



Strasbourg, 2 April 2009

DH-DEV(2009)002final

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

Meeting Report

38th meeting
Wednesday 11 March – Friday 13 March 2009

Room 8, Palais de l'Europe
Strasbourg

Summary

- As part of the follow-up to the Conference “Human rights in culturally diverse societies: challenges and perspectives”, the DH-DEV prepared revised draft elements for a Committee of Ministers’ declaration on the subject, and exchanged views on the advisability of a possible declaration.
- Some specific guidance was given to the DH-DEV-FA concerning the redrafting of the recommendation on human rights of members of the armed forces.
- The DH-DEV held an exchange of views with Mr Hans YTTERBERG, Chairperson of the Committee of Experts on Discrimination on Grounds of Sexual Orientation and Gender Identity (DH-LGBT).
- The DH-DEV held a preliminary exchange of views on impunity in preparation for the first meeting of the Committee of Experts on Impunity (DH-I) (9-11 September 2009).

Item 1: - **Opening of the meeting and adoption of the agenda**
 - **Election of the Chairperson and Vice-Chairperson of the Committee**

1. The Committee of Experts for the Development of Human Rights (DH-DEV) held its 38th meeting in Strasbourg on 11-13 March 2009. The meeting was opened by Mr Jan KLEIJSSSEN, Director of Standard-Setting, Directorate General of Human Rights and Legal Affairs.

2. Further to the decision of the Bureau of the Steering Committee for Human Rights (CDDH), Mr Philippe WERY (Belgium) chaired the meeting as acting Chairperson. His position would need to be confirmed by the CDDH at its 68th meeting (24-27 March 2009). The DH-DEV proceeded to the election of its Vice-Chairperson. Ms Jana VNUKOVA (Slovak Republic) was elected by acclamation.

3. 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.

Item 2: **Discussion on the follow-up to the Conference “Human rights in culturally diverse societies: challenges and perspectives” (The Hague, 12-13 November 2008)**

4. The acting Chair first recalled the work that had already been carried out by the DH-DEV Group on Human Rights in Multicultural Societies (GT-DEV-SM). He also mentioned that the CDDH, at its 67th meeting (Strasbourg, 25-28 November 2008), had asked the DH-DEV to further explore the possibility of a declaration of the Committee of Ministers on the subject and other follow-up action. He proposed to start with (a) a discussion of the content of a possible declaration on the basis of the draft text prepared within the framework of the GT-DEV-SM and taking into account the results of the Conference, followed by (b) an exchange of views on the advisability of such an instrument.

(a) Content of a possible declaration

5. The Committee shared the general point of view that, due to the political nature of such a declaration, the text should be short and more general and not attempt to list rights.

6. The Committee examined, paragraph by paragraph, the draft text prepared by the GT-DEV-SM and made a number of changes. The revised draft text appears in Appendix 3.

(b) Advisability of a possible declaration

7. During a “tour-de-table” on the advisability of a possible declaration of the Committee of Ministers, an important majority of delegations expressed their support for the possibility of such a declaration and for its revised text. Only a few delegations expressed doubts as to the added value of a declaration. A number of delegations, while supporting the revised text, expressed the wish that its content take more into account the role of civil society and the conclusions of the Hague Conference. The acting Chair concluded with the positive feeling that the Committee had accomplished its work, and that the draft was ready to be transmitted to the CDDH.

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8. With regard to the dissemination of the manuals on ‘hate speech’ and ‘the wearing of religious symbols in public areas’, launched at the Conference, the Secretariat explained that the Council of Europe would publish a bilingual edition, English and French, to be presented at the Warsaw International Book Fair in May 2009. On this occasion a Polish translation would also be available to increase the visibility of these texts.

Item 3: Draft recommendation on the human rights of members of the armed forces

9. Members were invited to give their opinion on certain issues relating to the format and scope of the draft recommendation that had been identified at the last meeting of the Steering Committee on Human Rights (CDDH) as posing particular problems (see CDDH(2008)014). They were also requested to provide guidance to the DH-DEV-FA for their work at their next meeting (13-15 May 2009) on redrafting the recommendation, notably with a view to shortening it.

