

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, le 11 December 2015

CDDH(2015)R84 Addendum IIIrev

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

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

DRAFT GUIDELINES

(as adopted by the CDDH at its 84th and last meeting, 7-11 December 2015)

Draft guidelines of the Committee of Ministers to member States on the protection and promotion of Human rights in culturally diverse societies

Preamble

- i. The Committee of Ministers
- 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;
- iii. Reaffirming the principle of equal dignity of all human beings and the principle of full and equal enjoyment of human rights and fundamental freedoms by all members of society;
- iv. Recalling the member States' obligation to secure to everyone within their jurisdiction the rights and freedoms defined in the European Convention on Human Rights (1950) and the Protocols thereto, and where relevant their obligations arising from the European Social Charter (opened for signature in 1961 and revised in 1996), as well as from other European and international human rights instruments, as far as they have ratified them;
- v. Reaffirming that human rights and fundamental freedoms are universal, indivisible, and interdependent and interrelated and should be enjoyed by all persons without discrimination;
- vi. Recalling that pluralism, which is one of the foundations of our democratic societies, is built upon the respect of human rights and on the 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;
- vii. 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 for each other;
- viii. Underlining that managing cultural diversity in full respect for the principles of democracy, human rights and the rule of law is a common challenge for all societies throughout Europe and beyond, and that integration strategies should take appropriate account of diversity;
- ix. Underlining that living in a democratic society entails responsibilities and duties with regard to other persons and groups;
- x. Being convinced that the satisfaction of basic human needs is a requirement intrinsic to the dignity of every human being and constitutes a pre-condition for the genuine enjoyment of human rights and fundamental freedoms;

- xi. Stressing that social cohesion and inclusion help ensure the welfare of all members of the society, minimise disparities and avoid polarisation;
- xii. Being aware that education, including human rights education, plays an essential role in preventing the rise of violence, extremism, racism, xenophobia, stigmatisation and all other forms of discrimination and intolerance;
- xiii. Noting with regret that lack of understanding and exclusion, xenophobic attitudes and hate speech, and even extremism and violence continue to take place between individuals or groups forming culturally diverse societies in Europe and beyond;
- xiv. Being convinced that full and equal enjoyment of human rights and fundamental freedoms by all members of democratic and culturally diverse societies directly contributes to peace and stability and may help to prevent intolerance potentially leading to violence and conflicts;
- xv. adopts the following guidelines which provide practical advice on how to address the above challenges and ensure better protection of human rights and fundamental freedoms in the context of culturally diverse societies based on respect for the inherent and equal dignity of every human being;
- xvii. invites member States to:
 - take appropriate account of the principles set out in these guidelines when reviewing relevant legislation and practice,
 - ensure the dissemination of the guidelines and the explanatory memorandum among competent authorities and stakeholders;
- xviii. agrees to examine, within the Committee of Ministers, the follow-up given by member States to the present guidelines five years after their adoption.

I. Relevant general principles

Obligation to respect human rights

1. Member States are under obligation to secure everyone within their jurisdiction the effective enjoyment of all human rights and fundamental freedoms enshrined in the European Convention on Human Rights and in other binding human rights treaties to which they are party.

Human rights as a common basis

2. Member States should ensure that the policies and actions of public authorities comply with human rights obligations.

Positive obligations

3. To comply with their obligations member States may need to take positive steps to secure the effective enjoyment for persons of their human rights and fundamental freedoms. This may also involve the protection of the rights and freedoms of individuals against the acts or omissions of others. Member States should promote equal opportunities and good relations between individuals and different groups based on mutual respect for human rights and fundamental freedoms.

Limitations and restrictions

4. In accordance with the European Convention on Human Rights member States must ensure that any limitations and restrictions on the exercise of freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association are prescribed by law, are necessary in a democratic society and pursue a legitimate aim as set out in the Convention.

Balancing of rights

5. Member States should strive to find a fair balance between conflicting interests resulting from the exercise of competing human rights and fundamental freedoms.

Margin of appreciation

6. Member States enjoy a margin of appreciation in how they apply and implement the European Convention on Human Rights depending on the circumstances of the case and the rights and freedoms engaged.

Living together

7. Member States should strive to ensure conditions that enable individuals and groups to live together in their diversity and allow the expression of pluralism, tolerance and broadmindedness that are hallmarks of a democratic society. This protection of "living together" can be linked to the legitimate aim of protecting the rights and freedoms of others. In this respect, although sometimes it is necessary that individual interests are subordinated to those of a group, democracy does not simply mean that the views of a majority shall always prevail: a balance must be achieved which ensures the fair treatment of the majority and the minority. Pluralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals or groups which are justified in order to maintain and promote the ideals and values of a democratic society.

II. Fundamental freedoms

8. Member States must ensure that freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association 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.

