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**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**Guide to good and promising practices  
on the way of reconciling freedom of expression  
with other rights and freedoms, in particular  
in culturally diverse societies**

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adopted by the CDDH  
at its 91<sup>st</sup> meeting (18–21 June 2019)

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**Appendix** *to be included in the publication*

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 (adopted by the CDDH in June 2017)

**Abbreviations and acronyms used in this guide**

CDDH	Steering Committee for Human Rights
CDMSI	Steering Committee on Media and Information Society
CERD	Committee on the Elimination of Racial Discrimination
ECHR or Convention	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR or Court	European Court of Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
NGOs	Non-governmental organisations
OSCE	Organization for Security and Co-operation in Europe
OSCE/ODIHR	Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE)
PACE	Parliamentary Assembly of the Council of Europe
UN	United Nations
Venice Commission	European Commission for Democracy through Law

## I. BACKGROUND

[1.] Freedom of expression is the foundation of open and inclusive societies as it promotes knowledge, exchange and mutual understanding in culturally diverse societies such as those in Europe today. On the other hand, the abuse or misuse of freedom of expression may pose a threat to democracy. Such a threat may also exist when this freedom is censored or silenced.

[2.] As examples, the international controversy after a Danish newspaper published Muhammad cartoons on 30 September 2005 and the murder of *Charlie Hebdo* journalists committed in Paris on 7 January 2015 have highlighted challenges related to the implementation of freedom of expression in democratic societies. These events highlight the risk for the safety of journalists, at the same time showing the risk to democracy itself. They also highlight the questions regarding limits to freedom of expression in contemporary European societies. Due to the diversity of multicultural societies, the enjoyment of one's freedoms seems more than ever to affect the freedom of others.

[3.] The background for preparing the present Guide is the wish of the Committee of Ministers of the Council of Europe to provide member States with a practical tool on ways of reconciling freedom of expression with other human rights, in particular, the right to respect for private life, freedom of thought, conscience and religion, freedom of assembly and association and the prohibition of discrimination. This practical tool is guided by the principle that coordinated and focused action taken to promote the rights to freedom of expression and equality is essential for fostering a tolerant, pluralistic and diverse democratic society in which all human rights can be realised for all people. At the same time it is necessary to draw attention to the non-permissible hate speech which various bodies of the Council of Europe have also firmly condemned.

[4.] While referring to national practices for achieving such conciliation, the Guide first and foremost stresses the utmost importance of freedom of expression as a fundamental right on which a large number of other freedoms are based. It holds a prominent place in democratic societies according to the European Court of Human Rights (hereafter "the Court"):

*Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it 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 the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".<sup>1</sup>*

[5.] Reconciling freedom of expression with other human rights is crucial in culturally diverse societies which strive to promote pluralism, one of the foundations of a democratic society, as underlined by the Court:

*For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts. The harmonious interaction of persons and groups with varied identities is essential for achieving social cohesion. It is only natural that, where a civil society*

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<sup>1</sup> *Thoma v. Luxemburg* (application no. 38432/97), judgment of 29 June 2001; *Perna v. Italy* (application no. 48898/99), judgment of 6 May 2003, §39.

*functions in a healthy manner, the participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.<sup>2</sup>*

## II. INTRODUCTION

[6.] This Guide was prepared by the Steering Committee for Human Rights (CDDH) which set up a drafting group for this purpose composed of a selective number of experts and intergovernmental representatives from member States who met four times during 2017-2019. The Guide has been produced by drawing on the established standards, principles and approaches, and recommendations from international, regional and national legal bodies. These include namely the European Convention on Human Rights (“ECHR” or “the Convention”) and the principles that can be derived from the case-law of the European Court relating to freedom of expression, in particular in the context of culturally diverse societies. An analysis of the relevant case law is contained in the appendix to this Guide.

[7.] Various Council of Europe bodies, international, regional, and intergovernmental organisations, non-governmental organisations (NGOs), national human rights institutions and national public authorities have published analyses and reports relating to freedom of expression. In particular the legal framework of the Council of Europe, namely the European Commission against Racism and Intolerance (ECRI), the Steering Committee on Media and Information Society (CDMSI), the European Commission for Democracy through Law (Venice Commission), the Council of Europe Commissioner for Human Rights and the recommendations and resolutions of the Parliamentary Assembly alongside recommendations from Special Rapporteurs of the UN Human Rights Council on the promotion and protection of the right to freedom of opinion and expression, on freedom of religion or belief, on the rights to freedom of peaceful assembly and of association, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and on minority issues have provided the foundation for the State practices on freedom of expression which this Guide features.

[8.] The specific good and promising practices indicated in this document detail the approaches and methods States use, and serve as an example for the development and incorporation of further measures and improved co-operation. State submissions to a Questionnaire sent out by the CDDH in 2017 provided the primary source of these practices,<sup>3</sup> though there are some aspects identified from other studies and reports on State practices.

[9.] The practices and selected responses are included to provide examples of specific measures and initiatives that could inspire other States or actors to develop and advance their own measures to protect and promote freedom of expression in culturally diverse societies, enhance co-operation between States and across borders, and to demonstrate various concrete means by which a number of challenges and concerns in the implementation can be tackled.

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<sup>2</sup> *Gorzelik and Others v. Poland* (application no. 44158/98), Grand Chamber judgment of 17 February 2004, §92.

<sup>3</sup> The replies from member States and representatives of the civil society are contained in the *Compilation to good and promising practices on the way of reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies* (document CDDH-EXP(2018)02).

[10.] This Guide is not intended as a monitoring exercise. Such monitoring is the role of other Council of Europe and UN bodies. Thus the selection of national practices is intended to be informative and does not imply an evaluation of the specific practices or of State responses. The references to concrete examples are by no means meant to be exhaustive.

[11.] The practices were selected for illustrative purposes only. The Guide shows how States implement the relevant standards and address the complex aspects of the protection of freedom of expression and the role it plays for other human rights, alongside show-casing some creative, enterprising, or transferable ideas to highlight particular options.

[12.] This Guide is mainly addressed to policy makers and public authorities in the Council of Europe member States as an aid to their process in developing national strategies and strengthening their existing ones, as well as collaborating at a regional or international level. It may also be useful for NGOs involved in advocacy and lobbying, and for their work implementing policies in this field. As protection and promotion of freedom of expression is a matter of global concern, in particular due to its exercise on the internet, the good and promising practices put in place in Europe may also serve as inspiration for other regions beyond Europe who are confronted with similar concerns.

[13.] The CDDH has focused on the protection and promotion of human rights in culturally diverse societies since 2003. It has co-organised several conferences and seminars<sup>4</sup> and has produced manuals on hate speech and the wearing of religious symbols in public areas<sup>5</sup> well as a Declaration of the Committee of Ministers on the need to intensify the effort to prevent and combat female genital mutilation and forced marriage in Europe which was accompanied by a Guide to good and promising practices aimed at preventing and combating female genital mutilation and forced marriage<sup>6</sup>. In 2016, it prepared Guidelines of the Committee of Ministers on the protection and promotion of human rights in culturally diverse societies.<sup>7</sup> In 2018, it prepared Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe.<sup>8</sup> The present Guide to good and promising practices on protecting and promoting freedom of expression is aimed in particular at the context of culturally diverse societies of Europe.

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<sup>4</sup> International Conference on "Fundamental Rights in a Pluralistic Society" (The Hague, 20-21 November 2003) co-organised by the Dutch chairmanship of the Committee of Ministers, Conference on "Human Rights in culturally diverse societies: challenges and perspectives" (The Hague, 12-13 November 2008) organised in cooperation with the Government of the Netherlands, High level Seminar "Protection and promotion of Human Rights in culturally diverse societies" (Strasbourg, 13-14 June 2016) organised during the Estonian chairmanship of the Committee of Ministers.

<sup>5</sup> *Manual on hate speech* by Dr Anne Weber and *Manual on the wearing of religious symbols in public areas* by Prof. Malcolm D. Evans.

<sup>6</sup> *Declaration of the Committee of Ministers on the need to intensify the effort to prevent and combat female genital mutilation and forced marriage in Europe*, adopted at the 1293rd meeting of the Ministers' Deputies on 13 September 2017.

<sup>7</sup> The Committee of Ministers' Guidelines were based on a *Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights*, adopted by the CDDH on 19 June 2015, which includes an appendix with a selection of relevant good practices from member States.

<sup>8</sup> *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe*, adopted by the Committee of Ministers at the 1330<sup>th</sup> meeting of the Ministers' Deputies, on 28 November 2018. In this context see also *Compilation of measures and practices in place in the Council of Europe member States*, as contained in document CM(2018)149.

### III. SCOPE AND CONTENT OF THE RIGHT TO FREEDOM OF EXPRESSION

[14.] Individuals of all backgrounds and beliefs have the right to express themselves, even when their opinions are offensive or shocking, providing that they do not incite violence or hatred.<sup>9</sup> Open debate enables our societies to evolve and meet new challenges. Free speech, supported by a diverse and independent media, allows citizens to make informed decisions and helps ensure that powerful interests are held to account.<sup>10</sup>

#### A. Protection of freedom of expression

##### *International and regional levels*

[15.] Freedom of expression is protected by a number of international instruments such as Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5.d.viii of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

[16.] Some of these instruments recognise that the right to freedom of expression is not absolute in all its forms (e.g. Articles 20(1) and (2) of the ICCPR prohibit any propaganda for war and expressions that would amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; Article 4 of the ICERD similarly prohibits propaganda, the dissemination of ideas based on racial superiority or hatred, and the incitement to racial discrimination and as such, it requests States parties to prosecute such behaviour).

[17.] Moreover the Universal Declaration on Cultural Diversity underlines the importance of ensuring the free flow of ideas by word and image by providing all cultures access to express themselves and make themselves known. Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.<sup>11</sup>

[18.] Freedom of expression and information is protected by Article 11 of the Charter on Fundamental Rights of the European Union (Charter). Furthermore, the EU Human Rights Guidelines on Freedom of Expression Online and Offline<sup>12</sup> explain the international human rights standards on freedom of opinion and expression and provide political and operational guidance to officials and staff of the EU institutions and EU member States for their work in third countries and in multilateral fora as well as in contacts with international organisations, civil society and other stakeholders.

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<sup>9</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies, II.B.

<sup>10</sup> Fourth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Populism - How strong are Europe's checks and balances?*, presented at the 127<sup>th</sup> session of the Committee of Ministers, Nicosia, 19 May 2017, Foreword.

<sup>11</sup> *Universal Declaration on Cultural Diversity* adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) at its thirty-first session on 2 November 2001, Art. 6. See also *Convention on the Protection and Promotion of the Diversity of Cultural Expression*, adopted by UNESCO on 20 October 2005.

<sup>12</sup> *EU Human Rights Guidelines on Freedom of Expression Online and Offline*, adopted by Council of the European Union on 12 May 2014.



[19.] At the Council of Europe level, freedom of expression is specifically protected by Article 10 of the European Convention on Human Rights. The European Social Charter also mentions specific aspects of this freedom (e.g. right to be informed of health risks, workers' right to information, right of migrant workers to receive training in their own language), while Articles 7 and 9 of the Framework Convention for the Protection of National Minorities guarantee the right of freedom of expression and the enjoyment of this freedom in the minority language to those belonging to national minorities.

[20.] Additional legal instruments include recommendations and guidelines adopted by other bodies of the Council of Europe which, although not legally binding, are an integral part of the Council of Europe standards.<sup>13</sup> Of particular importance in the present context are the Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies, as well as the Committee of Ministers' Declaration on freedom of communication on the Internet<sup>14</sup> reaffirming freedom of expression and the free circulation of information on the internet.

### **National level**

[21.] Freedom of expression is considered as having a "constitutional" importance<sup>15</sup> since it is not only a right in itself but also underpins other rights and freedoms under the Convention, for example, the freedom of thought, conscience and religion and for freedom of assembly and association.

[22.] In the legal orders of most Council of Europe member States freedom of expression is protected at the constitutional level, i.e. it is guaranteed by the constitution, fundamental law or by a charter of fundamental rights and freedoms enjoying constitutional rank. The wording of the relevant provisions is frequently similar to Article 10 of the Convention. As such, freedom of expression can be invoked in particular before the constitutional courts which interpret its scope and limits in the light of the fact that it is a basic element of a democratic society. The constitutional principles are often further developed in legislative instruments on freedom of speech, media, audio-visual communication, information society services, etc.

[23.] At the end of 2017, the *Danish* Government set up a Commission on Freedom of Expression to assess the framework and general conditions for the freedom of expression in Denmark. The purpose of the Commission's work is to give way for broad political discussions regarding the status of freedom of expression in the present Danish society. The commission is scheduled to deliver its report before the end of 2019.