10. One member of the Committee regretted that, due to the fact that their State is not represented in the DH-DEV-FA, they had not had sufficient time to seek direction from their competent authorities on the matter.

11. As regards the scope of the recommendation, that is, whether it should apply in peacetime only, or also during conflict, several members thought that it should cover both. However, others were opposed to the application of the recommendation during wartime, providing examples of possible incompatibility of certain provisions of the draft recommendation and of the European Convention on Human Rights with conflict situations, and suggested that the Working Group reconsider adding the word “normal” before “work and service life” in paragraph 1 of the appendix to the recommendation. Furthermore some members suggested that the concept of “normal work” should be described in the explanatory memorandum as that carried out within the jurisdiction of the state, with a reference to Article 1 of the European Convention on Human Rights (ECHR), in the light of the relevant case-law of the European Court of Human Rights.

12. Members considered it was too early to seriously consider follow-up to the recommendation at this stage. The final content of the text would lead to a clearer picture regarding this.

13. It was thought that the text of the draft recommendation as a whole should be examined in more depth, given the strong division of opinions. During the discussion, the following specific issues were notably raised by several members of the Committee as requiring further consideration:

- the territorial application of the recommendation
- whether or not to include references to Protocol No. 12 and the Revised European Social Charter (or social rights at all)
- the limitations that may be placed on the rights of members of the armed forces (notably Article 15 ECHR)
- the paragraphs concerning conscientious objection

- the rewording (or deletion) of the principles concerning trade unions
- disciplinary and criminal proceedings
- references to “ordinary courts” in relation to Article 5 rights (consideration should be given to military justice systems)
- the rights of persons under the age of 18
- the fact that some states have large armed forces involved in operations across the world
- whether or not to include references to international instruments
- the fact that military operations have been the subject of decisions of international institutions
- other issues mentioned in the written comments submitted by several delegations to the CDDH for its meeting in November 2008
- the possibility of drafting a manual on human rights of members of the armed forces

14. The following guidance to the DH-DEV-FA was suggested by the Committee:

- the text of the recommendation should be shortened
- the rights contained in the recommendation should be restricted to those specifically relevant to members of the armed forces
- the circumstances of each particular situation should be taken into account, using the approach adopted by the Court concerning the enjoyment of certain human rights
- the special characteristics of military life should be emphasised
- the fact that the armed forces of several Council of Europe member states are made up of a majority of conscripts should be taken into account
- the spirit of compromise within the Group should be maintained

15. The Committee also considered the written comments that had been submitted by Russia, Turkey, the United Kingdom and EUROMIL on the draft recommendation. It was suggested that members of the DH-DEV could submit written observations, in particular on these comments, to the Secretariat (claire.askin@coe.int) in time for the next meeting of the DH-DEV-FA and at the latest by 30 April 2009. It was also proposed that any issues on which the DH-DEV-FA could not find a compromise at its meeting in May could be the subject of specific questions put to the DH-DEV for reply at the latter’s next meeting.

16. States that were not represented in the DH-DEV-FA were reminded that they could participate in the Group’s meetings at their own cost.

Item 4: **Discrimination on grounds of sexual orientation and gender identity**

17. An exchange of views took place with Mr Hans YTTERBERG (Sweden) Chairperson of the Committee of Experts on Discrimination on grounds of sexual orientation and gender identity (DH-LGBT). The DH-LGBT has been tasked to draft a recommendation to be adopted by the Committee of Ministers on measures to combat discrimination based on sexual orientation or gender identity. This recommendation will aim at ensuring respect for the human rights of lesbian, gay, bisexual and transgender persons and promoting tolerance towards them, and will be firmly based on human rights standards while having a clear practical objective.

18. Mr Ytterberg presented the results of the first meeting of the DH-LGBT (18-20 February 2009) (see DH-LGBT(2009)005 Meeting Report, containing a list of issues and practical measures for possible inclusion in the draft recommendation). He explained that on the basis of the case-law of the European Court of Human Rights and the European Court of Justice, and relevant reports of, notably, the Council of Europe Office of the Commissioner for Human Rights, the Fundamental Rights Agency of the EU and various Council of Europe Committees, the DH-LGBT concentrated on the identification of relevant problematic issues drawn from realities in Member States, which could be addressed by the recommendation, such as hate crimes, respect for private life and rights of children and young people.

