

A EUROPEAN FRAMEWORK NATIONAL STATUTE

FOR THE PROMOTION OF TOLERANCE

SUBMITTED WITH A VIEW TO BEING
ENACTED BY THE LEGISLATURES
OF EUROPEAN STATES

Whereas respect for human dignity is based on recognition of human diversity and the inherent right of every person to be different,

Whereas tolerance postulates an open mind to unfamiliar ideas and ways of life,

Whereas the concept of tolerance is the opposite of any form of unlawful discrimination,

Whereas tolerance has a vital role in enabling successful coexistence of diverse groups within a single national society,

Whereas such coexistence enriches and strengthens the fabric of the national society, it should not affect the basic identity of that society or its shared values, history, aspirations and goals,

Whereas integration within a single national society does not mean assimilation,

Whereas coexistence and cooperation within a democratic society require that individuals and groups make mutual concessions to each other,

Whereas respect for the distinctive characteristics of diverse groups should not weaken the common bonds of responsible citizenship within a democratic and open society as a whole,

Be it therefore enacted as follows:

Section 1. Definitions

For the purposes of this Statute:

- (a) "Group" means: a number of people joined by racial or cultural roots, ethnic origin or descent, religious affiliation or linguistic links, gender identity or sexual orientation, or any other characteristics of a similar nature.
- (b) "Group libel" means: defamatory comments made in public and aimed against a group as defined in paragraph (a) – or members thereof – with a view to inciting to violence, slandering the group, holding it to ridicule or subjecting it to false charges.

Explanatory Notes:*

- (i) This definition covers "blood libels" and anti-Semitic slurs, as well as allegations that, e.g., "gypsies are thieves" or "Moslems are terrorists".
 - (ii) It must be understood that the "group libel" may appear to be aimed at members of the group in a different time (another historical era) or place (beyond the borders of the State).
- (c) "Hate crimes" means: any criminal act however defined, whether committed against persons or property, where the victims or targets are selected because of their real or perceived connection with - or support or membership of - a group as defined in paragraph (a).
 - (d) "Tolerance" means: respect for and acceptance of the expression, preservation and development of the distinct identity of a group as defined in paragraph (a). This definition is without prejudice to the principle of coexistence of diverse groups within a single society.

* Explanatory notes must be viewed as an authentic interpretation of the text of the Framework Statute. Where appropriate, they should also serve as a basis for either primary or secondary legislation.

Explanatory Note:

Coexistence of diverse groups within a single society requires, *inter alia*, some knowledge of local language as a means of communication with authorities and the social environment.

Section 2. Purpose

The purpose of this Statute is to:

- (a) Promote tolerance within society without weakening the common bonds tying together a single society.
- (b) Foster tolerance between different societies.
- (c) Eliminate hate crimes as defined in Section 1(c).
- (d) Condemn all manifestations of intolerance based on bias, bigotry and prejudice.
- (e) Take concrete action to combat intolerance, in particular with a view to eliminating racism, colour bias, ethnic discrimination, religious intolerance, totalitarian ideologies, xenophobia, anti-Semitism, anti-feminism and homophobia.

Explanatory Notes:

- (i) This formulation does not go into detail within the subsets listed. Thus, religious intolerance is understood to cover Islamophobia, anti-Christianity, etc. Ethnic discrimination is understood to cover anti-Roma (gypsies) activities.
- (ii) Anti-Semitism is listed as a separate subset since it crosses the lines of various subsets. It is certainly not confined to religious intolerance (conversion did not save Jews from extermination under the Nazis).

Section 3. Guaranties of Rights

Tolerance (as defined in Section 1(d)) shall be guaranteed towards any group (as defined in Section 1(a)), especially in the enjoyment of the following human rights:

Explanatory Notes:

- (i) The list of the human rights enumerated below is non-exhaustive.
- (ii) The rights, as listed below, have to be interpreted in a broad manner.