[24.] In *Georgia*, Article 17 of the Constitution 2018 deals with "freedom of thought, information, mass media and internet". The independence of the Public Broadcaster from state agencies, and its freedom from political and substantial commercial influence, shall be ensured by law.

<sup>13</sup> See document SG(2014)1 Final. Report by the Secretary General of the Council of Europe on the state of democracy, human rights and rule of law in Europe, Executive Summary, "Standard-Setting".

<sup>14</sup> *Declaration on freedom of communication on the Internet*, adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers' Deputies.

<sup>15</sup> Harris, O'Boyle, and Warbick, *Law of the European Convention on Human Rights*, Third edition, Oxford University Press 2014, p. 613.

[25.] In *Spain*, Article 20 of the Constitution (1978) recognises and protects:  
 (i) the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication;  
 (ii) the right to literary, artistic, scientific and technical production and creation;  
 (iii) the right to academic freedom; and (iv) the right to freely communicate or receive accurate information by any means of dissemination whatsoever.  
 Furthermore, Article 5 of the Act 7/2010 on General Audio-visual communication regulates the right to cultural and linguistic diversity in the audio-visual field.

[26.] During the UNESCO World Press Freedom Day hosted by *Finland* in May 2016 on the main themes of Freedom of Information, Press Freedom and Safety of Journalists, freedom of cultural expressions was also highlighted, especially at side events organised within the framework of the Finnish 2016 Presidency of the Nordic Council of Ministers. The objective of the seminar “Re-shaping cultural policies”, jointly organised with UNESCO, was to increase awareness of the significance of diversity of cultural expressions in sustainable development and cultural expression in the Nordic countries and discuss how these could be utilised in the implementation of the UN Agenda 2030. The Nordic Ministers of Culture adopted a Declaration on Promoting Diversity of Cultural Expressions and Artistic Freedom in a Digital Age.<sup>16</sup>

### **Article 10 of the ECHR**

- **Scope**

[27.] Concerning the scope of the rights protected under the freedom of expression, Article 10 (1) of the Convention explicitly refers to three components:

- a. The freedom to hold opinions, which is a prior condition to the other freedoms guaranteed by Article 10 and enjoys an absolute protection in the sense that the possible restrictions set forth in Article 10 (2) are inapplicable to it.<sup>17</sup> This means in substance that the State must not try to indoctrinate its citizens and that the State may not distinguish between those holding specific opinions and others.
- b. The freedom to receive information and ideas which includes the right to gather information and to seek information through all possible lawful sources. Even if Article 10 cannot be read as guaranteeing a general right of access to information, the Court has consistently recognised that the public has a right to receive information of general interest and that particularly strong reasons must be provided for any measure limiting access to information which the public may receive.<sup>18</sup>

<sup>16</sup> *Declaration by the Nordic Ministers of Culture on Promoting Diversity of Cultural Expressions and Artistic Freedom in a Digital Age*, published on 2 May 2016.

<sup>17</sup> Monica Macovei, *Freedom of Expression, Human rights handbook*, No. 2, Council of Europe, 2004, p. 7.

<sup>18</sup> *Magyar Helsinki Bizottság v. Hungary* (application no.18030/11), Grand Chamber judgment of 8 November 2016, §§ 157-180. The case concerned the right of access to information, and, more specifically, the right of access to State-held information. The Court held that whether and to what extent the denial of access to information constituted an interference with an applicant’s freedom of expression had to be assessed in each individual case and in the light of its particular circumstances including: (i) the purpose of the information requested; (ii) the nature of the information sought; (iii) the role of the applicant; and (iv) whether the information was ready and available.

- c. Freedom of expression includes the freedom to impart information and ideas, which is of the greatest importance for the political life and the democratic structure of a country.

- **Permissible limitations**

[28.] It is clear that any restrictions to the freedom of expression have to be construed strictly so as to avoid any risk of undermining the fundamental principles of a democracy. Article 10 (2) of the Convention explicitly recognises that the exercise of the freedom of expression “carries with it duties and responsibilities” and subjects permissible limitations to several conditions. According to this provision, “[t]he exercise of these freedoms (...) may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

[29.] Usually exceptions to the principle of freedom of expression provided by domestic law are aimed at protecting public order, fundamental rights and human dignity of others<sup>19</sup>; unjustified interferences are sanctioned by means of civil or criminal law that regulate rights and responsibilities of those exercising the right to freedom of expression. Namely, the Constitutional Court in *Hungary* stated in several decisions that human dignity or dignity of communities may serve as a constitutional limit to the freedom of expression.

[30.] In *France*, for historical and legal reasons, the domestic law enshrines the principle of strict neutrality of civil servants or agents charged with a public-service mission, which implies restrictions on their liberty to manifest their religious belonging in the exercise of their professional duties.

[31.] In *Germany*, the Basic Law trusts in the power of free debate, commitment of civil society and education as the most effective weapons against the dissemination of totalitarian, inhumane ideologies. In principle, freedom of expression can only be limited on the basis of “general laws”. A law that restricts opinions is deemed impermissible “special legislation” if it is only directed against certain opinions and not drafted in a sufficiently open manner.

[32.] In *Spain*, Act 7/10 on General Audio-visual Communication guarantees the right to a pluralistic audio-visual communication and provides for its limitations since such communication can never incite hatred or discrimination based on gender or any other personal or social circumstance and should be respectful of human dignity and constitutional values, with a special attention paid to the eradication of behaviours fostering situations of inequality of women. There is a non-profit association AUTOCONTROL which manages the advertising self-regulation system, in accordance with a self-regulatory code on commercial publicity.

<sup>19</sup> This is the case in e.g. *Hungary, Latvia, Republic of Moldova, Poland, Serbia and Spain*.

### Maintaining the authority and impartiality of the judiciary

[33.] The need to maintain the authority and impartiality of the judiciary can be, among others, a valid reason for restricting the freedom of expression. Indeed, “as the guarantor of justice, a fundamental value in a law-governed State, the judiciary must enjoy public confidence if it is to be successful in carrying out its duties. It may therefore prove necessary to protect such confidence against gravely damaging attacks that are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying”.<sup>20</sup>

[34.] Another situation where the freedom of expression becomes relevant in the administration of justice concerns the publishing of information regarding on-going criminal cases. Such publication may be contrary to the presumption of innocence guaranteed by Article 6 (2) of the Convention.<sup>21</sup> As regards the freedom of expression of lawyers, intermediaries between the public and the courts, a distinction must be drawn depending on whether the lawyer expresses himself in the courtroom or elsewhere.

[35.] As regards the issue of “conduct in the courtroom”, the principle of fairness militates in favour of a free and even forceful exchange of arguments between the parties. Lawyers have the duty to “defend their clients’ interests zealously”, which means that they sometimes have to decide whether or not they should object to or complain about the conduct of the court<sup>22</sup>. Concerning remarks made outside the courtroom, the Court recognised that the defence of a client may be pursued through media channels which allow the lawyer to inform the public about shortcomings that are likely to undermine pre-trial proceedings.<sup>23</sup>

[36.] Whereas lawyers cannot justifiably be held responsible for the actions of the media, they are not, when making public statements, exempted from their duty of prudence in relation to the secrecy of a pending judicial investigation and from other confidentiality obligations. Lawyers cannot, moreover, make remarks that are so serious that they overstep the permissible expression of comments without a sound factual basis, nor can they proffer insults or make remarks which could be regarded as a gratuitous personal attack.<sup>24</sup>

[37.] Several member States<sup>25</sup> stated that illicit influence on criminal proceedings, violation of order in a court session or violation of secrecy, insulting or defamation of court are punishable offences.

[38.] In *Croatia* specific rules applicable to persons involved in court proceedings are set in the Courts Act, in the State Attorneys Act and in the Legal Profession Act as well as in the respective codes of ethics. A new Code of Ethics and professional behaviour of the judge has been in 2015 adopted in the *Republic of Moldova*, which also contains rules on communicating with mass media. In *Serbia* the Journalists Code of Ethics provides that journalists are obliged to protect privacy, identity and presumption of innocence.

[39.] *Norwegian* judges have established a media group that consists of judges who have undertaken to make themselves available to journalists. The objective is to contribute to openness and greater awareness of the courts amongst the general public. The members do not express the opinions of the Norwegian courts, individual courts or other judges, only their own personal opinions. The Judges Association has released a manual on regulations and good practices for the judges' relationship to the media, called “The judges and the media”. The manual only gives recommendations and non-binding principles.

<sup>20</sup> *Morice v. France* (application no. 29369/10), Grand Chamber judgment of 23 April 2015, § 128.

<sup>21</sup> *Bédat v. Switzerland* (application no. 56925/08), Grand Chamber judgment of 29 March 2016, §§ 68-69.

<sup>22</sup> *Morice v. France*, cited above, § 137.

<sup>23</sup> *Ibid.*, § 132.

<sup>24</sup> *Ibid.*, §§ 136-139.

<sup>25</sup> E.g. Austria, Croatia, Denmark, Estonia, Republic of Moldova, Poland, Serbia, Spain and Switzerland.

[40.] In *Spain*, the Audio-visual Council, “Tribunal Superior de Justicia” and the Association of Journalists, all from Andalusia, published in 2013 “The right to the information and justice: guide for the informative treatment of judicial proceedings”, which summarizes all the existing caselaw on the accessibility of judicial information to the media and collects codes and protocols in force both in Spain and within Europe regulating the relationship among professionals of the information and the judicial sphere.

[41.] In *Switzerland* journalists who want to keep the chronicle of the judicial activity of the Federal Supreme Court (Tribunal fédéral), as well as of many cantonal courts need a special accreditation. Accredited journalists receive more detailed information than the general public and can be authorized to assist at hearings closed to public; in return, they must comply with specific duties.

[42.] In the *United Kingdom*, the institution of a Judicial Appointments and Conduct Ombudsman was created by the Constitutional Reform Act 2005. In 2016 the Judicial College published updated guidance on reporting restrictions in on-going criminal cases, setting out the exceptions to the general principle of open justice.

[43.] In connection with the general rule on impartiality of the judge under section 61 in the *Danish Administration of Justice Act (AJA)* (“retsplejeloven”) and in light of “Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities”, the Danish Association of Judges decided to create guidelines on the ethical principles for judges, which include a section on impartiality. Furthermore section 56 of AJA, stipulates that a judge may not appear in court in a way that is apt to be perceived as an indication of his or her religious or political affiliations or his or her attitude towards religious or political matters. The provision was adopted in 2009 as a codification of an existing custom within the judicial branch to appear politically and religiously neutral. Another limitation to the freedom of expression in relation to the wearing of religious symbols is found in AJA section 168(2). This provision, adopted in 2010, stipulates that witnesses may not wear articles of clothing that hides his or her face, unless otherwise decided by the court. Failure to comply with section 168(2) is a punishable offence under section 178 of AJA.

- **States’ obligations**

[44.] In correlation to the above findings, States have a positive obligation to protect and guarantee the individual rights inherent to the freedom of expression. Indeed, genuine, effective exercise of the freedom of expression does not depend merely on the State's negative undertaking to refrain from any action that disproportionately interferes with the Convention rights, but may require also positive measures of protection, even in the sphere of relations between individuals.<sup>26</sup>

[45.] In *Spain* the Audio-visual Council of Andalusia takes different initiatives (complaints, reports, recommendations) to enforce positive and negative obligations set in the law regarding communication broadcasted through media (in the field of child protection, minors, discriminatory contents, gender-based violence, etc.).

<sup>26</sup> *Palomo Sánchez and Others v. Spain* (application nos. 28955/06, 28957/06, 28959/06 and 28964/06), Grand Chamber judgment of 12 September 2011, §§ 58-59. *Khadija Ismayilova v. Azerbaijan*, (application nos. 65286/13 and 57270/15), judgment of 10 January 2019, §§164-166.

[46.] Member States enjoy a margin of appreciation in their fulfilment of positive and negative obligations with regard to freedom of expression.<sup>27</sup> This margin of appreciation differs according to the context, in particular the historic, demographic and cultural context.<sup>28</sup> It also differs depending on the circumstances of the case and on the rights and freedoms engaged.<sup>29</sup>

- **Access to information online and offline**

[47.] Access to information is a central part of freedom of expression. Innovations in information and communication technologies have created new opportunities for individuals to disseminate information to a mass audience and have had an important impact on the participation and contribution of citizens in decision-making processes.<sup>30</sup> These innovations have also brought new challenges.<sup>31</sup> As underlined in Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom, the ECHR applies both offline and online, in particular with regard to the right to freedom of opinion and expression and the right to privacy, which also includes the protection of personal data.<sup>32</sup> Member States should seek measures to promote a pluralistic offer of services via the internet which caters to the different needs of users and social groups.<sup>33</sup> To protect the right to private life, with regard to the automatic processing of personal data, the Council of Europe elaborated the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.<sup>34</sup> In the light of its accessibility and its capacity to store and communicate vast amounts of information, the internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general.<sup>35</sup> Access to information in general, including public information and official documents, offline and also online should thus be available and affordable to everyone without discrimination.