19. Several members expressed their strong support for the list of areas which the DH-LGBT had drawn up during its first meeting and the Committee was encouraged to continue its work.

20. Regarding the scope and format of the draft recommendation, Mr Ytterberg underlined that although the Committee showed a strong preference for a recommendation in one single document, without an appendix, no firm decision has been taken yet since it is important for the Committee at this stage to take into account every possible option and to primarily focus on the content of the draft recommendation aiming at practical use.

Item 5: Exchange of views on impunity

21. The Committee held an exchange of views on impunity, in preparation for the first meeting (9-11 September 2009) of the Committee of Experts on Impunity (DH-I), tasked with studying the feasibility of guidelines against impunity for human rights violations.

22. Members generally acknowledged the complexity of the issue and agreed that a useful first step would be to clarify the notion of impunity. It was stressed that the DH-I's work should not only focus on the impunity of police or prison officers, but be much broader. It was also agreed that the guidelines envisaged would reinforce existing obligations rather than creating new ones, taking into account the relevant case-law of the Court. Several members thought consideration of the decisions of other regional or international courts and mechanisms would be useful for the DH-I's work. Others stressed that the work of other Council of Europe bodies should not be duplicated by the Committee.

23. The question of whether humanitarian law and conflict resolution should be included in the scope of the guidelines was put to the Committee. The few members who expressed an opinion thought the guidelines should be restricted to situations within member states.

24. Members thought it would be helpful if the Secretariat prepared a compendium of the case-law of the Court concerning the positive obligation of states to carry out an investigation into cases of violations of human rights and bring the perpetrators to justice.

Item 6: Other business

25. None.

Item 7: Date of next meeting

26. The dates for the next meeting were fixed for 23-25 September 2009.

Appendix I

LIST OF PARTICIPANTS

MEMBER STATES / ETATS MEMBRES

ALBANIA / ALBANIE

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

ANDORRA / ANDORRE – apologised / excusé

ARMENIA / ARMENIE

Ms Varduhi MELIKYAN, 3rd secretary of Legal department, Ministry of Foreign Affairs

AUSTRIA / AUTRICHE

Ms Susanne PFANNER, Federal Chancellery, Legal Service

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, Chair *a.i.* of the Committee / Président *a.i.* du Comité, Attaché, SPF Justice, Service des Droits de l'Homme

BOSNIA AND HERZEGOVINA / BOSNIE ET HERZEGOVINE

Mr Samir ŠLAKU, Expert advisor, Ministry for Human Rights and Refugees of BiH

BULGARIA / BULGARIE

Mme Emanuela TOMOVA, Second Secrétaire, Direction des Droits de l'Homme et des Organisations Humanitaires, Ministère des Affaires Etrangères

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

Ms Lene STEEN, Head of Section

ESTONIA / ESTONIE

Mr Kalle KIRSS, Lawyer, Ministry of Foreign Affairs

FINLAND / FINLANDE

Ms Satu KASKINEN, Legal Officer, Ministry of Foreign Affairs, Legal Department

FRANCE

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

GEORGIA / GEORGIE – apologised / excusé

GERMANY / ALLEMAGNE

Ms Katja BEHR, Senior Legal Assistant, 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

M. Nicola LETTIERI, Expert juridique, Représentation Permanente de l'Italie auprès du Conseil de l'Europe

Stagiaire de la Représentation Permanente de l'Italie auprès du Conseil de l'Europe

LATVIA / LETTONIE – apologised / excusé

LIECHTENSTEIN – apologised / excusé

LITHUANIA / LITUANIE – apologised / excusé

LUXEMBOURG – apologised / excusé

MALTA / MALTE – apologised / excusé

MOLDOVA

Mrs. Mariana BALITCHI, Counselor within Council of Europe and Human Rights Directorate, Ministry of Foreign Affairs and European Integration of the Republic of Moldova