- (iii) It is important to stress that tolerance must be practised not only by Governmental bodies but equally by individuals, including members of one group *vis-à-vis* another.
 - (iv) Guarantee of tolerance must be understood not only as a vertical relationship (Government-to-individuals) but also as a horizontal relationship (group-to-group and person-to-person). It is the obligation of the Government to ensure that intolerance is not practised either in vertical or in horizontal relationships
- (a) Freedom of expression, including freedom to seek, receive and impart information and ideas - regardless of frontiers – either orally, in writing or in print, and through any broadcasting or electronic media (including the Internet).
 - (b) Freedom of religion and belief, expressed either individually or in community with others, including:
 - (i) freedom to manifest that religion or belief in worship, observance, rituals, rites, practice and teaching; and
 - (ii) freedom to change or opt out of one's religion.
 - (c) Freedom of association with other members of the group, with a view to promoting its special culture, way of life, religion or language.
 - (d) Freedom of peaceful assembly, including non-violent parades and demonstrations.
 - (e) Freedom to vote and to run for elections, subject to general prescriptions such as citizenship, minimum age and residence.
 - (f) Freedom to take part in the conduct of public affairs, including access to civil service, subject to general prescriptions as regards citizenship and general qualifications.
 - (g) Right to acquire nationality based on birth or long-term residence.
 - (h) Freedom of movement.
 - (i) Right to privacy.
 - (j) Freedom of access to professions, subject to general qualifications, and to individual economic activities.
 - (k) Freedom of education in the language of the group, as well as in accordance with its religious and cultural traditions.
 - (l) Right to equal participation in general cultural activities.
 - (m) Right to own and to inherit property.
 - (n) Right to housing.

- (o) Right to work, including free choice of employment and equal pay for equal work.
- (p) Right to medical care and social insurance.

Section 4. Limitations

The rights guaranteed in Section 3 are subject to the following limitations, applied in a proportionate manner as necessary in a democratic society:

Explanatory Notes:

- (i) The list of limitations as enumerated below is exhaustive.
- (ii) The limitations, as listed below, have to be interpreted in a restrictive manner.
- (iii) The limitations are enumerated here in a generic fashion. Not every right or sub-right guaranteed in Section 3 is necessarily subject to every limitation mentioned here.

(a) National or international security.

Explanatory Note:

Tolerance must not be used as a means for the condoning terrorism or as a cover for those seeking to subvert domestic or international peace and security.

(b) *Ordre public*.

Explanatory Notes:

- (i) A prime example: it must be understood that demonstrations (in exercise of freedom of assembly) need not be tolerated when they are likely to degenerate into riots or infringe on the rights of others
- (ii) Another example is that, given the need to fight crime, persons may not be allowed to cover their faces in public.
- (iii) *Ordre public* is not confined to issues of crime and violence. Thus, city planning and zoning rules may override an attempt to build a place of worship on a particular site.

(c) Public policy.

Explanatory Note:

Tolerance does not mean that a group can segregate itself from society as a whole, repudiating the need to interface with other groups.

(d) Public morals.

Explanatory Note:

Examples: tolerance does not denote acceptance of such practices as female circumcision, forced marriage, polygamy or any form of exploitation or domination of women.

(e) Public health.

Explanatory Note:

Example: the Court of Appeal in England (per Lord Denning) found no fault with the refusal of a chocolate-making factory to employ a bearded Sikh in view of a hazard of contamination by bacteria.

(f) Protection of the rights and freedoms of others.

Explanatory Notes:

- (i) Tolerance is a two-way street. Members of a group who wish to benefit from tolerance must show it to society at large, as well as to members of other groups and to dissidents or other members of their own group.
- (ii) There is no need to be tolerant to the intolerant. This is especially important as far as freedom of expression is concerned: that freedom must not be abused to defame other groups.