[48.] The new *Georgian* Constitution guarantees in its Article 17 § 4 freedom to access and use the internet. In *France* the "Conseil Constitutionnel" considered that the right to connect to the internet comes within the exercise of the freedoms of communication and expression and, as such, enjoys constitutional protection attached to those freedoms (decision 2009-580 of 10 June 2009).

<sup>27</sup> *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (application nos. 9214/80, 9473/81 and 9474/81), judgment of 28 May 1985, § 67.

<sup>28</sup> *Soulas and Others v. France* (application no. 15948/03), judgment of 10 July 2008, §38.

<sup>29</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 6.

<sup>30</sup> Report by the Secretary General for the Ministerial Session in Helsinki, 16-17 May 2019, *Ready for future challenges –reinforcing the Council of Europe*, p. 31.

<sup>31</sup> For example, see Maja Brkan, *Freedom of expression and Artificial Intelligence: on personalisation, disinformation and (lack of) horizontal effect of the Charter*, posted on 9 Apr 2019, available at <https://ssrn.com/abstract=3354180>, pp. 2-3.

<sup>32</sup> *Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom*, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies, §1; *EU Human Rights Guidelines on Freedom of Expression Online and Offline*, § 6; Human Rights Council Resolution 20/8, *The promotion, protection and enjoyment of human rights on the Internet*, 16 July 2012, document A/HRC/RES/20/8, §1; Human Rights Council Resolution 32/13, *The promotion, protection and enjoyment of human rights on the Internet*, 1 July 2016, document A/HRC/RES/32/13, § 1.

<sup>33</sup> *Declaration on freedom of communication on the Internet*, cited above, principle 5.

<sup>34</sup> *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108), opened for signature in Strasbourg on 28 January 1981. A *Protocol amending the Convention* was adopted at the 128<sup>th</sup> session of the Committee of Ministers (Elsinore, Denmark, 17-18 May 2018). The Protocol recognises the need to promote at the global level the fundamental values of respect for privacy and protection of personal data, thereby contributing to the free flow of information between people. The principles of transparency, proportionality, accountability, data minimisation, privacy by design, etc. are now acknowledged as key elements of the protection mechanism and have been integrated in the modernised instrument.

<sup>35</sup> *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)* (application nos. 3002/03 and 23676/03), judgment of 10 March 2009, § 27.

[49.] In *EU member States*, Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 lays down measures concerning open internet access. In accordance with the obligations foreseen by this regulation, the competent regulatory authority in *Austria* published in 2017 its first net neutrality report on the state of openness of the internet.

[50.] *Finland* was the first country to make broadband internet access a legal right in 2009.

[51.] The *Finnish* Ministry of Education and Culture promotes research information availability and open science through an Open Science and Research Initiative aimed at:

- ensuring that open science is widely utilised in the society,
- promoting the trustworthiness of science and research,
- supporting the culture of open science within the research community,
- increasing the societal and social impact of research and science.

It calls for an extensive accessibility to open publications, open research data, open research methods and tools, as well as increasing skills, knowledge and support. It involves higher education institutions such universities and polytechnics which are evaluated for their status of the openness of research organisations' operational culture. Libraries play a key role in promoting openness in higher education institutions at the local level.

[52.] Transparency of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist.<sup>36</sup> The right of access to official documents is essential to the self-development of people and to the exercise of fundamental human rights. It also strengthens public authorities' legitimacy in the eyes of the public, and its confidence in them. National legal systems should recognise and properly enforce a right of access for everyone to official documents produced or held by the public authorities.<sup>37</sup>

[53.] The Council of Europe Convention on Access to Official Documents<sup>38</sup> is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities. The Convention draws its principal source of inspiration from Recommendation Rec(2002)2 of the Committee of Ministers to member States on access to official documents which guarantees the right of everyone to have access, on request, to official documents held by public authorities.<sup>39</sup> In addition, a public authority should, at its own initiative and where appropriate, take the necessary measures to make public information which it holds when the provision of such information is in the interest of promoting the transparency of public administration and efficiency within administrations or will encourage informed participation by the public in matters of public interest.<sup>40</sup>

<sup>36</sup> *Council of Europe Convention on Access to Official Documents* (CETS No. 205) opened for signature on 18 June 2009, Explanatory Report, II.1.

<sup>37</sup> *Ibid.*

<sup>38</sup> The Convention will enter into force upon the ratification of 10 member States. On 1 March 2019 it had been ratified by the following 9 member States: Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Montenegro, North Macedonia, Norway, Republic of Moldova and Sweden. Belgium, Georgia, Serbia, Slovenia and Ukraine have signed but not yet ratified it.

<sup>39</sup> *Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents*, adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies, Section II; *Council of Europe Convention on Access to Official Documents*, Art. 2.1

<sup>40</sup> *Recommendation Rec(2002)2 of the Committee of Ministers to member states on access to official documents*, Section XI; *Council of Europe Convention on Access to Official Documents*, Art.10.

[54.] Most of the member States<sup>41</sup> have adopted laws on access to public information which allow individuals to request information held by public authorities.

[55.] For example, in *Finland, Latvia, North Macedonia, Norway* and *Serbia*, the right to access information held by State and local public institutions is guaranteed by the Constitution. In *Serbia, Spain* and *Switzerland*, a special authority is competent to handle situations of public authorities' failure to provide information.

[56.] The *Finnish* Government's Communication Recommendation further highlights transparency of the administration in its daily work. It underlines that open and interactive communication is central to good governance; that reliability is the basis of all activities of the authorities; and that transparency and confidence go hand in hand.<sup>42</sup>

[57.] Public authorities are often legally obliged to publish certain information or documents proactively, by means of a regular publication, as open data on specific website(s) or data portals.

[58.] In *Estonia* e-governance website provides everyone with easy access to various public services and to certain data collected about her or him. Moreover, § 33 of the Public Information Act gives every person free access to public information through the internet in public libraries, pursuant to the procedure provided for in the Public Libraries Act. In accordance with Article 20 of the *Finnish* Act on the Openness of Government Activities (621/1999), the authorities shall see to it that the documents or the pertinent indexes which are essential to the general public's access to information are available where necessary in libraries or public data networks, or otherwise easily accessible to the members of the public.

[59.] According to *Norwegian* law, administrative agencies must keep a record of case documents that have been received by or submitted by the agency. To facilitate the Freedom of Information Act, "Einnsyn" is a tool used by central government agencies to publish these records online.<sup>43</sup> The public can search this database to locate case documents relevant to their field of interest. Having located relevant case documents, users may submit requests to view these documents. The request is sent to the agency responsible for the case documents and public record entries. The agency then processes the request and replies to the user directly.

[60.] In *Denmark* in 2014, the new Access to Public Administration Files Act entered into force with the purpose *inter alia* to expand openness among public authorities in the light of the changing conditions in society, including the increased use of digital communication and the development in the co-operation structures of the central administration. However the Act provides for restricting the principle of openness in certain cases in order to ensure that the relevant protection interests – e.g. the internal and political decision-making process – continue to be protected. With a view to expanding the principle of openness the Act includes *inter alia* non-listed companies where the public sector owns more than 75 per cent of the company shares.

<sup>41</sup> E.g. Austria, Belgium, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Latvia, Netherlands, North Macedonia, Norway, Poland, Serbia, Spain, Switzerland.

<sup>42</sup> The Finnish Government's Communication Recommendation is available at <http://vnk.fi/documents/10616/3541383/Valtionhallinnon-viestintasuositus-2016.pdf/>

<sup>43</sup> Public record data is stored in a searchable database available at [www.einnsyn.no](http://www.einnsyn.no).



[61.] With the aim to promote greater transparency and openness, as of June 2017 the Government of *North Macedonia* is publishing on the official Government's website the minutes with the agenda of the Government's sessions, its conclusions and announcements.

[62.] In *Finland* a great variety of public information resources is available as open data, such as data on terrain, the environment, weather, climate, sea, transport, financing, statistics and culture. Many local authorities are also providing open data. Measures taken under the Finnish Open Data Programme have accelerated the opening up of information resources in 2013–2015. For example Tutkihankintoja.fi online service enables the citizens, companies and interest groups to explore the state spending. The website is based on the state invoicing data published on www.avoindata.fi service. It improves transparency in the use of public funds and provides information on the market to companies. Tutkibudjettia.fi is an interactive visualisation of the state budget which enables citizens, politicians, interest groups and others to explore the content of the budget in a user friendly and dynamic way.

## B. Specific actors and their relation to freedom of expression

- **Media**

[63.] Particular attention should be given to the role of the media and their special responsibility within the society to promote a climate of tolerance and intercultural respect, which is of vital importance for culturally diverse societies.<sup>44</sup>

[64.] The *Finnish* Foundation for Media and Development ('Vikes') is a journalists' solidarity organisation set up in 2005 devoted to strengthening democracy and active civil society by supporting freedom of expression, quality journalism and media diversity around the world. Most of Vikes funding comes from the development budgets of the EU and the Finnish Ministry for Foreign Affairs. Donations from the Finnish Union of Journalists and other organisations, as well as individuals and private companies are also crucial in sustaining Vikes activities.<sup>45</sup>

[65.] Since their emergence as a means of mass communication, media have been the most important tool for freedom of expression in the public sphere, enabling people to exercise their right to seek and receive information. Developments in information and communication technologies and their application to mass communication have led to significant changes in the media ecosystem. This has led to new ways of disseminating content on a large scale and often at considerably lower cost and with fewer technical and professional requirements. Media-related policy must therefore take full account of these and future developments, embracing a broad notion of media which is appropriate for such a fluid and multi-dimensional reality. All actors – whether new or traditional – who operate within the media ecosystem should be offered a policy framework which guarantees an appropriate level of protection of freedom of expression and provides a clear indication of their duties and responsibilities.<sup>46</sup>

<sup>44</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 69.

<sup>45</sup> For more details see <https://vikes.fi/en/>

<sup>46</sup> *Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media* sets out criteria for identifying whether certain activities, services and actors might be categorised as media and provide guidance for a graduated and differentiated policy approach in respect of the various activities, services or actors that are part of the media ecosystem.

[66.] It is important for States to engage in dialogue with all actors in the media ecosystem in order for them to be properly apprised of the applicable legal framework.<sup>47</sup> Furthermore it is important to adopt strategies to promote, develop or ensure suitable levels of public service delivery so as to guarantee a satisfactory level of pluralism, diversity of content and consumer choice and ensure close scrutiny or monitoring of developments.<sup>48</sup>

[67.] In *Austria* and *Poland* the independence of media and broadcasting is warranted on the constitutional level. The *Hungarian* Fundamental Law states in its Article IX Paragraph (2) that “Hungary shall recognize and protect the freedom and diversity of the press, and shall ensure the conditions for the freedom to receive and impart information as is necessary in a democratic society.”

[68.] Several member States have adopted legislation providing that broadcasting shall include programmes for, and in the languages of, different minorities or groups and satisfy their media-related needs.

[69.] In *North Macedonia* there is a variety of television and radio outlets broadcasting programming in languages of the (minority) ethnic communities in the country in addition to those broadcasting only in Macedonian. There are 29 television outlets and 15 radio outlets broadcasting in minority languages.

[70.] In *Georgia*, the Law on Broadcasting enjoins the Georgian Public Broadcaster to reflect ethnic, cultural, linguistic, religious, age and gender diversity of the society in programmes, and to broadcast a number of programmes in certain proportions prepared in the languages of minorities, about minority groups and prepared by minorities.

[71.] In *Poland* Article 18(4) of the Act of 6 January 2005 on national and ethnic minorities and on regional languages provides “support for TV programmes made by minorities”, and Article 24 of the Broadcasting Act obliges public service broadcasters to pay due regard to the needs of national and ethnic minorities and communities speaking regional languages, including broadcasting news programmes in the language of national and ethnic minorities and in regional languages.

