

## **Information Documents**

**SG/Inf(2022)36**

6 October 2022

---

## **Freedom of political speech: an imperative for democracy**

---

## **Introduction**

Freedom of expression, as one of the essential foundations of a democratic society, is of decisive importance in the political debate. There can be no democracy where freedom of expression in political debate is curtailed. The views expressed by elected politicians, candidates standing for election, but also all those who play an important role in shaping democratic decisions on all levels – local, regional, national and international – are the very essence of the political debate. As far as members of parliament are concerned, this fundamental principle is often enshrined in democratic constitutions through the institution of parliamentary immunity. However, while the need to secure a sound democratic debate requires a strong protection of political speech, politicians<sup>1</sup> also bear a specific responsibility for democracy, for the safeguard of fundamental rights and of the rule of law. The reach of this freedom and the relevant standards of the Council of Europe have been described in earlier reports.<sup>2</sup>

Recent debates in the Parliamentary Assembly<sup>3</sup> and judgments of the European Court of Human Rights (hereafter “the Court”) clearly demonstrate the relevance and importance of political speech for democracy and address fundamental questions, such as the limits of political speech in a democratic society. In today’s critical circumstances for security and democratic stability, the extent of freedom of speech of politicians is being debated in view of the weight and influence of their public discourse. Article 10 of the European Convention on Human Rights (ECHR) specifically recognises that the exercise of the right to freedom of expression “carries with it duties and responsibilities” and may therefore, under certain conditions, be subject to “formalities, conditions, restrictions or penalties”. At the same time, there have been situations where political speech was silenced by means of harassment, threats, violence, arbitrary procedures and imprisonment.

How far can political speech advocate fundamental changes in the structure of the state or of the constitution? How far can it affect the rights of others and democracy itself? What are the limits of a permissible state action restricting the right to freedom of expression in the framework of a political debate? Guidance to address these questions is offered by Council of Europe standards and the caselaw of the Court as set out in this report.<sup>4</sup>

---

<sup>1</sup> For the sake of brevity, this report uses the notion of “politicians” for persons who are in elected or appointed functions in governments or in parliaments on all levels, for candidates and activists in and outside political parties, in elections and in referenda.

<sup>2</sup> “The impact of the sanitary crisis on freedom of expression and media freedom” (SG/Inf(2019)19 of 7 July 2020); “Safety of journalists” (SG/Inf(2021)2 of 4 February 2021); “Current trends in threats to freedom of expression” (SG/Inf(2021)36 of 22 November 2021).

<sup>3</sup> [PACE Resolution 2381 \(2021\) Should politicians be prosecuted for statements made in the exercise of their mandate?](#)

<sup>4</sup> These questions were also addressed at an online conference on freedom of expression in political speech, organised on 28 and 29 April 2022 by the University of Geneva with the support of the Council of Europe. Members of parliament, scientists, experts from international organisations and civil society discussed the scope of freedom of expression in political speech and its limits. From the Council of Europe, the Secretary General, the Commissioner for Human Rights, representatives of the Parliamentary Assembly, judges of the European Court of Human Rights, representatives of Council of Europe committees, as well as officials of the Secretariat took part in the debate.

## 1. The scope of freedom of expression of politicians

Freedom of expression is applicable “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb... Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’”.<sup>5</sup> The importance of this principle, set out repeatedly in the caselaw of the Court, is further stressed for political parties and their active members: interference with the freedom of expression of politicians, especially if they are members of an opposition party, calls for the closest scrutiny by the Court. The Court stated that – in a democratic society based on the rule of law – political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression.<sup>6</sup> According to the Court, it is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a state is currently organised, if they do not harm democracy.<sup>7</sup>

The Court has consistently emphasised the importance of freedom of expression for members of parliament, this being political speech *par excellence*. While freedom of expression is important for everyone, it is especially so for elected representatives of the people. They represent their electorate, draw attention to their preoccupations and defend their interests.<sup>8</sup> Parliamentary speech enjoys an elevated level of protection, as “[p]arliament is a unique forum for debate in a democratic society”.<sup>9</sup> The rules of parliamentary immunity pursue precisely the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions. Parliamentary immunity aims at protecting free speech in parliament, protecting the opposition and the autonomy of legislature, and thus also maintaining the separation of powers.<sup>10</sup> At the same time, the Court noted that this immunity serves the interests of parliament as a whole and is not a personal privilege for its members.<sup>11</sup> Hence the applicable rules in Council of Europe member states usually provide for the possibility of parliament to lift such immunity in specific cases, irrespective of the consent of the individual parliamentarian concerned.

