

STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING GROUP ON HUMAN RIGHTS AND ARTIFICIAL INTELLIGENCE

(CDDH-IA)

Handbook on human rights and artificial intelligence – Draft Outline

I. Introduction

- Mandate of the CDDH on a Handbook on human rights and artificial intelligence
- Brief explanation of the regulatory context, including the relevance of EU law (without analysis), and the CoE Framework Convention.
- **Object**
 - Provides for the target audience of government officials and policymakers of Council of Europe member States a practical, comprehensive sectoral approach to potential risks and harms posed by AI to human rights in light of the European Convention on Human Rights (ECHR, as interpreted by the European Court of Human Rights (the Court), and the European Social Charter (ESC), as interpreted by the European Committee on Social Rights (ECSR). Considers other international instruments, where appropriate. Notes status of ratifications for binding instruments when appropriate.
- **Scope**
 - Covers current AI use cases and use cases that are reasonably in prospect.
 - Reflects ongoing sectoral work of other specialised CoE bodies (e.g., freedom of expression (MSI-AI), discrimination (GEC/ADI-AI)), ensuring consistency and avoiding unnecessary duplication.
 - General analysis, recognising that national variations may require adaptation.
 - Focuses on human rights impacts, not technical details of AI systems.
 - Briefly acknowledges (without analysis) that AI also provides opportunities for the protection of human rights.
 - Concentrates on (some) major public governance sectors where AI impacts human rights, with the potential to examine further sectors in future editions.

II. AI related technical concepts relevant for human rights

- Definition of "artificial intelligence systems" from the Framework Convention:
 - “machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that may influence physical or virtual environments. Different artificial intelligence systems vary in their levels of autonomy and adaptiveness after deployment”.¹
- Further technical concepts to be identified in line with the draft texts on the sectoral analysis.

¹ Explanation through the Explanatory memorandum on the updated OECD definition of an AI system.

III. Human rights and artificial intelligence

1. General issues

- Application of ECHR/ESC general principles in the context of AI
 - Some general principles from the ECHR:
 - Effective protection of Convention rights²
 - Subsidiarity
 - Evolutive interpretation and the 'living instrument' doctrine
 - Human dignity³
 - Self-determination and personal autonomy⁴
 - Democracy⁵ and the rule of law⁶
 - Autonomous interpretation⁷
 - Vertical and horizontal effect
 - Positive obligations
 - Margin of appreciation
 - Lawfulness
 - Legitimate aim
 - Necessity, proportionality and fair balance
 - Some general principles from the ESC:
 - Effectiveness of rights (Concrete and effective rights)⁸
 - 'Living instrument' doctrine⁹
 - Lawfulness, legitimate aim, proportionality (Article G of the Charter)¹⁰
 - Non-discrimination (Article E of the Charter)¹¹
 - Margin of appreciation/discretion
 - Progressive implementation of certain rights (not all – some rights require immediate implementation)¹²
 - Human dignity
 - Positive obligations
- Cross-cutting human rights issues (for e.g. effective remedies, non-discrimination, data protection/right to privacy) and recurring issues of competing human rights obligations

² *Belgian Linguistics Case*, 23 July 1968, para I.B.5.

³ *Pretty v. the United Kingdom*, 29 April 2002, 2346/02, §§ 65 and 67.

⁴ *Jehovah's Witnesses of Moscow and Others v Russia*, 10 June 2010, 302/02, § 135-136.

⁵ *United Communist Party of Turkey v Turkey*, 30 January 1998, 19392/92, § 45

⁶ *Repecevirág Szövetkezet v Hungary*, 30 April 2019, 70750/14.

⁷ *Mihalache v Romania*, 8 July 2019, 54012/10, § 114-116.

⁸ [Digest of the case law of the ECSR](#), p.33.

⁹ *Idem*, p. 34.

¹⁰ *Idem*, p. 208-209.

¹¹ *Idem*, p. 205-207.

¹² *Idem*, p. 34.

- Certain human rights issues, such as non-discrimination, vulnerable groups, effective remedies, data protection and privacy, will also be relevant to most, if not all sectors.
 - One potentially recurrent issue is the apparent tension between the need for transparency in AI systems and the protection of intellectual property rights and trade secrets related to AI software, which may attract the protection of Article 1 of Protocol 1 (right to property) of the ECHR.
- Positive obligations (private sector)
- Private sector specific analysis of positive obligations under the ECHR/ESC in the context of AI
 - Business and human rights (UNGPs, OECD Guidelines, CM/Rec(2016)3) in the context of AI

3. Sectoral analysis

Sector	Sector Description	Some Key AI Use Cases	Relevant Human Rights and Principles (ECHR/ESC)	CoE Committees and Bodies addressing AI and Human Rights in the Sector
Law Enforcement, and Public Safety	Policing, crowd control, surveillance, protection of individuals at risk (e.g., domestic violence victims), road and traffic safety, the management of prisons and detention facilities and parole and probation services	Predictive policing, facial recognition, surveillance	ECHR, Articles 2, 3, 5, 8, 10	European Committee on Crime Problems (CDPC) Parliamentary Assembly of the Council of Europe (PACE)
Administration of justice	Criminal, civil, and administrative courts, processes such as bail decisions, sentencing, parole, and the	Predictive sentencing, case management, legal research	ECHR Article 6 <i>Principles such as: equality of arms, adversarial proceedings etc.</i>	European Commission for the efficiency of justice (CEPEJ)

	management of legal evidence, the organization of the judiciary, such as judge appointments and case allocation.			
Healthcare	Diagnostics, treatment, emergency care, mental health services, end-of-life care	Medical diagnostics, personalized treatment, health data analysis	ECHR Article 2, Article 3, Article 8 ESC, Article 11 (Right to health) ESC, Article 12 (Right to social security)	Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO)
Education	Access to learning, student assessments, and educational outcomes	Personalized learning, automated grading	ECHR Protocol 1 Art 2	[Planned] Sectoral and specific legal instrument to regulate the use of artificial intelligence systems in education - Steering Committee for Education (CDEDU) Artificial intelligence and education – a critical view through the lens of human rights, democracy, and rule of law, November 2022
Social Services and Welfare	Social care, welfare benefits and emergency services	Automated eligibility assessments, fraud detection; E-governance, automated decision-making in public services	ECHR Article 8 ESC Article 12 (Right to social security), 13 (Right to social assistance)	-
Immigration and Border Control	Asylum claims, monitoring borders, and determining visa or residency statuses	Risk assessments for asylum seekers, facial recognition at borders	ECHR, Article 3, 6, 18 <i>Principles: Non-refoulement</i>	-
Labour and Employment	Recruitment, performance management, and workplace monitoring	Automated recruitment, workplace monitoring	ECHR, Article 8 Article 1 ESC (The right to work)	European Committee for Social Cohesion (CCS)

			Article 2 ESC (Right to Just Working Conditions) Article 3 ESC (The right to safe and healthy working conditions)	
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- Private sector and cross-cutting issues analysed for each sector where appropriate.

IV. Conclusions and Prospective Challenges/Updates

- The Handbook could be drafted in such a way as to allow inclusion of further issues such as the environment or culture in future editions, in order to respond to the rapid technological advancement and developments in relevant national and international case law in the coming years.
- Mention some AI use cases on the horizon.
- Potentially the postponed sectors (Housing and Urban Planning, Taxation, Democratic Processes, Public Administration).