[72.] The European Court of Human Rights has noted that “the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis and provide ‘reliable and precise’ information in accordance with the ethics of journalism.”<sup>49</sup>

[73.] In several member States self-regulatory measures in the media system have been developed alongside regulatory measures. They provide in particular the opportunity to file complaints before a specific body or board. States should invite traditional and new media to exchange good practice and, if appropriate, consult each other in order to develop self-regulatory tools, including codes of conduct, which take account of, or incorporate in a suitable form, generally accepted media and journalistic standards.<sup>50</sup>

<sup>47</sup> Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media

<sup>48</sup> *Ibid.* See also Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies.

<sup>49</sup> *Stoll v. Switzerland* (application no. 69698/01), Grand Chamber judgment of 10 December 2007, §§ 103-104.

<sup>50</sup> Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, cited above, § 7.

[74.] In *Finland, Georgia, Ireland and Latvia* public liability of media is increased through codes or charters of journalistic ethics, often promoted by voluntary unions of journalists.

[75.] In *Denmark*, the Media Liability Act stipulates the norms for the exertion of mass media. By decision of September 2013, the Danish Press Council stated that posts on professional blog sites are a common part of the media in question and that such blog posts must therefore meet the general press ethical requirements made for media content. Furthermore, the Act stipulates that the content and conduct of the media shall be in accordance with sound press ethics under section 34(1). The Press Council determines whether the conduct of the media is contrary to sound press ethics. Its decision is based on the Advisory Rules of Sound Press Ethics which were part of the Media Liability Bill of 1991. However, the "sound press ethics" standard keeps pace with developments in determination of what is unethical, and adopts standpoints on new situations that arise. The advisory rules of sound press ethics were revised on 22 May 2013.<sup>51</sup>

[76.] In *Norway*, the Ethical Code of Practice for the Press applies to both printed press, radio, television and internet publications, and has been adapted to address special issues concerning web publication. Article 4.3 of the Ethical Code states: "Always respect a person's character and identity, privacy, ethnicity, nationality and belief. Be careful when using terms that create stigmas." The last sentence, as well as the term "ethnicity", was added in 2013.

[77.] In *North Macedonia*, the Council of Media Ethics, a non-governmental, non-political and non-profit self-regulatory body, aims at achieving the following goals stated in the Statute:

- Protection of media freedom and the right of public to be informed;
  - Prevention of influence of the state, political parties and other centres of power over the media;
  - Protection of public interests by providing an independent, efficient and fair process of resolving complaints about the media contents;
  - Raising public awareness on the professional and ethical standards to be observed by the media;
- Promotion of the Code of Journalists and Reduction of all forms of censorship and self-censorship in journalism.

[78.] Legislation on broadcasting may forbid language or content inciting hate or discrimination (see below Part II - *Specific focus area*: HATE SPEECH). In several member States the self-regulatory editorial codes include guidelines on discrimination, and campaigns against racism and hate speech are run not only in the traditional media but also in the internet and social media.

[79.] In *Belgium* the government of Flanders organised in 2016-2017 the competition "De Clichékillers", in which journalism students were challenged to report, in nuanced ways and without falling into clichés, on poverty, gender, disability, origin or sexual identity.<sup>52</sup> It also created an online database, to be used by journalists, of more than 1 000 experts from groups which are less visible in the media (women, immigrants, persons with disabilities, transgender persons, persons living in poverty).

<sup>51</sup> More details available on the website in English of the Danish Press Council at <http://www.pressenaevnet.dk/press-ethical-rules/>.

<sup>52</sup> More details available at <http://declichekillers.be>

[80.] In 2015 the *Norwegian* State broadcaster, NRK, introduced a five-year “diversity plan”, which aims to promote recruitment of employees with multicultural knowledge and skills. One goal is to advance the staff’s understanding of different cultures and minority groups, and thereby help improve the reporting on minority issues.

[81.] In the *United Kingdom* publishers and independent press self-regulators have issued editorial codes which include guidelines on discrimination, making clear that publishers must avoid prejudicial or prerogative reference to, and must not incite hatred against, any group on the basis of a characteristic that makes that group vulnerable to discrimination. Independent press regulators have undertaken their own initiatives to improve the quality of their work relating to groups vulnerable to discrimination. The Independent Press Standards Organisation (IPSO), which regulates 95% of national newspapers by circulation, regularly meets with representatives of different communities to talk about the standards of reporting of that community and how best to support journalists to report in a way which is consistent with the highest editorial standards.

[82.] Recent assessment reports have made clear that violence against journalists has increased significantly over the last decade.<sup>53</sup> In response the Council of Europe set up in 2015 a Platform for the Protection of Journalism and Safety of Journalists, in co-operation with prominent international NGOs active in the field of the freedom of expression and associations of journalists, to provide information which may serve as a basis for dialogue with member States about possible protective or remedial action.<sup>54</sup> The Platform sends daily alerts on physical attacks, detention and imprisonment of journalists, harassment and intimidation, impunity and other acts which have a chilling effect on media.<sup>55</sup>

[83.] Journalists and other media actors are often specifically targeted on account of their work, and additionally their real or perceived gender, gender identity, sexual orientation, ethnic identity, membership of a minority group, religion, or other particular characteristics which may expose them to discrimination and dangers in the course of their work.<sup>56</sup> These violations are increasingly taking place online.<sup>57</sup> Such abuses and crimes, which in practice are committed by both State and non-State actors, have a grave chilling effect on freedom of expression, including on the public watchdog role of journalists and other media actors.<sup>58</sup> Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the

<sup>53</sup> Report by the Secretary General, *Ready for future challenges –reinforcing the Council of Europe*, cited above, p. 16.

<sup>54</sup> See report Annual Report 2019 by the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists “*Democracy at Risk: threats and attacks against media freedom in Europe*” published on 12 February 2019, available at <https://rm.coe.int/annual-report-2018-democracy-in-danger-threats-and-attacks-media-freed/1680926453>

<sup>55</sup> Report by the Secretary General, *Ready for future challenges –reinforcing the Council of Europe*, cited above, p. 16: In 2018, the number of reported threats – including death threats – doubled, with the majority of violent incidents allegedly committed by unknown or non-state actors. The murders of at least two journalists in Europe for reasons related to their work in 2018 highlight the price that media professionals continue to pay for investigating corruption and organised crime.

<sup>56</sup> Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers’ Deputies, § 2; Resolution 2035 (2015) on the protection of the safety of journalists and of media freedom in Europe, adopted by PACE on 29 January 2015; Resolution 2141 (2017) on attacks against journalists and media freedom in Europe, adopted by PACE on 24 January 2017; Council of Europe study, *Journalists under pressure - Unwarranted interference, fear and self-censorship in Europe* (2017), by Marilyn Clark and Anna Grech; Annual Report 2019 by the Partner Organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, “*Democracy at Risk: threats and attacks against media freedom in Europe*”, cited above.

<sup>57</sup> Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, cited above, § 2.

<sup>58</sup> *Ibid.*, § 3.

protection of journalism and safety of journalists and other media actors provides specific guidelines to member States to act in the areas of prevention, protection, prosecution, promotion of information, education and awareness raising.

[84.] In March 2016, the Council for Mass Media in *Finland* adopted and published a statement saying that improper feedback and direct threats may reduce or completely prevent the handling of certain issues in the media. “Self-censorship, either conscious or unconscious, is a threat to freedom of expression and to social debate and thus to the whole democratic social order.” It required the police and the prosecutor to have a more active attitude towards such threats to freedom of expression.

- **Civil society actors**

[85.] Civil society actors, including human rights defenders, play an important role in protecting and promoting human rights in culturally diverse societies.<sup>59</sup>

[86.] The European Court has found that the function of creating forums for public debate is not limited to media. This function may also be exercised by NGOs, the activities of which are an essential element of informed public debate; in such a situation the NGO is exercising a role as a public watchdog of similar importance to that of the press.<sup>60</sup> Considering the general principles developed by the Court with respect to Article 10, in particular the strong protection of the freedom to receive and impart information on issues of general importance and the narrow margin of appreciation the States have in limiting political speech, activities of NGOs, National Human Rights Institutions (NHRIs),<sup>61</sup> and individuals related to matters of public interest therefore warrant similar protection to that afforded to the press.<sup>62</sup>

[87.] Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe<sup>63</sup> underlines the positive, important and legitimate roles of all human rights defenders, including NHRIs and civil society organisations, in independently promoting the realisation of all human rights including by engaging with Governments, across local, regional, national and international levels, organising awareness-raising and education activities, and contributing to the efforts to implement the obligations and commitments of States in this regard.<sup>64</sup> Civil society organisations, which express a diverse range of views and interests, is a manifestation of the right to freedom of association under Article 11 of the European Convention and of their host country’s adherence to principles of democratic pluralism and commitment to human rights and the rule of law.<sup>65</sup>

<sup>59</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 69.

<sup>60</sup> *Guseva v. Bulgaria* (application no. 6987/07), judgment of 17 February 2015, § 38.

<sup>61</sup> Report of the Special Rapporteur of the Human Rights Council on Human Rights Defenders of 13 January 2013, A/HRC/22/47; *Guidelines on the Protection of Human Rights Defenders*, OSCE/ODIHR, published on 10 June 2014, § 7.

<sup>62</sup> *Youth Initiative for Human Rights v. Serbia* (application no. 48135/06), judgment of 25 June 2013, § 20.

<sup>63</sup> *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe*, adopted by the Committee of Ministers on 28 November 2018 at the 1330<sup>th</sup> meeting of the Ministers' Deputies.

<sup>64</sup> *Ibid.*, preamble.

<sup>65</sup> *Ibid.*

[88.] Numerous NHRIs closely cooperate with journalists, such co-operation including trainings, regular meetings and exchange of information.<sup>66</sup>

[89.] During 2017 the Human Rights Defender (the Ombudsman) in *Armenia* periodically organised capacity building trainings and workshops for media representatives to enhance their capacities in investigating, as well as more accurately and duly reporting on human rights issue.

[90.] The Office of the Ombudsman of *Croatia* works directly with journalists, providing them with information regarding the human rights situation in the country, but also connecting them with communication officers of international human rights organisations (e.g. FRA, Council of Europe) and providing specifically for their reports.

[91.] Domestic legislation in *Latvia* provides for public participation in the State administration through participating in various working groups, councils, advisory bodies as well as by providing opinions and recommendations following the initiative of officials of an institution. To promote co-operation with NGOs and to further strengthen involvement of the civil society at all levels and stages of decision-making, the government approved in January 2014 a new memorandum of co-operation between NGOs and the Cabinet of Ministers.

- **Internet intermediaries**

[92.] The internet plays a particularly important role with respect to the right to freedom of expression by enhancing the public's ability to seek, receive and impart information without interference and regardless of frontiers. Internet intermediaries, who represent a wide, diverse and rapidly evolving range of service providers that facilitate interactions on the internet between natural and legal persons, play an increasingly important role in modern societies. Their actions influence the choices people make, the way they exercise their rights, and how they interact. The market dominance of some places them in control of principal modes of public communication.

[93.] The European Court has paid attention to the role, and ensuing responsibilities, that internet intermediaries play in the distribution of content online. Indeed, it considered that "because of the particular nature of the internet, the "duties and responsibilities" that are to be conferred on an internet news portal for the purposes of Article 10 may differ to some degree from those of a traditional publisher".<sup>67</sup> It held, in particular, that the commercial operator of an internet news portal may be held accountable for offensive comments posted on the portal by users, which constituted clearly unlawful speech; such conclusion could not be automatically applied to other types of internet fora where third-party comments could be posted, for example, internet discussion groups, bulletin boards or certain social media platforms. However, when examining the internet portals' liability for third-party comments which did not constitute clearly unlawful speech and did not amount to hate speech or incitement to violence,<sup>68</sup> the Court considered that such liability may have foreseeable negative consequences on the comment environment of an internet portal. These

<sup>66</sup> See also *Compilation of measures and practices in place in the Council of Europe member States*, prepared by the CDDH Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST) within the framework of its work on the protection and promotion of the civil-society space, document CM(2018)149. It contains examples of national measures and practices on the right to information and freedom of expression with respect to Civil Society Organisations (section 3.3.) and Human Rights Defenders (section 4.3).

<sup>67</sup> *Delfi AS v. Estonia* (application no.64569/09), Grand Chamber judgment of 16 June 2015, § 113.