The Committee of Ministers (CM) has spelled out thoroughly how member states and politicians should act: Its *Declaration on freedom of political debate in the media* summarises basic principles such as the freedom to criticise the state and politicians, the principle of close public scrutiny of politicians in their functions, the protection of their reputation and its limits, and the requirement for proportionate remedies.<sup>12</sup> In its *Recommendation on measures concerning media coverage of election campaigns*, the CM indicated the criteria for observing the rule of fair media coverage of election campaigns by public service media.<sup>13</sup> The *Recommendation on electoral communication and the media coverage of election campaigns* of 2022 lays out how regulatory frameworks for online election campaigning should be adjusted to restore the fairness and legitimacy of the electoral process. It introduces the principle of transparency in online advertising and in financing of campaigns and recommends how to ensure trustworthy and pluralistic electoral content online with safeguards against electoral disinformation.<sup>14</sup>

<sup>5</sup> ECtHR, *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976, § 49.

<sup>6</sup> ECtHR, *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, 25 September 2012, § 70.

<sup>7</sup> ECtHR, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, 5 April 2022, § 185.

<sup>8</sup> ECtHR, *Castells v. Spain*, no. 11798/85, 23 April 1992, § 42; see also ECtHR, *Jerusalem v. Austria*, no. 26958/95, 27 February 2001, § 36.

<sup>9</sup> ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, § 138.

<sup>10</sup> Ibid. An elevated level of protection for statements made in parliament has been attributed by the Court even in the case of an expert who had spoken before a parliamentary committee hearing but was not a parliamentarian himself (see ECtHR, *Freitas Rangel v. Portugal*, no. 78873/13, 11 January 2022, § 59).

<sup>11</sup> ECtHR, *Kart v. Turkey* [GC], no. 8917/05, 3 December 2009, § 95; *A. v. the United Kingdom*, no. 35373/97, 17 December 2002, § 86.

<sup>12</sup> Declaration of the Committee of Ministers on freedom of political debate in the media (12 February 2004).

<sup>13</sup> Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns.

<sup>14</sup> Recommendation CM/Rec(2022)12 on electoral communication and media coverage of election campaigns.

The Parliamentary Assembly stresses that politicians' freedom of speech and freedom of assembly requires a particularly high level of protection, both in parliament and when they speak to their constituents in public meetings or through the media, including social media.<sup>15</sup> It recalls that every person – not least politicians – has the right “to make proposals whose implementation would require changes to the constitution, provided the means advocated are peaceful and legal and the objectives do not run contrary to the fundamental principles of democracy and human rights”<sup>16</sup> as the basic principles advocated by the Council of Europe: “This includes calls to change a centralist constitution into a federal or confederal one, or vice versa, or to change the legal status and powers of territorial (local and regional) entities, including to grant them a high degree of autonomy or even independence”.<sup>17</sup> The Parliamentary Assembly considers that “politicians who are detained for making statements in the exercise of their political mandates that respect the limits of freedom of speech” fall under the definition of political prisoners and should be released without delay.<sup>18</sup>

The Venice Commission regularly addresses in its opinions the issue of freedom of expression and its possible limitations based on the international standards defined in Article 10 of the ECHR and the caselaw of the Court. The Commission underlines that, while freedom of expression is a core human right and an essential part of democracy, a very strong protection should be ensured with regard to members of parliament and political speech in general.<sup>19</sup>

---

<sup>15</sup> [PACE Resolution 2381 \(2021\)](#), cited above, § 1.

<sup>16</sup> *Ibid.*, § 4.

<sup>17</sup> *Ibid.*, § 5.

<sup>18</sup> *Ibid.*, § 7.

<sup>19</sup> The main features of these opinions appear in the Venice Commission's [compilation concerning freedom of expression and media](#) (CDL-PI(2020)008 of 07 July 2020).

