



Strasbourg, 7 February 2017

CDDH-EXP(2017)01

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**DRAFTING GROUP ON FREEDOM OF EXPRESSION AND LINKS TO OTHER
HUMAN RIGHTS
(CDDH-EXP)**

Extracts of CDDH documents concerning CDDH-EXP

1st meeting

22 March 2017 (9.30 a.m.) – 23 March 2017 (5.30 p.m.)

Council of Europe, Agora – Room G.05

Extracts of the draft annotated agenda and order of business of the Steering Committee for Human Rights (CDDH) - High-Level Seminar *International case-law in Bioethics : Insight and foresight* and 86th CDDH meeting (CDDH(2016)OJ2 from 16 November 2016)

ITEM 4: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS

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4.3 Freedom of expression and links to other Human Rights (CDDH-EXP)

22. The terms of reference given by the Committee of Ministers are the following:

- (i) Following the work already carried out by the CDDH in promoting pluralism and tolerance and contributing to maintaining cohesive societies, conduct an analysis of the relevant jurisprudence of the European Court of Human Rights and other Council of Europe instruments to provide additional guidance on how to reconcile freedom of expression with other rights and freedoms, in particular in culturally diverse societies (deadline: 31 December 2016).
- (ii) On this basis, prepare a guide to good national practices on reconciling the various rights and freedoms concerned (deadline: 30 June 2017). If necessary, a draft recommendation of the Committee of Ministers on “cyber security and Human Rights” is prepared (deadline: 31 December 2017).

23. The Rapporteur of the CDDH on Freedom of expression and links to other Human Rights (CDDH-EXP), Ms. Kristine LICE (Latvia), will report to the Bureau in November and at the plenary in December on the state of preparation of her draft legal analysis. The outline she suggested appears in Appendix VI hereafter.¹²

24. It is recalled that the CDDH decided on the composition of the Drafting Group on freedom of expression and links to other human rights (CDDH-EXP) last June. This Group will be chaired by Mr. Hans-Jörg BEHRENS (Germany). It shall meet three times (March, May and September 2017).

¹² It is recalled that co-ordination is being conducted by the Secretariat and the Rapporteur with, in particular, the Secretariats in charge of Council of Europe’s work on internet governance (EuroDIG) and of cyber-security (Cybercrime Convention Committee T-CY), as well as with the Secretariat of the Steering Committee on Media and Information Society (CDMSI).

Appendix VI

**MANDATE AND DRAFT TABLE OF CONTENTS
FOR THE ANALYSIS ON FREEDOM OF EXPRESSION AND LINKS
TO OTHER HUMAN RIGHTS IN VIEW OF THE WORK OF THE CDDH-EXP**

MANDATE

Under the authority of the CDDH, the CDDH-EXP is called to:

- (i) Following the work already carried out by the CDDH in promoting pluralism and tolerance and contributing to maintaining cohesive societies, conduct an analysis of the relevant jurisprudence of the European Court of Human Rights and other Council of Europe instruments to provide additional guidance on how to reconcile freedom of expression with other rights and freedoms, in particular in culturally diverse societies (deadline: **31 December 2016**).

- (ii) On this basis, prepare a guide to good national practices on reconciling the various rights and freedoms concerned (deadline: 30 June 2017). If necessary, a draft recommendation of the Committee of Ministers on “cyber security and human rights” is prepared (deadline: **31 December 2017**).

Composition: 10 members at the expense of the Council of Europe’s budget (Azerbaijan, Estonia, France, Hungary, Republic of Moldova, Montenegro, Russian Federation, “The former Yugoslav Republic of Macedonia”, Turkey, United Kingdom). Any other member State can be member of the drafting Group at its own expense. Chair: Germany²⁹.

This activity is to be carried out ensuring appropriate co-ordination and co-operation with the relevant bodies involved, in particular the Steering Committee on Media and Information Society (CDMSI). The Group is authorised to invite representatives of other bodies relevant to its work.

Rapporteur on Freedom of Expression and links to other Human Rights: Ms Kristine LICE (Latvia).