<sup>68</sup> *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary* (application no. 22947/13), judgment of 2 February 2016.

consequences may have, directly or indirectly, a chilling effect on the freedom of expression on the internet which could be particularly detrimental for a non-commercial website. The Court thus attaches importance to the fact whether a comment, although offensive, amounts to hate speech or incitement to violence, whether it is posted on a small blog run by a non-profit association or on a commercial website, and whether it was rapidly taken down.<sup>69</sup>

[94.] Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries<sup>70</sup> provides guidelines for States on actions to be taken vis-à-vis internet intermediaries with due regard to their roles and responsibilities.<sup>71</sup> The Recommendation underlines that it is primarily the obligation of States to make sure that laws, regulations and policies applicable to internet intermediaries effectively safeguard the human rights and fundamental freedoms of users.<sup>72</sup> However, at the same time and in line with the United Nations Guiding Principles on Business and Human Rights and Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, internet intermediaries have the responsibility to respect the internationally recognised human rights of their users and of third parties affected by their activities.<sup>73</sup> The scale and complexity of the means through which intermediaries meet their responsibilities may vary taking into account the severity of impact on human rights that their services may have.<sup>74</sup> In general, the greater the impact and the potential damage to the objects of legal protection and the higher the value of the services for the exercise of human rights, the greater the precautions that the intermediary should employ when developing and applying their terms and conditions of service, community standards and codes of ethics aiming, notably, to prevent the spread of abusive language and imagery, of hatred and of incitement to violence.<sup>75</sup>

[95.] The EU Directive on electronic commerce<sup>76</sup> requires EU member States to draw in their legislation a distinction between internet “publishers” or providers of content services, which have to prevent clearly unlawful comments from being published (duty of pre-monitoring), and the internet service providers transmitting and storing (hosting) third-party content, which enjoy limited liability since they are usually not responsible for the content as such but are obliged to remove or to disable access expeditiously after obtaining actual knowledge of illegal content.<sup>77</sup>

<sup>69</sup> *Pihl v. Sweden* (application no. 74742/14), decision on admissibility of 9 March 2017.

<sup>70</sup> *Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries*, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

<sup>71</sup> See Appendix to Recommendation CM/Rec(2018)2 which contains “Guidelines for States on actions to be taken vis-à-vis internet intermediaries with due regard to their roles and responsibilities”

<sup>72</sup> Appendix to Recommendation CM/Rec(2018)2, principle 1.

<sup>73</sup> *Ibid.*, principle 2.

<sup>74</sup> *Ibid.*, principle 2.1.2.

<sup>75</sup> *Ibid.*

<sup>76</sup> *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market* ('Directive on electronic commerce').

<sup>77</sup> See *Delfi AS v. Estonia*, cited above, §§ 50; 57.

[96.] A Code of Conduct on Countering Illegal Hate Speech Online was concluded by the European Commission, Facebook, YouTube, Twitter and Microsoft in May 2016, according to which the companies concerned have to establish a simple mechanism to report contents hosted at their webs and considered by users as hate speech, to examine them within 24 hours and to remove them in case those contents are indeed considered as hate speech.<sup>78</sup>

[97.] In *Germany* the Network Enforcement Act (NetzDG) explicitly refers to unlawful content (incitement to hatred, insult or defamation) which is not protected by freedom of expression.<sup>79</sup>

[98.] In *Estonia*, the Police and Border Guard Board established in 2011 the “web-constables”, i.e. police officers tasked with responding to notifications and letters submitted by people via the internet and with training children and adults on issues of internet security.

[99.] In the *Republic of Moldova* several legislative acts and action plans have recently been adopted in order to promote safety of children and teenagers on the internet, and to set up a self-regulation service that filtrates the content likely to have negative impact on children. In the *Netherlands* the Ministry of Education, Culture and Science supports Mediawijzer.net, an expertise unit for media literacy that helps children, parents, caretakers and educators use media safely and responsibly.

[100.] In *Norway* in 2017, the Association of Norwegian Editors published guidelines for managing user-generated content in comments sections and discussion fora online. The guide outlines applicable legal framework as well as ethical standards and practice from the Press Complaint’s Commission (PFU) in this field, and offers editors recommendations and tips on issues such as registration, moderation of content, and the use of filtering and flagging systems. Article 4.17 of the Ethical Code of Practice for the Press states that “Should the editorial staff choose not to pre-edit digital chatting, this has to be announced in a clear manner for those accessing the pages. The editorial staff has a particular responsibility, instantly to remove inserts that are not in compliance with the Ethical Code”.

[101.] In *Switzerland* some social networks give a special status to “trusted flaggers” (such as the Federal Police Office) and remove very rapidly contents flagged by the latter when they clearly infringe the conditions of use of the platform. The Federal Police Office has also established a black list of illegal websites dedicated to infantile pornography; their illegal content is being blocked on a voluntary basis, without any legal obligation, by the Swiss internet access providers.

[102.] In *Denmark*, there are examples of users of internet intermediary platforms, who have set out policies and measures themselves regulating the online content on their Facebook pages etc. This is the case with the Danish news networks, DR and TV2. Their guidelines on debates on their Facebook pages state as follows; “hateful comments, condescending comments or gross personal attacks are not welcome” (DR) and “we do not allow offensive language, personal attacks, harassment and calls for violence” (TV2).

<sup>78</sup> See also below section II. Specific focus area: HATE SPEECH - Self-regulation by public and private institutions, pp. 63-64.

<sup>79</sup> See also a below § 170 of this Guide.



***i. Specific focus area: Freedom of expression in political discourse***

[103.] Freedom of expression is crucial for political debate in a pluralist society. Pluralist democratic political activity is guaranteed by the European Convention on Human Rights in Article 10 on freedom of expression as well as in Article 11 on freedom of assembly and association, which both are essential for the work of political parties. During the election period freedom of expression is one of the conditions necessary to ensure the free expression of the opinion of the people in the choice of the legislature (Article 3 of Protocol No.1).<sup>80</sup> However Articles 10 and 11 are not absolute rights and may be qualified by consideration of competing public interests, including the prevention of crime and the protection of public order and of the rights of others. The prevention of racism, xenophobia and intolerance is also a public interest with which the freedoms of expression and association may not unduly interfere.<sup>81</sup> This is made clear by Articles 14 and 17 of the Convention and Protocol No. 12 to the Convention.

- **Freedom of political debate**

[104.] Freedom of political debate is at the very core of the concept of a democratic society.<sup>82</sup> For this reason there is little scope for restrictions on political speech or debates on questions of public interest.<sup>83</sup> The European Court of Human Rights has stated that whilst an individual taking part in a public debate on a matter of general concern is required not to overstep certain limits, as regards in particular respect for the rights of others, he or she is allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements.<sup>84</sup>

[105.] In *Norway*, political discourse has been given a particularly strong protection in the constitutional article establishing the right to freedom of expression. According to Article 100, third paragraph, of the Constitution limitations on political expressions must be clearly defined and may only be imposed when particularly weighty considerations justify it in relation to the grounds for freedom of expression.

[106.] The Constitutional Court of *Poland* held in its judgment of 21 September 2015<sup>85</sup> that the rights provided for in Article 54, paragraph 1, of the Constitution consist of the right to political debate constituting a material element of the democratic legal system. Free public debate in a democratic State is one of the most important guarantees of freedom and civil liberties and the establishment of the guarantees for the exercise of freedom of expression in a debate “is necessary due to both the personal and political aspects of the individual”. However, free exchange of views does not include clearly insulting statements. The Court also stressed that public debate is characterised by a high tension of emotions and often presents subjective views and beliefs of the speakers. This relates to the use of concepts and deliberately exaggerated, extreme terms, but there is no free democratic debate in a situation where the level of emotions and “emotive” (*soczystość*) of the used language would be an imposed standard, formally defined and bureaucratised by public authorities.

<sup>80</sup> PACE report adopted on 11 September 2003 on “Racist, xenophobic and intolerant discourse in politics”, Summary. See also Council of Europe factsheet on Freedom of expression and elections, available at <https://rm.coe.int/factsheet-on-media-and-elections-july2018-pdf/16808c5ee0>

<sup>81</sup> PACE report adopted on 11 September 2003 on “Racist, xenophobic and intolerant discourse in politics”, II. Explanatory memorandum.

<sup>82</sup> *Bowman v. the United Kingdom* (application no.24839/94), Grand Chamber judgment of 19 February 1998, § 42; *Lingens v. Austria* (application no. 9815/82), judgment of 8 July 1986, § 41.

<sup>83</sup> *Dichand and others v. Austria*, (application no. 29271/95), judgment of 26 February 2002, § 38; *Savva Terentyev v. Russia* (application no. 10692/09), judgment of 28 August 2018, § 62.

<sup>84</sup> *Willem v. France* (application no.10883), judgment of 16 July 2009, § 33.

<sup>85</sup> Judgment of 21 September 2015 of Constitutional Court of Poland, case no. K 28/13.

[107.] Moreover, the Court has underlined the need of ensuring transparency and the responsible exercise of the functions public officials.<sup>86</sup> In ascertaining whether a positive obligation to act exists in a particular situation, certain regard must be had to the fair balance that has to be struck between the general interest of the community and interests of individuals.<sup>87</sup> In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion.<sup>88</sup> Thus with respect to political speech the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician.<sup>89</sup> Moreover, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries.<sup>90</sup>

[108.] In addition, political parties in democratic societies play an essential role in ensuring pluralism and the proper functioning of democracy.<sup>91</sup> The formation of collective entities by individuals for any lawful purpose is protected by freedom of assembly and association in Article 11 of the Convention. As freedom of expression is particularly important for political parties and their active members, Article 11 must also be interpreted in light of Article 10<sup>92</sup>. As put forward by the Court, the reason behind the link between the two freedoms is the fact that the activities of political parties form part of a collective exercise of freedom of expression.<sup>93</sup>

[109.] As an example, Articles 10 and 11 of the Convention are reflected in several provisions of the Constitution of *Croatia* which includes clear conditions for exercising these rights. Under the Public Assembly Act 1999, prohibitions of peaceful assembly and public protest can be ordered where the goals of the assembly focus on calling for and incitement to national, racial or religious hatred or any form of intolerance.

- **Responsibility of political leaders and political parties**

[110.] Political discourse carries with it special duties and responsibilities. It may therefore be subject to restrictions in accordance with certain conditions. Political leaders, in their role of opinion leaders, have a particular responsibility which is inherent to free speech in culturally diverse societies.<sup>94</sup> They should speak and act resolutely in such a way as to foster a climate of mutual understanding, respect and diversity, based on universally recognised

<sup>86</sup> *OOO Ivpress and Others v. Russia* (application nos. 33501/04, 38608/04, 35258/05 and 35618/05), judgment of 22 January 2013, § 55. See also Council of Europe, Committee of Ministers, *Declaration on freedom of political debate in the Media*, adopted by the Committee of Ministers on 12 February 2004 at the 872nd meeting of the Ministers' Deputies, IV.

<sup>87</sup> *Ozgur Gundem v. Turkey* (application no. 23144/93), judgment of 16 March 2000, §43.

<sup>88</sup> *Sürek v. Turkey (no. 1)* (application no.26682/95), Grand Chamber judgment of 8 July 1999, § 61.

<sup>89</sup> *Ibid.*, § 61.

<sup>90</sup> *Ibid.*

<sup>91</sup> *United Communist Party of Turkey v. Turkey* (application no. 19392/92), Grand Chamber judgment of 30 January 1998. § 43.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*

<sup>94</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 21. See also *OSCE/ODIHR - Venice Commission joint guidelines on political party regulations* regarding 'Commitment to Non-Violence', p. 15: "Parties in democratic systems must reject the use of violence as a political tool and should not advocate or resort to violence, maintain their own militias or use hate speech as a political tool. Parties should not seek to disrupt meetings of rival parties, nor should they hinder the free speech rights of those with opposing views." Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)024-e)

human rights.<sup>95</sup> In this context Recommendation No. R 97(20) of the Committee of Ministers to member States on “Hate Speech” calls on national authorities and officials “to refrain from statements, in particular to the media, which may reasonably be understood as hate speech, or as speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur.”<sup>96</sup>

[111.] Recent years have seen an increase in racist discourse in politics in Europe, not only amongst what might be termed “far-right” parties, but also on the part of mainstream politicians.<sup>97</sup> In many countries in Europe nationalist and xenophobic political parties are exploiting public anxieties over migration and expressing populist views that seek to exclude other voices.<sup>98</sup> These parties collude in stoking intolerance and damaging community relations with the risk of dragging their societies further away from a more consensual and inclusive political culture in which all sides respect democratic norms.<sup>99</sup> Members of minority groups perceive the prevailing social climate as condoning racism, xenophobia and intolerance.<sup>100</sup> This underlines the need for States to address the effects that incitement to violence or hatred have on the population groups it targets.<sup>101</sup>

[112.] The rise of populism is facilitated by technological developments such as the creation of online platforms and big data which facilitate the spread of information disorder and hate speech (see below under *ii. Specific focus area: Information disorder (“fake news”)*). The rise of populism is also impacted by the demise of gatekeepers such as legacy media which obey common standards of decency, respect for opponents and fact-based debate, who unlike technology operators, can be held accountable for the negative impacts on a pluralistic, fact-based political debate.