## 2. The limits of political speech

The freedom of speech of politicians is not unlimited. Notably, political speech, even in parliament, that is aimed at the destruction of other fundamental rights or values of the ECHR does not benefit from its protection.<sup>20</sup> The Court has thus considered that antisemitic or discriminatory public statements, made by members of parliament, are not protected by freedom of speech as their content is at odds with the democratic values of the ECHR.<sup>21</sup> Indeed, when exercising their right to freedom of expression, politicians need to respect the duties stemming from the ECHR – in particular the duty to combat racial discrimination, which includes discrimination on account of someone’s ethnic origin.<sup>22</sup> The Parliamentary Assembly underlined that freedom of speech is not unlimited and that hate speech condoning violence against certain people or groups of people on the grounds of race, origin, religion, or political opinions, as well as calls for the violent overthrow of democratic institutions are not protected. Politicians have an even greater responsibility, due to their high visibility, to refrain from such abuses.<sup>23</sup>

Similarly, political speech conducive to violence does not benefit from the protection of freedom of expression. For instance, when assessing compatibility with the ECHR of restrictions to separatist discourse, the Court distinguishes between, on the one hand, discourse that does not constitute an incitement to violence, armed resistance or an uprising and does not contain hate speech (“peaceful” or “democratic” discourse) which is protected by Article 10 of the ECHR, even if it advocates changes in the internal organisation of the state or its constitution; and, on the other hand, discourse that advocates for or approves violent offences.<sup>24</sup> The latter is not protected by Article 10 of the ECHR.

Political speech, even when protected by Article 10 of the ECHR, may be restricted pursuant to paragraph 2 of this provision, according to which restrictions to freedom of speech may be imposed if they are, for example, prescribed by law, and necessary in a democratic society, in the interests of national security, territorial integrity or public safety or for the protection of the reputation or rights of others. Whilst the Court has consistently held that there is little scope for restrictions on political speech or on the debate of questions of public interest,<sup>25</sup> it also underlined that:

*“... tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote, or justify hatred based on intolerance, provided that the ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued”<sup>26</sup>.*

<sup>20</sup> See Article 17 ECHR.

<sup>21</sup> ECtHR, *Pastörs v. Germany*, no. 55225/14, 3 October 2019, § 47.

<sup>22</sup> ECtHR, *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, 16 February 2021, § 91.

<sup>23</sup> PACE Resolution 2381 (2021) cited above, § 3.

<sup>24</sup> Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, § 541. See also ECtHR, *Gerger v. Turkey* [GC], no. 24919/94, 8 July 1999, § 50; ECtHR, *Erdal Taş v. Turkey*, no 77650/01, 19 December 2006, § 38.

<sup>25</sup> ECtHR, *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, 17 May 2016, § 144; *Wingrove v. the United Kingdom*, no. 17419/90, 25 November 1996, § 58.

<sup>26</sup> ECtHR, *Erbakan v. Turkey*, no. 59405/00, 6 July 2006, § 56.

Interferences within the exercise of the right to free political speech which pursue the legitimate aim of protecting national security and public order need to be justified by the need to address a clear and imminent danger or impact on national security and public order.<sup>27</sup> Moreover, the concepts of national security and public safety must be interpreted restrictively.<sup>28</sup>

Based on the legal obligations stated by the Court, other institutions of the Council of Europe have been elaborating standards which address the issues systematically. The Commissioner for Human Rights has underlined that member states do have the right to regulate against ideologies aimed at the destruction of democracy and against hate speech, and called for zero tolerance to hate speech, including by politicians.<sup>29</sup> The general approach of the Group of States against Corruption (GRECO) in its 4th and 5th evaluation rounds relating respectively to prevention of corruption in respect of members of parliament and to promoting integrity in central governments (top executive functions), is to call for strong ethical frameworks for members of parliament and members of the executive, involving integrity checks, codes of conduct, promoting a broader culture of integrity in politics and preventing the misuse of powers to thwart freedom of expression. The European Commission against Racism and Intolerance (ECRI) recommends “counter-speech”, self-regulation by political parties, parliaments and other elected bodies; the withdrawal of financial and other support from political parties which have recourse to hate speech; civil, administrative and criminal liability; and – in very serious cases like the incitement to violence – even the prohibition of political parties.<sup>30</sup> ECRI stresses at the same time that the fight against hate speech must not be misused to suppress criticism of official policies and opposition.<sup>31</sup>

