



CDDH-EXP(2018)01

08/01/2018

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

**Extract of the terms of reference given by the Committee of Ministers to the CDDH
regarding the work of the CDDH-EXP during the 2018-2019 biennium**

(as adopted by the Committee of Ministers at its 1300th meeting, 21-23 November 2017)

and relevant extracts of the CDDH meeting reports

Extract of the terms of reference given by the Committee of Ministers to the CDDH regarding the work of the CDDH-EXP during the 2018-2019 biennium

(as adopted by the Committee of Ministers at its 1300th meeting, 21-23 November 2017)

Links between freedom of expression and other human rights and freedoms

"On the basis of work conducted in 2016-2017 and the evolving case-law of the European Court of Human Rights, and in close co-operation in particular with CDMSI and ECRI, prepare if appropriate a draft non-binding instrument (e.g. guidelines, guide to good practices, recommendation) on the way of reconciling freedom of expression and other human rights and freedoms, in particular in culturally diverse societies (deadline: 31 December 2019)."

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Extract of the report of the 87th CDDH meeting

(6-9 June 2017, document CDDH(2017)R87)

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

45. The Chair of the Drafting Group on freedom of expression and links to other human rights (CDDH-EXP), Mr Hans-Jörg BEHRENS (Germany) reported on the outcome of the first meeting of the Group (22-24 March 2017, CDDH-EXP(2017)R1Rev).

46. It is recalled that the Group has the following mandate:

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.

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

o f t h e C o m m i t t e e o f M i n i s t e r s o n " c y b e r s e c u r i t

47. The Chair of the Drafting Group observed that:

- The meeting was principally dedicated to the finalisation of the draft Analysis of the relevant case-law of the European Court of Human Rights and other instruments of the Council of Europe in view of providing guidance on how to reconcile freedom of expression with other rights and freedoms, notably in culturally diverse societies.
- The last day of the meeting, the members of the Drafting Group had also attended the *Conference on Promoting dialogue between the European Court of Human Rights and the media freedom community*, organised by European Centre for Press

and Media Freedom, with the support of the Steering Committee on Media and Information Society (CDMSI) and its partner organisations.

48. The CDDH thanked the Chair of the Drafting Group for this presentation and also the CDDH-EXP Rapporteur, Ms Kristīne LĪCIŠ (Latvia) for her contribution. It further examined the draft analysis, adopted it after having made a number of minor changes and decided to transmit it to the Committee of Ministers for information (document CDDH(2017)R Addendum III). Delegations that indicated, during the exchange of views, their wish to submit further drafting proposals were invited to do so by Friday, **23 June 2017** at 18:00, addressed to merete.bjerregaard@coe.int (see table of deadlines, **Error! Reference source not found.** hereafter). These contributions would be examined by the Chair and the Rapporteur of the Drafting Group with a view to be added in the text of the Analysis.

49. The Chair of the CDDH-EXP further explained that the Drafting Group had discussed the content and the procedure to be followed in order to prepare a draft Guide to good practices. It considered it useful to focus on specific issues, such as hate speech and in particular when it occurs online. The Group also decided to prepare a questionnaire at its next meeting which would be submitted to all member States with a view to collecting national good practices. It would prepare the draft Guide during its 3rd meeting (21-23 February 2018).

50. The CDDH endorsed the Drafting Group's work in identifying good practices while stressing, at the same time, that the guide should not only reflect the negative but also States' positive obligations. It should aim at creating a positive environment of press and media freedom. It also recalled that the selection of specific issues in view of collecting good practices should bear in mind the focus of the guide which was to provide guidance on how to reconcile freedom of expression with other rights and freedoms, in particular in the context of culturally diverse societies.

51. In this perspective, the CDDH more specifically:

- (i) suggested taking into account the complexity of the concept of hate speech, including its various connotations (racial, religious, sexual, etc.);
- (ii) considered particularly relevant to emphasising the exercise of freedom of expression online;
- (iii) pointed out that the protection of freedom of expression of journalists and human rights defenders represents a major concern and that this issue should be coordinated with the works of the Drafting Group on civil society and national human rights institutions (CDDH-INST);
- (iv) considered that the need to balance freedom of expression with other rights, in particular the rights of individuals to protect their reputation, was an important aspect of the works;
- (v) considered useful to provide further clarification regarding the limitations of freedom of expression in political discourse, while also addressing the phenomena of populism and of fake news.
- (vi) considered it necessary to bring further clarifications to the topic of freedom of expression in labour relations.

52. Finally, the CDDH noted that the CDDH-EXP had briefly examined the topic of cyber security and human rights and that it wished to discuss the topic in more detail with a representative of the CDMSI at its 3rd meeting in September. The CDDH then exchanged views on the appropriateness of preparing a new draft recommendation on this topic and concluded that although it was an important topic, it was not within its field of competence as it related mainly to the member States' national security.

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Extract of the report of the 88th CDDH meeting

(5-7 December 2017, document CDDH(2017)R87)

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

16. The Chair of the Drafting Group on the freedom of expression and links to other human rights (CDDH-EXP), Mr Hans-Jörg BEHRENS (Germany), informed the CDDH that at its second meeting the Drafting Group had prepared a preliminary structure for a Guide to good practices on reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies. On this basis, it invited member States and observers to submit examples of good practices by **15 February 2018 at 18:00** to the Secretariat (DGI-CDDH@coe.int), using the boxes foreseen for this purpose in the document setting out the preliminary structure of the Guide (CDDH-EXP(2017)R2).

17. The CDDH welcomed the progress made and took note of the preliminary structure as it appears in Appendix V below.

18. It noted that several member States had already submitted good practices and encouraged the other States to do the same, pointing out that the CDDH-EXP, at its 3rd meeting (25-27 April 2018) will finish its draft Guide to good practices which it will submit to the CDDH for review and possible adoption at its meeting (November 2018). On this occasion, the CDDH-EXP will also submit suggestions to the CDDH for possible follow-up work in this area.

Appendix V

**Preliminary structure of the draft Guide to good practices
on the way of reconciling freedom of expression with other human rights
and freedoms, in particular, in culturally diverse societies**
(as approved by the CDDH at its 88th meeting, 5-7 December 2017)

I. Introduction

- Human rights in culturally diverse societies
- Contemporary challenges and threats

II. Background to the Guide

- The CDDH's past relevant work
- Terms of reference
- The target group of the Guide
- Selection criteria for good practices

III. Scope and content of the right to freedom of expression

- A. Protection of freedom of expression
- B. Specific actors and their relation to freedom of expression
 - i. Specific focus area: Freedom of expression and political discourse
 - ii. Specific focus area: Fake news (disinformation)

IV. Hate speech

V. Reconciling freedom of expression and other human rights

- A. Freedom of expression and right to private life
- B. Freedom of expression and freedom of thought, conscience and religion
 - i. Specific focus area: Blasphemy
- C. Freedom of expression and freedom of peaceful assembly and association
- D. Freedom of expression and prohibition of discrimination

Appendix [If necessary]

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