[113.] During the 2017 Municipal Elections in *Finland*, the Non-Discrimination Ombudsman, the Advisory Board for Ethnic Relations and the Finnish League for Human Rights stressed the importance of election campaigns that are respectful of all people and free from hate speech. The Non-Discrimination Ombudsman, who actively monitors municipal election campaigns, particularly on social media, and addressing hate speech, sent a letter to all the political parties participating in the election, reminding them of the significant role that political decision-makers play and of their effect on the social climate. As part of the monitoring, automatic text analysis to recognise hate speech was experimented. This experiment helped

<sup>95</sup> *Ibid.*, principle 70. See also *Declaration of the Committee of Ministers on human rights in culturally diverse societies*, adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Ministers’ Deputies and *The Ljubljana Guidelines on Integration of Diverse Societies*, published on 7 November 2012 by the OSCE High Commissioner on National Minorities, principle 27. Furthermore see OSCE, 14<sup>th</sup> Ministerial Council, Brussels, 4 – 5 December 2006, *Decision No. 13/06 “Combating intolerance and discrimination and promoting mutual respect and understanding”*, § 8.

<sup>96</sup> *Recommendation No. R 97(20) of the Committee of Ministers to member States on “Hate Speech”*, adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers’ Deputies, Appendix.

<sup>97</sup> PACE report “Racist, xenophobic and intolerant discourse in politics”, adopted on 11 September 2003, Summary.

<sup>98</sup> Fourth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Populism - How strong are Europe’s checks and balances?*, presented at the 127<sup>th</sup> session of the Committee of Ministers, Nicosia, 19 May 2017, Foreword; ECRI, *General Policy Recommendation 15 on combating Hate Speech (GPR No. 15)*, adopted on 8 December 2015, Explanatory memorandum § 158. See also *ECRI Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse*, adopted on 17 March 2005.

<sup>99</sup> Fourth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Populism - How strong are Europe’s checks and balances?*, Foreword. See also European Union Agency for Fundamental Rights (FRA), *Incitement in media content and political discourse in EU Member States*, Contribution to the second Annual Colloquium on Fundamental Rights, November 2016.

<sup>100</sup> FRA, *Incitement in media content and political discourse in EU Member States*, Contribution to the second Annual Colloquium on Fundamental Rights, cited above, Conclusions.

<sup>101</sup> *Ibid.*

detect public Twitter and Facebook messages sent by candidates that contained elements of hate speech. The material collected was analysed by the Non-Discrimination Ombudsman to determine whether it contained hate speech. People were also able to contact the Non Discrimination Ombudsman via an online form.

[114.] In *Estonia*, the Network of Estonian Nonprofit Organisations ‘Valimiste valvurid’ (Election Guardians), with representatives from several NGOs and different media, policy and other experts, keeps an eye on whether politicians’ campaigns (actions, messages etc.) are in line with the ‘Hea valimistava’ (good practice document for elections). The text consists of principles for politicians to follow, including not spreading hate speech and other topics related to moral and ethical questions. The experts are usually rather active and bring out any shortcomings publicly.

- **Measures to combat political statements that incite to violence or hatred**

[115.] Manifestations of racism, xenophobia and intolerance in political discourse may take a variety of forms and have impacts of varying gravity. Accordingly, a progressive range of measures needs to be put in place so as to accommodate and address fully the complexity of each situation.<sup>102</sup>

[116.] In the *Czech Republic*, the Constitutional Court concluded in its decision<sup>103</sup> concerning anti-Roma statements posted on Facebook that a deputy of the national Parliament may not invoke his or her parliamentary immunity with regard to posts on social media despite these being written at parliamentary premises because such statements are not part of the parliamentary debate and are directed towards the public at large.

*a. Self-regulation*

[117.] Self-regulation by political parties and elected bodies as well as public institutions, such as the Parliament<sup>104</sup>, is in many instances the most effective means of preventing and condemning manifestation of racism, xenophobia and intolerance in political discourse.<sup>105</sup> The existence of such codes of conduct is particularly relevant where the position of the speaker may entail immunity, such as in the case of parliamentarians, since it may preclude any other forms of action being taken against the use of hate speech by the person concerned.<sup>106</sup> These institutions are often best-placed to identify certain uses of statement that incite to violence and hatred and to prevent their continuation. The nature of such institutions can vary significantly which may have a bearing on the exact way how their regulations are set up and function.<sup>107</sup>

<sup>102</sup> PACE Resolution 1345 (2003) on racist, xenophobic and intolerant discourse in politics, adopted on 29 September 2003, § 10.

<sup>103</sup> Ref. no. I. ÚS 3018/14 of 16 June 2015. The English translation of the Constitutional Court’s decision is available at [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Decisions/pdf/1-3018-14.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Decisions/pdf/1-3018-14.pdf).

<sup>104</sup> Fifth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Role of institutions - Threats to institutions*, presented at the 128<sup>th</sup> session of the Committee of Ministers, Elsinore, 18 May 2018, Chapter 4, p.71.

<sup>105</sup> ECRI GPR No. 15, preamble.

<sup>106</sup> ECRI GPR No. 15, Recommendation 6.a, and its Explanatory memorandum §§ 118-119.

<sup>107</sup> ECRI GPR No. 15, Explanatory memorandum § 116.

[118.] Certain features are however useful to include in all self-regulatory schemes such as codes of conduct (or ethics) and similar sets of standards, including rules of procedure accompanied by certain sanctions for non-compliance with their provisions.<sup>108</sup> In addition, there are a number of international or regional codes or charters that are applicable to bodies, institutions and organisations operating within member States such as the Charter of European Political Parties for a non-racist society.<sup>109</sup> At the Council of Europe level, the Parliamentary Assembly has launched a “No Hate Parliamentary Alliance” with a Charter of commitments for membership.<sup>110</sup>

[119.] The Czech Ministry of Justice has joined the Hate Free Zone Network.

[120.] All political parties of the Parliament of *Finland* re-signed the Charter of European Political Parties for a Non-Racist Society on 5 August 2015. The Charter was initially signed by a majority of political parties in 2003 and resigned in 2011. The parties have committed to upholding all articles of the Charter, including committing themselves to not display, publish or distribute views and positions which stir up or invite prejudice, hostility or division. The parties have also pledged to ensure that persons partaking in campaigning or other party activities are obliged to act in accordance with the Charter. Parties have committed themselves to provide guidance to their candidates with regard to respectful campaigning.

[121.] The effective use of such codes is more likely if they contain an explicit reference to hate speech e.g. such as defined in ECRI General Policy Recommendation No. 15. This will ensure that they cover all forms of hate speech including negative stereotyping and misleading information and not just those which might attract criminal sanctions.<sup>111</sup> For more detail on combating hate speech see below Section II of the Guide.

[122.] Such codes need not only to be disseminated to and drawn to the attention of those to whom they apply but should also be made publicly available so that anyone with an interest in ensuring the observance of their requirements is in a position to act accordingly.<sup>112</sup>

[123.] For example, in *Greece*, the Code of Ethics for Members of the Greek Parliaments (Articles 2 and 8 par.1) provides for the prevention of hate speech against persons on the grounds of their racial or ethnic origin, religious or political beliefs, sex, age, disability or sexual orientation (Official Gazette, A67/18.4.2016). Furthermore, Presidential Decree 77/2003 ratified the Code of Conduct on News and Other Journalistic and Political Broadcasts, as it was drafted by the National Council for Radio and Television, which is an independent authority, as specified by law (Article 15 par. 2 of the Constitution).

<sup>108</sup> In its concluding observations on periodic reports submitted by States Parties to the ICCPR, the Human Rights Committee (HR Committee) has also expressed the need to impose on all actors and political forces rules of conduct and behaviour that are compatible with human rights, democracy and the rule of law.

<sup>109</sup> *The Charter of European Political Parties for a Non-Racist Society* was drawn up under the auspices of the European Union Consultative Commission on Racism and Xenophobia, opened for signature on 28 February in Utrecht 1998. Taking inspiration from the International Convention on the Elimination of All Forms of Racial Discrimination and referring to the European Convention on Human Rights and the European Social Charter, it rejects all forms of racist violence, incitement to racial hatred and harassment and any form of racial discrimination. See also *European Code of conduct for the political integrity of local and regional elected representatives*, adopted by the Congress of Local and Regional Authorities of the Council of Europe on 17 June 1999, available at <https://rm.coe.int/1680718fbf>

<sup>110</sup> The “No Hate Parliamentary Alliance”, launched on 29 January 2015, is open to members of the Parliamentary Assembly and to members of delegations having observer and partner for democracy status with the Assembly. Their commitment is formalised by signing the Charter of commitments available at <http://website-pace.net/documents/19879/1110723/20150129-CharteEngagementsNHPA-BIL.pdf/95347ed9-8d91-4271-bbeb-3226ac95fd25>

<sup>111</sup> ECRI GPR No. 15, Explanatory memorandum §§ 119-120.

<sup>112</sup> *Ibid.*

[124.] In *Hungary*, Act XXXVI of 2012 “Maintaining the order of the discussion, the disciplinary power” in the National Assembly deals with the limits of freedom of expression. Accordingly, the Chair of the session shall reprimand a speaker who in the course of his or her speech uses a term ostentatiously offending or a term offending the reputation of any person or group. If the speaker nevertheless uses such term after being warned, the Chair of the session shall withdraw his or her right to speak. In addition, measures may be taken to exclude the Member concerned from the remaining part of the session day, and the remuneration payable to him or her may be decreased.

[125.] The Parliament of *Latvia* has a standing “Mandate, Ethics and Submissions Committee” tasked with the supervision of observing the Code of Ethics for Members of the Parliament<sup>113</sup> which is an integral part of the Parliament’s Rules of Procedure. The decisions of the Committee are publicly available.<sup>114</sup> The Code states that “a Member of Parliament avoids using words, gestures and other actions that can be insulting and does not use offensive or otherwise inappropriate statements that may dishonour the [Parliament]. A Member of Parliament bases his or her decisions on facts and their fair interpretation, as well as on logical argumentation”. The Code further states that “a Member of Parliament does not use statements and does not support actions that may be regarded as incitement to illegal activity. A Member of Parliament observes the principles of human rights and does not appeal to race, gender, skin colour, nationality, language, religious beliefs, social origin or state of health to justify his/her argumentation”.

[126.] Although the adoption of codes in itself reflects a commitment to the values embodied in them, their effective implementation is often best achieved through a combination of monitoring and complaints mechanisms.<sup>115</sup> The effective implementation of codes is much dependent upon the provision of appropriate training for those with responsibilities in this regard, as well as the availability of sufficient funding for the operation of the various monitoring and complaints mechanisms involved.<sup>116</sup>

[127.] In the event that internal complaints mechanisms are not sufficient to deal effectively with the use of hate speech, including the provision of appropriate satisfaction for those targeted by it, it should be possible to use other forms of redress under the law e.g. criminal sanctions.<sup>117</sup>

[128.] To combat racism in *Croatia*, hate speech is prohibited under national legislation, on the grounds that the rights of others need to be protected in a democratic society. On that basis, the “Act on the Responsibility of Legal Persons for the Criminal Offences” 2003 prescribes criminal liability for political parties that use hate speech, which may consequently be subject to a fine.

<sup>113</sup> For more detail see website at: <http://www.saeima.lv/en/legislation/rules-of-procedure/8>

<sup>114</sup> For more detail see website at: <http://mandati.saeima.lv/lemuma-projekti/par-saeimas-deputtu-tikas-kodeksa-prkpumiem>

<sup>115</sup> ECRI GPR No. 15, Recommendation 6.c., and its Explanatory memorandum §§ 122-123.

<sup>116</sup> ECRI GPR No. 15, Explanatory memorandum §§ 126-127.

<sup>117</sup> *Ibid.*, § 129.