MONACO – apologised / excusé

MONTENEGRO – apologised / excusé

NETHERLANDS / PAYS-BAS

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

NORWAY / NORVEGE

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

POLAND / POLOGNE

Ms Justyna CHRZANOWSKA, Third Secretary, Ministry of Foreign Affairs, Legal and Treaty Department, Human Rights Unit

PORTUGAL

Mr José DE SOUSA E BRITO, Judge at the Constitutional Court (emeritus)

ROMANIA / ROUMANIE – apologised / excusé

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RUSSIAN FEDERATION / FEDERATION DE RUSSIE

Mr Andrey NIKIFOROV, Deputy Head, Humanitarian Cooperation and Human Rights Department, Ministry of Foreign Affairs

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 VNUKOVA, Vice-chair of the Committee / Vice-présidente du Comité, Director of International Relations and Human Rights Department, International Law & European Law Section, Ministry of Justice

SLOVENIA / SLOVENIE – apologised / excusé

SPAIN / ESPAGNE – apologised / excusé

SWEDEN / SUEDE

Ms Anna ERMAN, Legal Adviser, Department for International Law, Human Rights and Treaty Law, 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"

Mrs Sanja ZOGRAFSKA-KRSTESKA, Head of Council of Europe, OSCE and European Multilateral Affairs Unit

TURKEY / TURQUIE

Mme Deniz AKÇAY, Adjointe au Représentant permanent de la Turquie auprès du Conseil de l'Europe

UKRAINE – apologised / excusé

UNITED KINGDOM / ROYAUME-UNI

Ms Jessica GLADSTONE, Assistant Legal Adviser, Foreign and Commonwealth Office

Mr John EVANS, Director General Law, Ministry of Defense

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PARTICIPANTS

Council of Europe Office of the Commissioner for Human Rights / Bureau du Commissaire aux Droits de l'Homme

Mr Dennis VAN DER VEUR, Advisor to the Commissioner for Human Rights, Council of Europe

Ms Rita PATRICIO, Advisor to the Commissioner for Human Rights, Council of Europe

Committee of Experts on discrimination on grounds of sexual orientation and gender identity (DH-LGBT)

Mr Hans YTTERBERG, Chair of the Committee / Président du Comité, Director General, Ministry of Integration and Gender Equality, former ombudsman for LGBT-matters in Sweden

* * *

OTHER PARTICIPANTS

Holy See / Saint-Siège

Révérénd Frère Olivier POQUILLON o.p., Délégué permanent de l'Ordre Dominicain auprès de l'Organisation des Nations Unies

Monsieur Gregor PUPPINCK

* * *

OBSERVERS

Amnesty International

Mr Johannes HEILER, Assistant Adviser, International Law and Organizations Programme, Amnesty International

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**Directorate General of Human Rights and Legal Affairs – DG-HL /
Direction générale des droits de l'Homme et des affaires juridiques – DG-HL
Council of Europe/Conseil de l'Europe, F-67075 STRASBOURG CEDEX**

Mr Jan KLEIJSEN, Director / Directeur, Directorate of Standard-Setting / Direction des activités normatives

Mr Jeroen SCHOKKENBROEK, Head of Department / Chef de Service, Human Rights Development Department / Service du développement des droits de l'Homme

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

Mr Daniele CANGEMI, Head of Division / Chef de Division, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme, Secretary of the DH-DEV / Secrétaire du DH-DEV

Ms Merete BJERREGAARD, Administrator / Administrateur, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme, Co-secretary of the DH-DEV / Co-secrétaire du DH-DEV

Ms Claire ASKIN, Administrative Assistant / Assistante administrative, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mme Stéphanie BUREL, Programme Officer / Officier de programmes, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

Mrs Catherine VARINOT, Assistant / Assistante, Human Rights Law and Policy Division / Division du droit et de la politique des droits de l'Homme

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Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation
Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

Interpreters / Interprètes:

Mme Sara WEBSTER

Mme Isabelle MARCHINI

M. Nicolas GUITTONNEAU

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Appendix II

AGENDA

- Item 1:** **- Opening of the meeting and adoption of the agenda**
- Election of the Chairperson and Vice-Chairperson of the Committee

Working documents

- Terms of Reference of the CDDH and the bodies answerable to it CDDH(2009)003
- Draft order of business DH-DEV(2009)001