<p><i>A. Freedom of thought, conscience and religion</i></p>
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9. Member States must ensure respect for freedom of thought, conscience and religion, which constitutes one of the essential foundations of a democratic and pluralist society and 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), whether in community with others, in public and within the circle of those whose faith one shares, or 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 are prescribed by law and necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

10. The freedom to manifest one's religion or beliefs also includes the right of every individual not to be obliged to disclose his or her religion or beliefs and not to be obliged to act in such way that one can conclude that he or she holds - or does not hold - such religion or beliefs. This is without prejudice to situations where the disclosure of religion or beliefs is necessary to benefit from a special privilege made available in domestic law on the grounds of religion or beliefs.

Impartiality

11. The member States' role as facilitator for impartially creating the conditions for the exercise of various religions and beliefs is conducive to public order, religious harmony and tolerance in a democratic society.

12. This impartiality is incompatible with any power on the part of member States to assess the legitimacy of religious beliefs or the ways in which those beliefs are expressed.

13. Member States should promote mutual tolerance between opposing groups and refrain from taking sides in religious disputes.

14. In remaining impartial member States should also be inclusive and diversity friendly.

Diversity of approaches

15. In view of the diversity of approaches in Europe in the sphere of cultural and historical development and with respect to the significance of religion in society, member States are afforded a margin of appreciation in determining the steps to be taken to ensure compliance with the European Convention on Human Rights in this sphere. A reference to a tradition cannot however relieve them of their obligation to respect the rights and freedoms enshrined in the European Convention on Human Rights.

Legal status and autonomy of religious communities

16. 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.

17. Member States should ensure that religious communities and their members are able, in compliance with the national law:

- a.* 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.
- b.* to make their opinion publicly known without being subjected to censorship and also exercise the right to freedom of expression, freedom of peaceful assembly and the freedom to use the media.

Education of children

18. In the exercise of any functions which they assume in relation to education and teaching, member States should, in accordance with European Convention on Human Rights, respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. They are afforded a margin of appreciation whether to provide religious instruction in public schools and, if so, what particular system of instruction should be adopted, however it should respect the freedom of thought, conscience and religion of others.

B. Freedom of expression

19. Member States must ensure respect for the freedom of expression, which 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 the freedom to hold opinions and receive and impart information and ideas without interference by public authority and regardless of frontiers. 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.

20. Member States should ensure that the 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 individuals or groups within society.

21. The exercise of the right 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 in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the rights or the reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. Opinion makers and opinion leaders should be aware of the responsibilities which are inherent to free speech in culturally diverse societies.

22. Member States should remember that “hate speech” is not protected under the European Convention on Human Rights.

<p><i>C. Freedom of assembly and association</i></p>
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23. Member States must respect the right to freedom of peaceful assembly and to freedom of association with others. This is crucial to the functioning of a pluralist and democratic society and instrumental for individuals and groups to collectively address and resolve challenges and issues that are important to society.

24. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

25. 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 and groups may interact freely with each other and pursue common objectives collectively.

26. Member States should avoid unduly interfering with freedom of peaceful assembly and association, and also secure its effective enjoyment in the sphere of relations between individuals. They should protect the peaceful exercise of freedom of assembly, including through measures to ensure that counter-demonstrations do not affect the right to demonstrate.

III. Equality and non-discrimination

Prohibition of discrimination in the enjoyment of human rights

27. Member States must secure the enjoyment of the rights and freedoms set out in the European Convention on Human Rights without discrimination on any ground.

National legislation

28. Member States should respect the fundamental principle according to which all persons are equal before the law and are entitled to equal protection of the law without discrimination on any ground. Member States should ensure that their national legislation recognises and provides full and effective guarantees of the principle of equality and the prohibition of discrimination to all members of society.

Promotion of the principle of equality

29. Member States should ensure the promotion of the principle of equality and the right of every person to be free from all forms of discrimination on any ground.

Positive action

30. Member States should bear in mind that the right not to be discriminated against is violated when persons in relevantly similar situations are treated differently without an objective and reasonable justification but also if, without such justification, persons whose situations are significantly different are not treated differently. Member States should take all appropriate measures, including some positive action, to ensure full respect for the prohibition of discrimination.

Multiple discrimination

31. Member States should recognise that individuals may require effective measures to address the problem of multiple discrimination, particularly against women and the most vulnerable groups of the population.

Equality between women and men and gender equality

32. Member States should ensure equality between women and men in culturally diverse societies and the systematic integration of this dimension in the framework of securing human rights and fundamental freedoms. They should also ensure gender equality. These should be ensured regardless of traditional or cultural attitudes.

Elimination of discrimination in all its forms in all areas of life

33. Member States should take all necessary measures to eliminate in law and practice discrimination on any grounds in all areas of life such as employment, education, healthcare, culture, housing, access to goods and services, access to justice and decision-making both in the public and private sectors.

