



**Doc. 11640**

17 June 2008

## Towards decriminalisation of defamation

**Reply to Recommendation<sup>1</sup>:** Recommendation 1814 (2007)  
Committee of Ministers

1. The Committee of Ministers has studied Parliamentary Assembly [Recommendation 1814 \(2007\)](#) "Towards decriminalisation of defamation" with great attention. It has communicated the recommendation to the governments of member states as well as to the Steering Committee on the Media and New Communication Services (CDMC), the European Committee on Crime Problems (CDPC), the Steering Committee for Human Rights (CDDH) and the Council of Europe Commissioner for Human Rights, for information and possible comments. The comments received are contained in the appendix.

2. By decision of 24 November 2004, the Committee of Ministers instructed the Steering Committee on Mass Media (CDMM), which subsequently became the Steering Committee on the Media and New Communication Services (CDMC), *inter alia*, to look into "the alignment of laws on defamation with the relevant case law of the European Court of Human Rights, including the issue of decriminalisation of defamation". It took note of the reply received in September 2006 and of the fact that the CDMC considered it desirable that member states should take a proactive approach in respect of defamation by measuring, even in the absence of judgments of the European Court of Human Rights concerning them directly, their domestic legislation against the standards developed by the Court and, where appropriate, by aligning criminal, administrative and civil legislation with those standards. In the above-mentioned document, the CDMC also considered that steps should be taken to ensure that the application in practice of laws on defamation fully complies with those standards.

3. The Committee of Ministers endorses this view, as well as the Parliamentary Assembly's call on member states to take such measures, with a view to removing all risk of abuse or unjustified prosecutions.

4. Bearing in mind the role of the European Court of Human Rights in developing general principles on defamation through its case law and its power to adjudicate claims of violations of Article 10 in specific cases, the Committee of Ministers does not consider it advisable at this point in time to develop separate detailed rules on defamation for member states.<sup>2</sup>

5. Finally, the Committee of Ministers considers that there is no need at present to revise its Recommendation No. R (97) 20 on hate speech or to prepare guidelines on this subject. Member states could instead make more efforts to give the recommendation more visibility and to make better use of it.

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1. Adopted by the Committee of Ministers on 11 June 2008, at the 1029th meeting of the Ministers' Deputies.

2. The above-mentioned report, prepared by the CDMC (Document CM(2006)148,Appendix II), sets out the general principles developed by the Court at the time of the report's publication.



**Appendix – Comments of the Steering Committee on the Media and New Communication Services (CDMC) on Parliamentary Assembly Recommendation 1814 (2007)**

1. The Steering Committee on the Media and New Communication Services (CDMC) supports the Parliamentary Assembly's call to all member states to review their defamation laws and, where necessary, make amendments in order to bring them into line with the case law of the European Court of Human Rights, with a view to removing all risk of abuse or unjustified prosecutions.

2. In this context, the CDMC would like to refer to its reply to the Committee of Ministers on the alignment of laws on defamation with the relevant case law of the European Court of Human Rights, including the issue of decriminalisation of defamation (Document CM(2006)148, Appendix II), in which the CDMC found that there is an urgent need for the Council of Europe to promote strict alignment of national criminal, administrative and civil laws on defamation with the relevant case law of the European Court of Human Rights.

3. In the above-mentioned document, the CDMC also deemed it desirable that member states should take a proactive approach in respect of defamation by measuring, even in the absence of judgments of the European Court of Human Rights concerning them directly, their domestic legislation against the standards developed by the Court and, where appropriate, by aligning criminal, administrative and civil legislation with those standards. Where necessary, steps should also be taken to ensure that the application in practice of laws on defamation fully complies with those standards.

4. The reply and related background document<sup>3</sup> also set out the general principles that the Court has developed in its case law on defamation. Given the European Court of Human Rights' own role and its power to adjudicate claims of violations of Article 10 in specific cases, having regard to all surrounding circumstances, the CDMC does not consider it advisable at this point in time to develop separate detailed rules on defamation for member states.

Finally, in the CDMC's view, there is no need at present to revise the Committee of Ministers' Recommendation No. R (97) 20 on hate speech or to prepare guidelines taking into account new developments on this subject, notably as regards the European Court of Human Rights' case law. More efforts could, however, be made by member states to give the recommendation more visibility and to make better use of it. The CDMC would underline that, in addition to other state bodies, national parliaments have a key role to play in this respect and, more generally, in the alignment of national laws on defamation with the relevant case law of the European Court of Human Rights.

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3. "Examination of the alignment of the laws on defamation with the relevant case law of the European Court of Human Rights, including the issue of decriminalisation of defamation" (CDMC(2005)007).