DRAFT TABLE OF CONTENTS

I. Introduction

A. Brief presentation of the following issues:

1. Recent developments in Europe
2. Mandate received
3. International legal context

B. Method/approach

II. General principles and definitions

Freedom of expression and its role in a democratic society

The protection offered by Article 10

- *Press freedom*

- *Human rights defenders*

Obligations of States under Article 10

“Duties and responsibilities” related to the exercise of freedom of expression

Possible interferences (formalities, conditions, restrictions or sanctions)

- *“existence of an interference”*

- *“prescribed by law”*

- *“legitimate aim”*

- *“necessary in a democratic society”*

Margin of appreciation

III. Freedom of expression and links to other Human Rights: Seeking balance between the rights at stake

Freedom of expression in the “digital world”

1. Freedom of expression and right to private life

Mass media and private life

Freedom of expression of private individuals and protection of the rights of others

2. Freedom of expression and freedom of thought, conscience and religion

Competing interests of freedom of expression and freedom of thought, conscience and religion

Exercise of the freedom of expression based on the freedom of thought, conscience and religion

3. Freedom of expression and freedom of assembly and association

[Measures taken against terrorism]

4. Freedom of expression and prohibition of discrimination

5. Freedom of expression and maintaining the authority and impartiality of the judiciary

6. Freedom of expression in political discourse

IV. Conclusions and possible follow-up

²⁹ The expense of the Chair will be covered by the budget of the Council of Europe.

Extracts of the report of 86th CDDH meeting, Strasbourg 6-8 December 2016

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4.1 Freedom of expression and links to other human rights (CDDH-EXP)

1. The Rapporteur of the CCDH on freedom of expression and links to other human rights, Ms Kristine LĪCE (Latvia), reported on the state of progress of the drafting work, with emphasis on the Court's case-law regarding freedom of expression as a prerequisite to the exercise of other rights and freedoms. The CDDH expressed gratitude to the Rapporteur for her thorough work which would serve as an excellent basis for the drafting of an analysis on freedom of expression and the links to other human rights.
2. The work of the Rapporteur would be sent to all the CDDH and CDDH-EXP members, participants and observers in good time for them to comment/make proposals in view of the 1st meeting of the Group (22-24 March 2017).
3. The Chair of the CDDH-EXP, Mr Hans-Jörg BEHRENS (Germany) provided information on the manner in which the work is envisaged. The 1st meeting:
 - (i) should be focused on a first reading of the analysis in view of its adoption by the Group at an appropriate stage;
 - (ii) should allow the Group to consider whether there would be a need to send out a questionnaire to member States with regard to the preparation of a Guide to good practice and to see to what extent available information within other bodies of the Council of Europe could be useful in the work of the Group.
4. The Chair of the Group also indicated that, at the last day of the meeting, the participants to the CDDH-EXP will attend the conference *Promoting dialogue between the European Court of Human Rights and the media freedom community*, organised in Strasbourg by the European Centre for Press and Media Freedom and supported by the Council of Europe. Its aim will be to discuss the developments and challenges concerning freedom of expression and the role and case law of the Court.
5. While noting that the whole range of topics mentioned in the analysis was important, the CDDH provided the following guidance:
 - (i) to focus on some topics such as the issue of hate speech, the protection of a person's reputation in particular on the internet, and freedom of expression in the employment

field (such as whistleblowing, cyber bullying and harassment when it concerns private individuals);

- (ii) to include in the study of case-law not only judgements in which the Court had found a violation of Article 10, but also instances when no violation had been found;
 - (iii) to broaden the scope to include relevant work of other committees and bodies of the Council of Europe (eg. the Venice Commission);
 - (iv) to ensure a wide range of participants in the work of the Group including active non-governmental organisations in this field;
 - (v) with regard to freedom of expression and human rights defenders, the CDDH pointed out that there was a direct link to the work of the CDDH-INST and that, due to this, it might be appropriate to closely coordinate the work of these two Groups;
 - (vi) with regard to possible further work on cyber security and human rights, the CDDH noted that it would be necessary to reflect further on the added value that the CDDH could provide, bearing in mind that other bodies of the Council of Europe are already addressing related issues.
6. Finally, the CDDH welcomed the proposal of the United Kingdom to host a brain storming seminar on freedom of expression in spring 2017 which would provide inspiration for the work of the CDDH-EXP. The Secretariat and the Chair of the CDDH-EXP will co-operate with the British authorities regarding, in particular, the identification of civil society representatives and other bodies which could be invited to this seminar.