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

Working documents

- Report of the 37th meeting of the Committee of Experts for the Development of Human Rights (DH-DEV), which contains: DH-DEV(2008)002
 - (i) Concluding remarks of the Conference “Human rights in culturally diverse societies” (The Hague, 12-13 November 2008) prepared by Mr Jan Helgesen;*
 - (ii) Revised draft elements for a Committee of Ministers’ declaration.*
- Activity report on human rights in a multicultural society CDDH(2007)011 AddII

- Item 3:** **Draft recommendation on the human rights of members of the armed forces**

Working documents

- Report of the 4th meeting of the DH-DEV Group on human rights of members of armed forces (DH-DEV-FA), containing: DH-DEV-FA(2008)005
 - Revised draft recommendation of the Committee of Ministers to member states on human rights of members of the armed forces and its appended principles*
 - Comments from: Russian Federation DH-DEV-FA Misc 004
 - Turkey DH-DEV-FA Misc 005
 - UK DH-DEV-FA Misc 003rev
 - EUROMIL EUROMIL
- Draft explanatory memorandum for a CM recommendation on human rights of members of the armed forces DH-DEV-FA(2008)006
- Report of 67th meeting of the Steering Committee of Human Rights (CDDH) CDDH(2008)014

Appendix III

**Follow-up to the Conference “Human rights in culturally diverse societies:
challenges and perspectives”
Revised draft elements for a Committee of Ministers’ declaration prepared by
the Committee of Experts for the Development of Human Rights (DH-DEV)**

The Committee of Ministers of the Council of Europe,

[Preamble]

[1] Noting the existence of culturally diverse societies in Europe and underlining that diversity is a source of enrichment;

[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;

[3] Reaffirming that all human rights are universal, indivisible, interdependent and interrelated;

[4] Being convinced that the existing international human rights standards provide a solid common basis for social cohesion and the peaceful and harmonious development of societies;

[5] Recalling that pluralism and social cohesion are essential elements for our democratic societies; they are built on the genuine recognition of and respect for diversity and fair treatment for everybody;

[6] Recalling that diversity calls for tolerance and non discrimination, and that it cannot be invoked to justify human rights infringements;

[7] Recognising the importance of intercultural dialogue and taking into account the Council of Europe White Paper on Intercultural Dialogue (May 2008);

[8] Underlining that human rights are an essential basis for policies and action of public authorities as well as for relations between individuals and groups in socially cohesive societies;

[9] Underlining that living in a democratic society entails rights and duties for all its members;

[Operative Part]

1. Stresses the obligation for member states, as the ultimate guarantors of the principle of pluralism, to secure everyone’s effective enjoyment of human rights, especially those enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), and that the respect of this obligation is of particular importance towards those who are more vulnerable to discrimination;

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 our democratic societies to regard respect for human rights and fundamental freedoms as a common basis for all: no cultural, religious or other practices or traditions can be invoked to prevent any individual from exercising his or her basic rights or from participating actively in the society;
3. Calls on opinion leaders, including political leaders, to speak and act resolutely 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 promoting education as a key to dialogue and mutual understanding, and supporting social inclusion, notably with respect to participation in the decision-making process;
4. Emphasises that the preservation and promotion of a democratic society based on respect for diversity requires resolute action against all forms of discrimination. Racial violence is a particular affront to human dignity, and requires special vigilance and a vigorous reaction from public authorities;
5. Recalls that the right not to be discriminated against may be accompanied by appropriate measures, such as through action plans, support programmes or any other government action, to ensure the realisation of the human rights of all;
6. 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. These rights are closely interrelated and equally fundamental in a democratic society;
7. Draws particular attention to the fact that freedom of expression constitutes one of the essential conditions for the progress of society and for the development of every human being, including in the context of culturally diverse societies. Freedom of expression applies 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. At the same time, the exercise of freedom of expression is not without any duties and responsibilities, and incitement to hatred and violence will not be protected;
8. Underlines that when freedom of expression, freedom of assembly and association, and freedom of thought, conscience and religion are at stake states must strike a fair balance between them, while ensuring that any restriction be prescribed by law, necessary in a democratic society and proportionate to a legitimate aim.