Law enforcement measures

34. 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 groups in society.

IV. Countering hatred and violence*Countering stereotypes*

35. Member States should promote mutual respect and diversity and counter negative stereotypes, prejudices and any form of intolerance.

Combating racism and xenophobia

36. Member States should ensure that all available means are used to combat racism and xenophobia, which is a particular affront to human dignity, thereby reinforcing the vision of a democratic society in which diversity is not perceived as a threat but as a source of enrichment.

37. Member States should ensure special vigilance and a vigorous reaction to any act of racist and xenophobic nature, including those committed through computer systems.

38. Member States should take appropriate action against organisations that promote hatred, intolerance and xenophobia. This may include the dissolution of organisations that incite racial hatred. Member States should provide measures to suppress public financing of such organisations. Efforts should be taken to ensure that these provisions are effectively enforced.

39. Member States are encouraged to address the problem of racism and violence in sports.

Combating hate crime and hate speech

40. Member States should ensure that various forms of hate crimes, including acts of violence and hate speech, including public incitement to hatred and violence, are punishable under their national law.

41. Member States should take measures to prevent and combat cases of hate crimes and hate speech, in particular by carrying out effective investigations in order to avoid impunity.

Protection of the right to life and of the freedom from torture and inhuman or degrading treatment or punishment

42. Member States are required to take reasonable and effective measures and policies designed to ensure that individuals within their jurisdiction, including members of vulnerable or minority groups, are not subjected to attacks violating their right to life or their freedom from torture and inhuman or degrading treatment or punishment irrespective of whether such acts are committed by public officials or private individuals.

43. Member States should combat all acts of violence and ill-treatment targeting members of vulnerable and minority groups and bring perpetrators to justice. They must 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 European Convention on Human Rights, even in the absence of an express complaint if there are sufficiently clear indications that an attack violating the right to life or the freedom from torture and inhuman or degrading treatment or punishment might have occurred.

44. Member States should consistently combat any form of physical, sexual, psychological and economic violence particularly directed against women and girls (including stalking, sexual violence, forced and child marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment, crimes committed in the name of so-called “honour”, aiding or abetting and attempt to commit any of these offences), 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 cultural and religious prescription or practice. They should strive to adopt adequate legislation and introduce initiatives to prevent such violence, protect the victims and prosecute the perpetrators.

45. With a view to effective investigation and prosecution of violent criminal offenses, member States should take all appropriate legislative, administrative and other measures to uncover any racially, xenophobic or religiously motivated attack violating the right to life or the freedom from torture and inhuman or degrading treatment or punishment and to establish whether or not hatred or prejudice might have played a role in the events, even when the attack is inflicted by private individuals.

International protection

46. The right to life and prohibition of torture may also encompass 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 European Convention on Human Rights in view of persecutions based on race, religion, nationality, membership of a particular social group and political opinions.

47. In order to adopt appropriate measures to counter hatred and violence and prevent persecutions, member States should cooperate among themselves and within the framework of international organisations and initiatives.

Training for the judiciary and other authorities

48. Member States are encouraged to ensure that members of the judiciary, prosecution service, law enforcement agencies and other relevant services have access to training regarding the national and international standards related to the effective fight against hatred and violence.

V. Participation, social inclusion and dialogue*Participation in the democratic process*

49. Member States should adopt specific strategies and targeted policies to ensure that everyone has adequate opportunities to effectively participate in public affairs and democratic decision-making, which is an essential condition for social cohesion.

Participation in the making of legislation

50. Member States are encouraged, as far as possible, to enable all relevant segments of society, including non-governmental organisations, to participate in the preparation and consideration of legislation so as to ensure inclusivity and the genuine recognition of the diversity within the societies.

Representation in public administration and decision-making bodies

51. Member States should strive for adequate representation of social diversity in all structures of decision-making bodies and public administration including the judiciary, law-enforcement agencies and executive bodies.

Participation and inclusion in social, economic and cultural life

52. Member States should strive for effective participation on an equal footing by all members of society, including persons belonging to vulnerable and minority groups in social, economic and cultural life, which is an essential precondition for equal opportunities in practice.

53. Member States should formulate and implement policies in relevant areas, such as education and training, culture, employment, access to healthcare, housing, and access to 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.

Rights concerning identity

54. Member States should recognise the particular needs of persons belonging to minorities bearing in mind the value of cultural diversity.

55. Member States are encouraged to promote the conditions necessary for persons belonging to national, linguistic and religious minorities to maintain and develop their culture and preserve the essential elements of their identity.

56. Member States should fully respect the principle of the individual's voluntary self-identification of belonging to a specific group in society.

Reasonable accommodation

57. With a view to guaranteeing equality that is effective, and not merely formal, in the right to freedom of thought, conscience and religion, member States are invited to seek reasonable accommodation, where appropriate, when exercising their margin of appreciation.