*b. Withdrawal of public financial and other forms of support*

[129.] In the context of cultural diversity in European societies, measures should be in place to suppress public financing of political parties and other organisations that promote hatred, intolerance and xenophobia.<sup>118</sup> It is of particular importance to ensure that such provisions are effectively enforced.<sup>119</sup> ECRI recommends that there should be a withdrawal of financial and other forms of support by public bodies where any form of hate speech is used by political parties and other organisations or, where they fail to sanction its use by their members.<sup>120</sup>

[130.] The withdrawal of support by public bodies should cover not only grants, loans and other forms of financing for the activities of the political parties and other organisations concerned but also forms of practical assistance such as the availability of public facilities or staff. These measures should extend to political parties and organisations that have a formal legal status as well as those having a more informal or *de facto* character.<sup>121</sup>

[131.] However, the said measures must always be applied in a manner consistent with the requirements of the right to freedom of association under Article 11 of the Convention. The withdrawal of various forms of support for political parties and organisations using hate speech or failing to sanction their members for having done so is, in principle a restriction compatible with the right to freedom of association. However, such a withdrawal is unlikely to be regarded as a proportionate measure unless there is a clear institutional commitment to the use of hate speech. This will undoubtedly exist where it figures in policy documents and pronouncements and by leading personalities in the political party or organisation concerned but also where it is used repeatedly by individual members without any objection being made to this. On the other hand, it will be less evident where such use entailed no more than an isolated incident of remarks by an individual member.<sup>122</sup>

[132.] The withdrawal of any form of support to a political party or other organisation should always be open to challenge in an independent and impartial court.<sup>123</sup>

[133.] In *Germany*, Article 20 (3) of the German Basic Law was amended in 2017 so as to cancel such public funding for political parties which have not been prohibited by the Federal Constitutional Court but are nonetheless hostile towards democracy. This applies irrespective of whether it appears possible for the party to achieve its goal of abolishing the existing free democratic basic order.<sup>124</sup> The exclusion from public funding is limited to a period of six years but can be extended.<sup>125</sup>

<sup>118</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 38.

<sup>119</sup> Article 4 (a) of the ICERD obliges States Parties, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the ICERD, to criminalize hate speech, hate crimes and the financing of racist activities.

<sup>120</sup> ECRI GPR No. 15, Recommendation 9. See also *General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination*, Part III, §§ 16-17.

<sup>121</sup> ECRI GPR No.15, Explanatory memorandum § 157.

<sup>122</sup> *Ibid.*, § 168.

<sup>123</sup> *Recommendation CM/Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe*, § 10.

<sup>124</sup> The new Article 20 (3) of the Basic Law is available at [https://www.gesetze-im-internet.de/gg/art\\_21.html](https://www.gesetze-im-internet.de/gg/art_21.html). The amended version has its origin in the judgement of the Federal Constitutional Court of 17 January 2017 regarding the far right-wing National Democratic Party (NPD), see N. 91. While the Court rejected the application to ban the NPD due to the fact that it did not consider the NPD to be a genuine threat to the democratic basic order, the Court indicated that there were less restrictive means than a prohibition to react to parties which are hostile towards democracy. As a consequence of this, the German constitutional legislator amended the constitution shortly after the judgement was handed down.

<sup>125</sup> See also above § 31 of the Guide.

[134.] In the *Netherlands*, when a political party is found guilty of discrimination it loses its right to subsidies in accordance with the law on the financing of political parties (*Wet financiering politieke partijen*). This is only possible if a political party is convicted as a legal entity and not on the basis of the behaviour of persons from the party. In 2005, the subsidies to the “Reformed Political Party” (*Staatkundig Gereformeerde Partij – SGP*) were discontinued, following the refusal to include women as full members in the party. This decision was reversed in 2007 when the party decided to admit women.

*c. Prohibition and dissolution of political parties and organisations in exceptional cases*

[135.] The dissolution of a political party that seeks to open a political debate, regardless of whether it challenges the state ideology and structure, is a drastic measure in a pluralist democracy.<sup>126</sup> According to the European Court, the limitations set out in Article 11 of the Convention, where political parties are concerned, are to be construed strictly, and only “convincing and compelling reasons” may justify restrictions on the freedom of association of political parties.<sup>127</sup>

[136.] However, in Europe’s increasingly culturally diverse societies, appropriate responses against political parties and organisations that promote hatred, intolerance and xenophobia will need to be taken.<sup>128</sup> In the event of racist, xenophobic or intolerant discourse of exceptional gravity such measures should, as a last resort, lead to the dissolution of political parties and organisations that incite racial hatred.<sup>129</sup>

[137.] At the global level, the ICERD obliges the State Parties, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of the ICERD, under Article 4(b) to declare illegal and prohibit organisations that promote or incite racial discrimination. The Committee on the Elimination of Racial Discrimination (CERD) has underlined the positive obligation for States to declare illegal and prohibit organisations that promote or incite racial discrimination.<sup>130</sup> In addition, in its concluding observations on periodic reports submitted by State Parties to the ICCPR, the Human Rights Committee has called for specific legislation criminalising racist organisations.<sup>131</sup>

[138.] Similarly, ECRI has stressed that there should be provision for prohibiting or dissolving political parties and other organisations where the use of hate speech by them is of a more serious character, namely, where it is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination.<sup>132</sup>

<sup>126</sup> *United Communist Party of Turkey v. Turkey*, cited above, § 46.

<sup>127</sup> *Ibid.*, § 31. See also OSCE Copenhagen Document. Meeting of the Conference on the Human Dimension of the CSCE. § 24.

<sup>128</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 38

<sup>129</sup> *Association nouvelle des Boulogne Boys v. France* (application no. 6468/09), decision on the admissibility of 22 February 2011.

<sup>130</sup> CERD, *Recommendation No.35, Combating hate speech*, adopted by the Committee at its eighty-third session (12–30 August 2013), CERD/C/GC/35.

<sup>131</sup> E.g. CCPR concluding observations on the periodic report of Bosnia and Herzegovina, 2017, CCPR/C/BIH/CO/3, §22; CCPR concluding observations on the periodic report of Slovenia, 2016, CCPR/C/SVN/CO/3, §8; CCPR concluding observations on the periodic report of Poland, 2016, CCPR/C/POL/CO/7, §16; CCPR concluding observations on the periodic report of the United Kingdom of Great Britain and Northern Ireland, 2015, CCPR/C/GBR/CO/7, § 10

<sup>132</sup> ECRI GPR No. 15, Recommendation 6. See also GPR No. 7 on national legislation to combat racism and racial discrimination, Part III, §§ 16-17.



[139.] It is important that any measure to prohibit or dissolve political parties and organisations is applied in a manner consistent with the requirements of the right to freedom of association under Article 11 of the European Convention. In determining whether a necessity within the meaning of Article 11 (2) exists, the Contracting States have only a limited margin of appreciation.<sup>133</sup> This approach should be translated into an obligation for States to also adopt a strict approach to the use of such sanctions by substantiating the need for their application<sup>134</sup> and then only doing so as a measure of last resort<sup>135</sup> and in accordance with the procedures which provide all the necessary guarantees to a fair trial.<sup>136</sup> Prohibition or dissolution of political parties may only be justified in the case of parties which advocate violence including specific demonstrations of it such as racism, xenophobia and intolerance, or is clearly involved in terrorist or other subversive activities.<sup>137</sup> Moreover, Article 17 of the European Convention on Human Rights allows a State to impose a restraint upon a programme a political party might pursue.<sup>138</sup> It provides: “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”. Similar provisions exist in other international human rights treaties, for instance in Article 5, paragraph 1 of the ICCPR.

[140.] *Estonia, Croatia, Germany, Hungary, Latvia, Netherlands, Poland, Serbia and Spain* have legal provisions, either at the Constitutional level or within their civil or criminal legislation, which allow them to prohibit or dissolve political parties and organisations, notably those that support racial or national hatred, incite violence and are a threat to democracy.

[141.] Additionally in *Latvia*, under the law on “Associations and Foundations” 2004, registration in the registry of associations and foundations might be refused, in the case the aim of these entities amount to an infringement of any legislative acts binding upon the State.

[142.] In *France*, an association whose purpose is lawful but tends to spread or provoke discrimination, hatred or racist violence or racist ideas may be subject to administrative dissolution in accordance with Article L. 212-1 6° of the Internal Security Code. However, in order to strike a balance between freedom of association and freedom of expression, on the one hand, and the public order and rights of others, on the other hand, the dissolution procedure is used exceptionally where it is demonstrated that these associations use hate speech and that their activities threaten public order and public security. Several associations were dissolved on this basis, under the supervision of the *Conseil d'Etat*, which has each time validated the measure as necessary, appropriate and proportionate (see in particular *Conseil d'Etat's* decrees of 15 December 2017 No. 401378 or of 30 December 2014 No. 372320). However, in order to strike a balance between freedom of association and freedom of expression, on the one hand, and public order and the rights of others, on the other hand, these measures of dissolution, which constitute administrative police measures, are used only exceptionally when it is established that these associations use hate speech and that their activities threaten public order and safety. These measures are placed under the control of a judge, as regards both the emergency character (under the *référé liberté* procedure),

<sup>133</sup> *United Communist Party of Turkey v. Turkey*, cited above, § 46.

<sup>134</sup> *Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan* (application no. 37083/03), judgment of 8 October 2009.

<sup>135</sup> European Commission for Democracy through Law (Venice Commission) and OSCE/ODIHR, *Guidelines on Freedom of Association* (2014), §248; PACE Resolution 1308 (2002) on restrictions on political parties in the Council of Europe member States, adopted on 18 November 2002, § 11.

<sup>136</sup> PACE Resolution 1308 (2002), cited above, § 11.

<sup>137</sup> European Commission for Democracy through Law (Venice Commission), *Guidelines on prohibition and dissolution of political parties and analogous measures*, adopted by the Venice Commission at its 41<sup>st</sup> plenary session (Venice, 10-11 December 1999), §3, Explanatory memorandum § 15.

<sup>138</sup> *Ibid.*, § 5.

and the substance. The judge's control is thorough, including the necessary and proportionate nature of the measure, particularly in view of the disturbances to which it aims to put an end and other possible measures.

[143.] Legal measures directed to the prohibition or dissolution of a political party or other organisation should only be ordered by a court in a procedure offering all guarantees of due process, openness and a fair trial. Before asking the competent judicial body to prohibit or dissolve a party, governments or other State organs should assess, having regard to the situation of the country concerned, whether the party really represents a danger to the free and democratic political order or to the rights of individuals and whether other, less radical measures could prevent the said danger.<sup>139</sup>

[144.] In *Germany*, the Federal Constitutional Court in its history has only twice prohibited a political party: In 1952, the Socialist Reich Party (SRP) was banned, and in 1956, the Communist Party of Germany (KPD). However in a judgement of 17 January 2017 the Federal Constitutional Court rejected to declare the unconstitutionality of the far-right National Democratic Party (NPD). Although the Court concluded that the NPD does indeed pursue anti-constitutional aims, it appeared entirely impossible in the view of the Court that the NPD would succeed in achieving these aims, especially due to its structural deficiencies and lack of political relevance.<sup>140</sup>

[145.] In *Serbia*, the Constitutional Court issued a decision on 12 June 2012 by which it banned the Association “Otočastveni pokret Obraz” having concluded that the said association’s activities were oriented in the direction of violating guaranteed human and minority rights and inciting to racial, national and religious hatred. In its reasoning, the Constitutional Court exposed a very detailed analysis of both the subject association and the Serbian society.<sup>141</sup>

[146.] In the *Czech Republic*, the political party “Dělnická strana” was dissolved by decision of the Supreme Administrative Court,<sup>142</sup> which concluded that the political programme of the party was xenophobic, homophobic and included racist features.<sup>143</sup> In its extensive reasoning, the Supreme Court weighed all the incumbent interests at stake, especially the freedom of assembly and freedom of expression of the party and its representatives. On 27 May 2010 the Constitutional Court dismissed the constitutional appeal upholding the conclusions of the Supreme Administrative Court.

- **Higher degree of tolerance of criticism towards politicians**

[148.] Politicians bear great responsibility for leadership and representation of their constituents and their country. They knowingly lay themselves open to close scrutiny not only of legislative and judicial authorities but also of the press and public opinion. Therefore, the limits of acceptable or permissible criticism are wider as regards a politician as such than as

<sup>139</sup> *Ibid.*, § 7.

<sup>140</sup> An unofficial English translation of this judgement can be found at [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/01/bs20170117\\_2bvb000113en.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/01/bs20170117_2bvb000113en.html).

<sup>141</sup> Constitutional Court’s decision no. VIIIU - 249/2009 from 12 June 2012.

<sup>142</sup> Judgment ref. no. Pst 1/2009 – 349 of 17 February 2010.