Most importantly, the Committee of Ministers adopted on 20 May 2022 its *Recommendation to member States on combating hate speech* which identifies public officials, elected bodies and political parties amongst the crucial stakeholders capable of playing a key role in making specific and significant contributions to preventing and combating hate speech and to promoting a culture of inclusiveness. Addressing public officials, the Recommendation provides that particularly those in leadership positions should not only “avoid engaging in, endorsing or disseminating hate speech” but also play a positive role and “be encouraged to publicly promote a culture of human rights and to condemn hate speech firmly and promptly”.<sup>32</sup> Significantly, the Recommendation also invites member states to encourage parliaments, other elected bodies and political parties to develop codes of conduct against hate speech, particularly in electoral campaigns and in debates; to avoid any expression that is likely to foster intolerance and to openly condemn hate speech.<sup>33</sup>

---

<sup>27</sup> ECtHR, *Gül and Others v. Turkey*, no. 4870/02, 8 June 2010, §§ 42-44; ECtHR, *Kılıç and Eren v. Turkey*, no. 43807/07, 29 November 2011, §§ 29-30.

<sup>28</sup> ECtHR, *Stoll v. Switzerland* [GC], no. 69698/01, 10 December 2007, § 54.

<sup>29</sup> Report of the Commissioner for Human Rights following her visit to Bulgaria from 25 to 29 November 2019 (31 March 2020, CommDH(2020)8), §§ 39-40.

<sup>30</sup> European Commission against Racism and Intolerance, *General Policy Recommendation No. 15* on combating hate speech, adopted on 8 December 2015.

<sup>31</sup> *Ibid.*

<sup>32</sup> Recommendation CM/Rec(2022)/16 on combating hate speech, see [Chapter 3, § 28 of the Appendix](#).

<sup>33</sup> Recommendation CM/Rec(2022)/16 on combating hate speech, see [Chapter 3, § 29 of the Appendix](#).

It should be stressed that the increased protection from which political speech benefits in a democratic society triggers also increased duties and responsibilities. Thus, as politicians inevitably and knowingly lay themselves open to scrutiny of their words and deeds by journalists and the public at large, they must display a greater degree of tolerance.<sup>34</sup> Politicians, making use of their right to freedom of expression may often make public statements that are susceptible of criticism,<sup>35</sup> or intended to be provocative and to arouse strong reactions.<sup>36</sup> The Parliamentary Assembly “condemns the rise of aggressive behaviour and violent verbal attacks by political figures and representatives of the authorities against journalists and calls on all political leaders to combat this phenomenon”.<sup>37</sup> Similarly, in their ministerial conference’s “Resolution on the safety of journalists” of 2021, the Council of Europe’s member states’ ministers responsible for media and information society condemned aggressive rhetoric, intimidation and violence by political actors in response to critical journalism.<sup>38</sup> Politicians must show restraint and not take advantage of their possible dominant position in state institutions to silence criticism, in particular by using civil or criminal procedures against critics; these procedures inevitably have chilling effects on the willingness of people and the media to express views on matters of public interest. According to an opinion adopted by the Consultative Council of European Judges (CCJE), politicians should, as a matter of principle, preserve the people’s trust in democratic institutions and avoid using demagogic arguments against court decisions, attack individual judges or encourage disobedience to judicial decisions.<sup>39</sup>

Finally, in as far as Article 10, paragraph 2 of the ECHR expressly refers to restrictions in the exercise of freedom of expression “for the protection of the reputation or rights of others”, it is worth noting that the Court found that parliamentary immunity is compatible with the right of access to court guaranteed by Article 6, paragraph 1 of the ECHR if a civil claim against a member of parliament is found inadmissible because of such immunity. This is provided that the immunity pursues the legitimate aim of protecting free speech in parliament and maintaining the separation of powers; that it is not disproportionate to the aims sought to be achieved (which is notably the case if the person who tries to sue a member of parliament in court has reasonable alternative means to protect effectively his or her rights, e.g. to petition parliament to obtain a retraction) and that the very essence of the right is not impaired.<sup>40</sup> The Court however stressed that the lack of any clear connection with parliamentary activity calls for a narrow interpretation of proportionality.<sup>41</sup> Otherwise the granting of parliamentary immunity may lead to a violation of the right of access to court under Article 6 of the ECHR.<sup>42</sup>

<sup>34</sup> ECtHR, *Lingens v. Austria*, no. 9815/82, 8 July 1986, § 42; ECtHR, *Nadtoka v. Russia*, no. 38010/05, 31 May 2016, § 42.