Section 5. Migrants

- (a) Tolerance (as defined in Section 1(d)) must be guaranteed to any group (as defined in Section 1(a)), whether it has long-standing societal roots or it is recently formed, especially as a result of migration from abroad.
- (b) Foreign migrants, for their part, must adhere to the principle of coexistence of diverse groups within a single society.
- (c) If a foreign migrant - who has been admitted into the territory of the State but has not acquired citizenship – is clearly unwilling to comply with the principle of coexistence of diverse groups within a single national society, he or she may be obliged to

leave the State (subject to applicable international legal standards).

Explanatory Notes:

- (i) Under Article 3 of Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, "No one shall be expelled ... from the territory of the State of which he is a national". Obviously, once a new migrant has acquired nationality, paragraph (c) is no longer applicable.
- (ii) Even with non-nationals, it is necessary to bear in mind that, under Article 4 of the same Protocol, "collective expulsion of aliens is prohibited". The decision whether a new migrant has forfeited the right to remain within the State must therefore be made on an individual basis through an appropriate judicial or quasi-judicial procedure.
- (iii) The right to expel migrant workers who "offend against public interest or morality" is explicitly expressed in Article 19(8) of the European Social Charter.
- (iv) The question whether a foreign migrant is clearly unwilling to comply with the principle of coexistence of diverse groups within a single national society is an issue of fact, which has to be determined by a judicial or quasi-judicial authority.
- (v) Upon admission to the State, foreign migrants may be required to sign a statement in which they confirm that they are aware of the provision included in paragraph (c).

Section 6. Implementation

To ensure implementation of this Statute, the Government shall:

Explanatory Note

It goes without saying that enactment of a Statute for the Promotion of Tolerance does not suffice by itself. There must be a mechanism in place ensuring that the Statute does not remain on paper and is actually implemented in the world of reality.

- (a) Be responsible for the special protection of vulnerable and disadvantaged groups.

Explanatory Notes:

- (i) Members of vulnerable and disadvantaged groups are entitled to a special protection, additional to the general protection that has to be provided by the Government to every person within the State.
- (ii) The special protection afforded to members of vulnerable and disadvantaged groups may imply a preferential treatment. Strictly speaking, this preferential treatment goes beyond mere respect and acceptance lying at the root of tolerance (see the definition of tolerance in Section 1(d)). Still, the present provision is justified by the linkage between historical intolerance and vulnerability.
- (iii) The answer to the question which group is vulnerable or disadvantaged in a particular society varies from one country to another.

(b) Without prejudice to existing control mechanism, set up a special administrative unit in order to supervise the implementation of this Statute.

Explanatory Note:

- (i) The implementation of this provision depends on the existing structure in any given State. In any country which has already set up an administrative body vested with general competence to supervise laws such as the present Statute, no further action has to be taken. However, where no such body exists, it has to be set up.
- (ii) The special administrative unit should preferably operate within the Ministry of Justice (although the Ministry of the Interior is another reasonable possibility).

(c) Establish a National Tolerance Monitoring Commission as an independent body – composed of eminent persons from outside the civil service – vested with the authority to promote tolerance. The Commission will be empowered to:

- (i) Issue general guidelines and specific recommendations for action.
- (ii) Express views regarding the degree to which this Statute is implemented in practice.
- (iii) Disseminate such guidelines, recommendations and views through the media and otherwise.
- (iv) Foster international cooperation with similar bodies in other States.

Explanatory Notes:

- (i) The thrust of paragraphs (b) and (c) is the existence of two national bodies entrusted with the implementation of the present Statute. The first body (referred to in paragraph (b)) is a governmental department. The second body (established under paragraph (c)) is external to the Government, acting independently (not unlike a special Ombudsman).
- (ii) The independent Commission will be empowered to express its views regarding implementation of the Statute by all concerned. Implementation in this context includes (but is not limited to) the imposition of penal sanctions, education and media coverage.
- (iii) The independent Commission will also be empowered to organize national or international conferences, workshops, seminars, etc.

