1961), its Protocols and the revised European Social Charter;

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) and its Protocols;

Framework Convention for the protection of national minorities (1994);

European Cultural Convention (1982);

Convention on the participation of foreigners in public life at local level (1992);

European Charter of Local Self-Government (1985);

European Charter for Regional or Minority Languages (1992);

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Vienna Declaration adopted by the heads of State and government of the member States of the Council of Europe on 9 October 1993;

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Declaration of the Committee of Ministers on Human Rights (1978);

Declaration of the Committee of Ministers regarding intolerance - A threat to democracy (1981);

Declaration of the Committee of Ministers on the freedom of expression and information (1982);

Declaration of the Committee of Ministers on equality of women and men (1988).