<sup>35</sup> ECtHR, *Mladina d.d. Ljubljana v. Slovenia*, no. 20981/10, 17 April 2014, § 40.

<sup>36</sup> ECtHR, *Oberschlick v. Austria (no. 2)*, no. 20834/92, 1 July 1997, § 31; ECtHR, *Pakdemirli v. Turkey*, no. 35839/97, 22 February 2005, §§ 45-47.

<sup>37</sup> PACE Resolution 2317 (2020) Threats to media freedom and journalists’ security in Europe, § 7.

<sup>38</sup> Conference of Ministers responsible for Media and Information Society, Resolution on the safety of journalists (10-11 June 2021).

<sup>39</sup> Consultative Council of European Judges (CCJE), Opinion No. 18 (2015) on the position of the judiciary and its relations with the other powers of State.

<sup>40</sup> ECtHR, *A. v. the United Kingdom*, no. 35373/97, 17 December 2002, §§ 75-77, 79 and 86.

<sup>41</sup> ECtHR *Cordova v. Italy (no. 2)*, no. 45649/99, 30 January 2003, § 64.

<sup>42</sup> See, for example, ECtHR *Cordova v. Italy (no. 2)*, no. 45649/99, 30 January 2003, § 64; *Syngelidis v. Greece*, no. 24895/07, 11 February 2010, § 44.

### **3. The limits to the limits: conditions for the compatibility of restrictions imposed on political speech**

Restrictions to freedom of expression need to fulfil the criteria set out in Article 10, paragraph 2 of the ECHR, namely, to be provided for by law, to pursue a legitimate aim recognised by this Article and to be necessary in a democratic society. When it comes to restrictions imposed on political speech, in particular in parliament, these conditions aim at ensuring that these restrictions will not deprive the people and the institutions from the benefit of a sound democratic debate.

The Court emphasised that the exercise of freedom of expression in parliament carries with it duties and responsibilities, including with regard to the effective operation of parliament, the orderly conduct of parliamentary business and the protection of the rights of other members of parliament. The Court distinguishes between the substance of parliamentary speech and the time, place and manner of the speech. While parliaments have very limited latitude to regulate the content of speech (for example to limit calls for violence), they are allowed to impose restrictions, including disciplinary sanctions when their members engage in disorderly conduct disrupting the normal functioning of the legislature. However, the Court stressed that rules concerning the internal operation of parliament should not serve as a tool for the majority to abuse its dominant position vis-à-vis the opposition. Parliamentary minority must be protected from abuse by the majority, possibly even by means of judicial review.<sup>43</sup>

Any measure of deprivation of liberty for the content of a political speech appears extremely problematic under Article 10 of the ECHR and has to be strictly checked. The Court considered that a violation of Article 10 of the ECHR occurred where such a measure affected a member of parliament belonging to an opposition party, whose immunity was lifted and who was placed on pre-trial detention. The Court found that the applicant, as a result of his pre-trial detention, was prevented from discharging his duties as member of parliament and from participating in crucial electoral campaigns.<sup>44</sup> Such measures often result into stifling pluralism and limiting freedom of political debate. Detention of political activists, opposition leaders or human rights defenders was thus found by the Court to pursue ulterior purposes of suppressing that political pluralism which forms part of “effective political democracy” governed by “the rule of law” and affecting the very essence of democracy.<sup>45</sup>

In this respect, the clarity of the legal provisions restricting the freedom of speech are of utmost importance. The Venice Commission emphasised that restrictions to freedom of expression must ensure legal certainty through clear provisions (e.g. by avoiding unprecise formulations such as “morality”, “honour and dignity”, “peace and accord in the country”, “connection to terrorist organisations”, “indirect incitement to discrimination”, “religious fanaticism” or “false news”). For the Parliamentary Assembly, the notion of “hate speech” should be construed narrowly and not be extended to criticism – even virulent – of the government, state institutions and their policies and practices, or the advocacy of radical changes, far-reaching autonomy or independence for a region. Acknowledging the right of states to fight against terrorism, the Assembly signaled the risks for democracy created by the incarceration of politicians “for statements they made in the exercise of their political mandates”, based on “the unclear wording and overly broad interpretation of (national) legislation concerning the fight against terrorism and/or the harsh penalties, including prison terms, handed down in practice by criminal courts for insult or defamation”.<sup>46</sup>

---

<sup>43</sup> See the *Karácsony* judgment cited above, §§ 133-141 and 147.