Section 7. Penal Sanctions

- (a) The following acts will be regarded as criminal offences punishable as aggravated crimes:
 - (i) Hate crimes as defined in Section 1(c).
 - (ii) Incitement to violence against a group as defined in Section 1(a).
 - (iii) Group libel as defined in Section 1(b).
 - (iv) Overt approval of a totalitarian ideology, xenophobia or anti-Semitism.
 - (v) Public approval or denial of the Holocaust.
 - (vi) Public approval or denial of any other act of genocide the existence of which has been determined by an international criminal court or tribunal.

Explanatory note:

This Sub-Section defines acts punishable as aggravated crimes. Sub-paragraph (vi) does not affect public (or private) discussions and differences of opinion as to whether other acts – not covered by decisions of international courts or tribunals - also amount, or fail to amount, to genocide.

- (b) Juveniles convicted of committing crimes listed in paragraph (a) will be required to undergo a rehabilitation programme designed to instill in them a culture of tolerance.

- (c) Crimes listed in paragraph (a) will not be considered political offences for purposes of extradition.
- (d)
- (e) Victims of crimes listed in paragraph (a) will have a legal standing to bring a case against the perpetrators, as well as a right to redress.
- (f) Free legal aid will be offered to victims of crimes listed in paragraph (a), irrespective of qualification in terms of impecuniosity.

Section 8. Education

The Government shall ensure that:

- (a) Schools, from the primary level upwards, will introduce courses encouraging students to accept diversity and promoting a climate of tolerance as regards the qualities and cultures of others.

Explanatory Notes:

- (i) The principle has been accepted for many years (*cf.* the Declaration Regarding Intolerance – A Threat to Democracy, adopted by the Committee of Ministers of the Council of Europe on 14 May 1981).
 - (ii) It is very important to start such courses as early as possible in the educational programme, *i.e.* in elementary school. Yet, these courses must be offered also at higher levels of education, up to and including universities.
- (b) Similar courses will be incorporated in the training of those serving in the military and law enforcement agencies.
 - (c) Training and tolerance awareness courses will be made available to different strata of society, with an emphasis on professional groups.

Explanatory Notes:

- (i) Training must be made available as part of continuing adult education.

- (ii) It is especially important to ensure advanced professional training of lawyers (including judges and criminal justice personnel), administrators, police officers, doctors, etc.
- (d) Teaching materials for tolerance awareness courses (including syllabi) will be developed by Departments of Education to meet the needs.
- (e) Instructors will be trained in a manner qualifying them to train others in tolerance awareness courses.
- (f) Departments of Education will ensure that teaching materials in ordinary courses will be free of any innuendos and slights directed against any group as defined in Section 1(a).
- (g) The production of books, plays, newspapers reports, magazine articles, films and television programmes – promoting a climate of tolerance – will be encouraged and, where necessary, subsidized by the Government.

Section 9. Mass Media

- (a) The Government shall ensure that public broadcasting (television and radio) stations will devote a prescribed percentage of their programmes to promoting a climate of tolerance, as per Section 8(f).
- (b)(b) The Government shall encourage all privately owned mass media (including the printed press) to promote a climate of tolerance, as per Section 8(f).
- (c) The Government shall encourage all the mass media (public as well as private) to adopt an ethical code of conduct, which will prevent the spreading of intolerance and will be supervised by a mass media complaints commission.

Explanatory Notes:

- (i) This is a delicate matter, inasmuch as there is no intention to censor the media. The media complaints commission is supposed to consist of independent persons, but it has to be set up by – and report to - the media themselves, rather than the Government.
- (ii) There is a related issue of Internet abuse through the spreading of intolerance. However, initiatives to bring about a legal regulation

of cyberspace are currently debated in a wider context. It is too early to speculate how the matter will be resolved.

This text was prepared – under the aegis of the European Council on Tolerance and Reconciliation – by a Group of Experts composed of Yoram Dinstein (Chair), Ugo Genesio, Rein Müllerson, Daniel Thürer and Rüdiger Wolfrum.