Inclusion in the workplace

58. Member States are encouraged to provide diversity training and advisory services concerning tolerance and non-discrimination in the workplace. This should include advice as regards policies to accommodate religious and cultural diversity in the workplace.

Participation and inclusion of youth

59. Member States should adopt policies or actions designed to promote youth participation in society, including the participation of young people belonging to vulnerable and minority groups. They should ensure a democratic and cultural environment of respect for young people and take into account their diverse needs, circumstances and aspirations. They should also encourage and support initiatives of young people which promote mutual respect, dialogue and inclusion as well as responsibility for others in culturally diverse societies.

Participation and inclusion of foreign residents

60. Member States should promote so far as appropriate equal opportunities for foreign residents, e.g. through the provision of adequate information about their civic rights and duties. Member states are encouraged to consider providing foreigners who are lawfully resident on their territory the right to vote and stand for election at the local level provided they fulfil the requirements set out in their national law.

Promotion of intercultural dialogue

61. Member States should encourage and support intercultural dialogue, including its religious dimension, to promote a spirit of inclusion and create an open and respectful exchange of views between individuals, groups and associations with different cultural or religious backgrounds on the basis of mutual respect and understanding. To this end, they should also treat religious communities or communities representing different cultural backgrounds as partners in the development of inclusive and mutually supportive societies, while respecting the importance of impartiality.

VI. Safeguards and remedies

Access to rights

62. Member States should implement concrete measures, including at the regional and local level, and raise awareness thereof, to enable everyone the full and equal enjoyment and exercise of their rights in culturally diverse societies without discrimination on any ground.

Access to justice

63. Member States should ensure access to justice and effective remedies before national authorities in cases where 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 establish appropriate legal aid schemes.

64. Member States are encouraged to establish accessible procedures and promote alternative dispute resolution processes such as mediation, conciliation and arbitration in the context of culturally diverse societies.

Sharing of the burden of proof

65. Member States should consider providing in civil and administrative law that if persons who consider themselves a victim of a discriminatory act, establish before a court or any other competent authority *prima facie* evidence of facts from which it may be presumed that there has been discrimination, it should be for the respondent to prove that there has been no discrimination.

Access to information and consultation

66. Member States should explore ways of ensuring that everyone has access without discrimination and in a timely manner to sufficient information about his or her rights.

VII. Other relevant actors

The role of National Human Rights Institutions

67. Member States should consider establishing, if they have not yet done so, an effective, pluralist and independent National Human Rights Institution. They should also ensure the existence of appropriate conditions for the fulfilment of their human rights mission, including sufficient funding. They should consider establishing, where appropriate, branches of such institutions at the regional or local level to facilitate access for those whose rights have been violated. They should encourage National Human Rights Institutions to pay appropriate attention to supporting the respect for human rights in the context of culturally diverse societies.

The role of civil society

68. Member States should take concrete action towards creating a conducive 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 the national, regional and local levels with a view to protecting and promoting human rights in culturally diverse societies.

The role of the media and information society

69. 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

70. Opinion leaders, including 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 based on universally recognised human rights.

The role of the private sector

71. Member States are reminded that the private sector can play an active role in promoting cultural diversity and countering negative stereotypes in their operations and activities and that they should be encouraged to do so.

VIII. Other measures*National strategies*

72. Member States should consider adopting a strategic approach towards the human rights challenges of culturally diverse societies.

Indicators

73. Member States should consider monitoring the impact of the actions taken, for instance by developing, where appropriate, human rights indicators to measure their impact in the context of culturally diverse societies. 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.

Action plans

74. Member States should consider encouraging 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.

Human rights education and training

75. Member States should guarantee the fundamental right of children to education in accordance with the European Convention on Human Rights, and the relevant case-law of the European Court of Human Rights and should provide it in an objective, critical and pluralistic manner.

76. Member States should adopt practical measures to promote education as a key to combating intolerance, breaking down stereotypes, developing intercultural dialogue including its religious dimension, building trust and mutual respect and promoting sincere support for the shared values of living together.

77. To this end, member States should consider adopting education policies that include the principles and values of education for democratic citizenship and human rights education. Such education policies should also be formulated as part of integration policies and cover formal, non-formal and informal education. This should include also the teaching of diversity and promoting the attitudes of social inclusion, mutual understanding and responsibility towards others. Member States should also review curricula and teaching materials as well as ensure participatory learning methods and inclusive environments at educational institutions.

Human rights awareness-raising

78. Member States should assess and address the needs of public officials and other professionals to ensure that they have a thorough and up-to-date knowledge of the human rights standards and instruments, including relevant national law and practice, and appropriate advice on how to take into account cultural diversity when interacting with individuals and groups in their field of competence.

79. Member States should also examine the need for awareness-raising activities directed at the general public.