<sup>44</sup> ECtHR, *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, 22 December 2020.

<sup>45</sup> ECtHR, *Navalnyy v. Russia*, nos. 29580/12 and 4 others, 15 November 2018, § 175.

<sup>46</sup> Parliamentary Assembly *Resolution 2381* (2021), Paragraphs 8 and 8.4 on “The functioning of democratic institutions in Turkey”.



#### 4. Restrictions by non-state actors

It should be noted that with the present technical developments, political discourse takes increasingly place not only in campaigns, parliaments and councils where the representatives of the people meet, but also on the internet. This may pose specific challenges for safeguarding a free and fair debate.

A relatively new field concerns restrictions imposed by private internet platforms against harmful content, like hate speech, incitement to violence and disinformation. If such restrictions go too far, they can interfere with the freedom of political discourse, notably if each platform applies its own standards or if they use “artificial intelligence” for automatic takedown of content in political discourse. Fair and transparent rules which respect human rights, democracy and the rule of law are urgently needed in this field, in particular at international level, as this phenomenon knows no borders. The Council of Europe has continuously promoted the rule of law approach to the governance of digital platforms and other intermediaries, with self-regulation as an important but complementary form of governance. In 2018, the Committee of Ministers adopted its *Recommendation on the role and responsibilities of internet intermediaries*, which acknowledges the curatorial and editorial roles of various platforms and calls on states to assign to them corresponding responsibilities.<sup>47</sup> Whereas changes in regulatory and liability frameworks carry a risk of excessive control and a systemic chilling effect on freedom of expression, this topic offers to both public and private actors the opportunity to contribute to an open and free, yet responsible and balanced public discourse. The Council of Europe’s work in the field of digital transformation has a particular relevance in this respect, in particular the guidance to be offered on good practices regarding the formation of public opinion in the digital environment.<sup>48</sup>

#### 5. Conclusions

In recent years the resilience of freedom of expression has been repeatedly tested. The Council of Europe’s efforts to increase safeguards for the protection of free speech online and offline have included concrete guidance to member states. In the present challenging circumstances, securing a democratic debate becomes all the more pressing. Politicians have a very important role to play, both when they make use of their right to free speech (in particular during the exercise of their mandates) and more generally by demonstrating tolerance towards criticism and respect for democratic institutions.

The Council of Europe stands ready to assist, upon request, its member states which may wish to engage in an in-depth examination of their laws and practice. This co-operation may focus in particular on criminal law provisions and their application, in light of the jurisprudence of the Court. This allows to ensure that such provisions are drafted sufficiently clearly, construed narrowly and do not lead to disproportionate restrictions and penalties.

Similarly, whenever judgments of the Court find violations of the right to freedom of speech, the Council of Europe stands ready to co-operate closely with the competent authorities of the respondent states in order to not only redress the individual situation of the applicant, but also to facilitate where necessary the promotion of a culture of open debate in the political sphere. Such debate should entail all issues, including sensitive ones, without the use or threat of criminal sanctions in order “to treat even fundamental opposition as a necessary and welcome part of a living democracy”.<sup>49</sup>

<sup>47</sup> Recommendation [CM/Rec\(2018\)2 on the role and responsibilities of internet intermediaries](#).

<sup>48</sup> The recently (5 July 2022) adopted EU Digital Services Act, which aims to modernise the e-Commerce Directive in relation to illegal content, transparent advertising and disinformation online will reinforce the regulatory framework applicable as it shall govern platforms operating in the EU also from non-EU member states.

<sup>49</sup> PACE [Resolution 2381 \(2021\)](#) cited above, § 10.2.8.