<sup>143</sup> The political party programme aimed at limiting human rights by calling for registering the ethnicity of the whole population in ID cards, preferential access to health care and social security for ethnic Czechs and for making homosexuality illegal.

regards a private individual.<sup>144</sup> Politicians must consequently display a greater degree of tolerance towards criticism notably in a situation in which they themselves make public statements that are susceptible of criticism, otherwise public debate may be stifled altogether.<sup>145</sup>

[149.] Moreover, all political figures, including those exercising the highest political authority such as Heads of State and Government, are legitimately subject to criticism and political opposition.<sup>146</sup>

[150.] However, a distinction should be drawn between statements of facts, of which the truth or falseness can be proven or demonstrated, and value judgments, which is a fundamental part of freedom of opinion secured by Article 10 of the Convention.<sup>147</sup>

[151.] The Constitutional Court of *Hungary* has examined the relationship between freedom of speech and the freedom of the press with the protection of the personality rights of public figures in the criminal law context.<sup>148</sup> Following a decision in 1994, the Constitutional Court established the legal standard related to criticism of political figures and freedom of expression stating that the level of criticism political figures must bear is higher than that of other individuals.<sup>149</sup> This applies to both the falsification of facts and value judgements. However, the human dignity of others has been interpreted in the Court's practice as a clear limitation over the freedom of speech, as referred to in Section 2:44 of Act V of 2013 on the Civil Code.

[152.] In *Austria*, when examining claims for compensation in respect of alleged insults relating to politicians under Sec. 6 of the Media Act, civil courts take into account, inter alia, whether and in how far the statement at issue contributed to a debate of public concern, and the position and conduct of the politician concerned.<sup>150</sup>

[153.] In *Serbia*, according to Article 8 of the "Law on Public Information and Media" 2014, the elected, appointed person shall be obliged to be subjected to the expression of critical opinion that pertain to the results of their performance namely, the policy they implement, and the opinions that are in relation to performing their function regardless of whether they feel personally affected by the expression of these opinions. Accordingly public figures in practice are expected to be more tolerant to public criticism. Nonetheless, a 2017 judgement of the Supreme Court of Cassation shows that public figures are not expected to endure insults in any case, notably when the statement is aimed to harm the plaintiff's personality and he or she suffered as a consequence.<sup>151</sup>

<sup>144</sup> *Linens v. Austria*, cited above; *Castells v. Spain*, (application no. 11798/85), judgment of 23 April 1992; *Oberschlick v. Austria (no. 2)* (application No. 20834/92), judgment of 1 July 1997; *Vona v. Hungary* (application no. 35943/10), judgment of 9 July 2013.

<sup>145</sup> *Ibid.*

<sup>146</sup> *Association nouvelle des Boulogne Boys v. France*, cited above; *Refah Partisi (the Welfare Party) and Others v. Turkey* (application no. 41340/98), Grand Chamber judgment of 13 February 2003, §§ 101, 111-115; *Kalifatstaat v. Germany* (application no. 13828/04), decision on the admissibility of 11 December 2006; *Sidiropoulos and Others v. Greece*, no. 26695/95, 10 July 1998, *The United Macedonian Organisation Ilinden and Others v. Bulgaria* (application no. 59491/00), judgment of 19 January 2006, *Tourkiki Enosi Xanthis and Others v. Greece* (application no. 26698/05), judgment of 27 March 2008; *Association of Citizens Radko & Paunkovski v. "the former Yugoslav Republic of Macedonia"* (application no. 74651/01), judgment 15 January 2009; *Socialist Party and Others v Turkey* (application no. 21237/93), Grand chamber judgment of 25 May 1998, conclusion.

<sup>147</sup> *Ibid.*

<sup>148</sup> Decision 36/1994. (VI. 24.) AB.

<sup>149</sup> Decision 7/2014. (III. 7.) AB available at [http://hunconcourt.hu/uploads/sites/3/2017/10/en\\_0007\\_2014.pdf](http://hunconcourt.hu/uploads/sites/3/2017/10/en_0007_2014.pdf)

<sup>150</sup> See, for example, *Haupt v. Austria* (application no. 55537/10), decision on the admissibility of 2 May 2017.

<sup>151</sup> Judgment of the Supreme Court of Cassation Rev 605/2017 of 6 April 2017.

[154.] In 2016, on the occasion of the presidential elections in the *Republic of Moldova*, the Central Electoral Commission adopted a regulation which expressly forbade attacks on a person's safety and goods, incitement to hatred or discrimination, incitement to war, interethnic hatred or territorial separatism, harming the person's dignity or reputation, public offence, verbal, written or non-verbal expressions that do not comply with the general acceptable behaviour norms in political debates.

[155.] However, the establishment of conditions for free exchange of views does not include, in principle, clearly insulting statements. Moreover the private life and family life of political figures and public officials is protected under Article 8 of the Convention unless it concerns information of direct public concern to the way in which they carry out their functions. However where political figures and public officials draw public attention to parts of their private life they must accept that those parts are subject to scrutiny and criticism.<sup>152</sup>

[156.] In any event, political figures are not expected to tolerate discrimination based on grounds prohibited by Article 14 of the Convention, nor do they have to tolerate racist or hate speech. This all the more so if the harassment is aimed at or has the effect of restricting or violating their freedom of expression.<sup>153</sup>

[157.] In October 2014, the *Estonian* Minister of Finance made insulting comments about the Minister of Education on account of his ethnic origin. The comments were condemned and criticised at various levels in the national institutions, including by the President of Estonia. As a result, the Minister of Finance resigned.

[158.] In the *Netherlands*, in 2018 in the criminal case related to a coloured and female politician the court found 21 persons guilty of group insult and incitement to discrimination.

[159.] In *Denmark* several cases have occurred in recent years of politicians being threatened, For example a 73-year old person was sentenced to 40 days in prison, after having threatened two politicians on Facebook.<sup>154</sup>

## **ii. Specific focus area: Information disorder (“fake news”)**

[160.] The recent growth in information disorder creates new global challenges in the field of freedom of expression. It concerns information which is potentially misleading and interferes with the public's right to know, the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds.<sup>155</sup>

<sup>152</sup> *Declaration on freedom of political debate in the media*, cited above, IV and VII.

<sup>153</sup> For example, see study *Sexism, harassment and violence against women in parliaments in Europe* by the Inter-Parliamentary Union (IPU) and the Parliamentary Assembly of the Council of Europe (PACE), October 2018, p. 13. The study also includes a section with solutions and good practices, pp, 14-17. Available at <http://website-pace.net/documents/19879/5288428/20181016-WomenParliamentIssues-EN.pdf/7d59e7c5-4a88-4d23-a6cd-7404449fd45f>

<sup>154</sup> See “*Ugeskrift for Retsvæsen*” 2017, p. 2246.

<sup>155</sup> The UN Special Rapporteur on Freedom of Expression and Opinion, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the Organization of American States (OAS) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights (ACHPR), *Joint Declaration on the freedom of expression and “Fake news”, Disinformation and Propaganda*, 3 March 2017, fourth preambular paragraph.

[161.] There is no agreement yet on the definition of the phenomenon<sup>156</sup> and not even on the use of the term “fake news”.<sup>157</sup> Some forms of information disorder may harm individual reputations and privacy, or incite to violence, discrimination or hostility against certain groups in society.<sup>158</sup> There is ongoing discussion on how the phenomenon is influencing democratic political processes and values. Targeted disinformation campaigns designed specifically to sow mistrust and confusion may sharpen existing socio-cultural divisions in society using nationalistic, ethnic, racial and religious tensions.<sup>159</sup>

[162.] Although false information, rumours and propaganda have always existed and have always been particularly prevalent in politically charged times, namely before elections such information can today be rapidly produced and disseminated on the internet, in particular via social media platforms, often without prior verification of accuracy or correctness and without editorial control.<sup>160</sup> Disinformation is one of the most important forms of attack against all societal players from governments down to individuals: it is disseminated through websites that deliberately publish hoaxes, propaganda and misleading information or disinformation purporting to be real news – often misusing social media to drive web traffic and amplify their effect. It is still too early to know how efficient these techniques are in influencing the behaviour of voters, however there is good reason to believe that their impact is set to grow.<sup>161</sup>

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<sup>156</sup> The meaning of the term has been clarified in the following two reports:

- Wardle, C. & Derakhshan, H. (2017) *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, report to the Council of Europe: ‘Information disorder’ includes the following three different types of content: ‘misinformation’ (false, but with no intent to harm); ‘disinformation’ (false, imposter or manipulated content designed to harm); ‘mal-information’ (not necessarily false, but leaks, harassment, hate speech), available at <https://shorensteincenter.org/information-disorder-framework-for-research-and-policy-making/>

- Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan against Disinformation*, 2018 JOIN(2018) 36 final, adopted on 5 December 2018, Introduction: “Disinformation is understood as verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm. Public harm includes threats to democratic processes as well as to public goods such as Union citizens’ health, environment or security. Disinformation does not include inadvertent errors, satire and parody, or clearly identified partisan news and commentary. The actions contained in this Action Plan only target disinformation content that is legal under Union or national law.”

<sup>157</sup> Report to the Council of Europe, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, cited above, consciously refrains from using the term ‘fake news’ which is woefully inadequate to effectively capture the complexity of the phenomenon of information pollution, not to mention that it is increasingly becoming politicised, p. 5. The EU Commission has also moved away from using the term ‘fake news’, see Final report from the EU Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, released on 13 March 2018. See also *How did the news go ‘fake’? When the media went social*, Claire Wardle and Hossein Derakhshan, The Guardian, 10 Nov. 2017

<https://www.theguardian.com/commentisfree/2017/nov/10/fake-news-social-media-current-affairs-approval>

<sup>158</sup> *Joint Declaration on the freedom of expression and “Fake news”, Disinformation and Propaganda*, cited above, preamble.

<sup>159</sup> *Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries*, Preamble. See also report to the Council of Europe, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, cited above, p. 4.

<sup>160</sup> Report of the Secretary General Thorbjørn Jagland: *Populism – How strong are Europe’s check and balances?*, cited above, p. 37.

<sup>161</sup> Fifth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Role of institutions - Threats to institutions*, presented at the 128<sup>th</sup> session of the Committee of Ministers, Elsinore, 18 May 2018, Chapter 4, p.70.

[163.] The harmful effect of fake news was the centre of a court case in *Denmark*, where a politician was rewarded a compensation of approx. EUR 10,000 after a webpage had posted an article claiming that the politician had been found dead.

- **Regulations at national level**

[164.] In many member States there is ongoing discussion on the necessity of regulating information disorder in order to safeguard pluralistic discourse based on objective information and professional journalism as a condition for a democratic decision-making.

[165.] Any efforts to tackle information disorder should be based on a human rights approach guaranteeing, on the one hand, freedom of expression and freedom to receive and impart information and, on the other hand, the protection of public order and the rights of others, including the right to reputation.<sup>162</sup>

[166.] Under Article 3 of the Protocol to the European Convention on Human Rights, member states undertake to guarantee free and democratic elections. The freedom and fairness of elections, being a central element of the democratic process, are jeopardised by broad and increasingly aggressive attacks against all societal players from governments down to individuals.<sup>163</sup> Special attention should be paid to the protection of the integrity of the democratic process by identifying and implementing effective responses to multiple threats that interfere with the electoral processes and manipulate voter behaviour, notably through the use of technologies and social media.<sup>164</sup>

[167.] In *Austria*, the distribution of false or manipulating information is regarded as illegal only in exceptional cases, for example in case the distribution of fake news is connected to general elections. According to Sec. 264 of the Penal Act, the public dissemination of false information which is liable to keep persons entitled to vote from casting their vote or to influence the voting behaviour is regarded as a criminal offence, if the dissemination takes place at a point in time when a counter statement cannot be published in due course.<sup>165</sup>

<sup>162</sup> Final report from the EU Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above.

<sup>163</sup> Fifth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Role of institutions - Threats to institutions*, cited above, p. 70.

<sup>164</sup> *Ibid.*, p. 7. The draft joint report of the Venice Commission and the Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law on *digital technologies and elections* addresses the issue of information disorder as a challenge to deliberative democracy, but states also that legislation aimed at fighting it may pose a threat to the fundamental right of freedom of expression and information. It concludes that, while States have a positive obligation to prevent undue interference with civil and political rights by third parties, undue state intervention can result in undermining the very rights that it is meant to protect. Alternative means need to be employed to counter information disorder, such as fact-checking, media literacy programmes aimed at sensitisation about the problem and recognition of false content, and investments in quality journalism. Any measures to address the information disorder must be designed with great care, so as not to undermine the principle of “net neutrality”.

<sup>165</sup> According to Sec. 264 of the Austrian Penal Act, the public dissemination of false information which is liable to keep persons entitled to vote from casting their vote or to influence the voting behaviour is regarded as a criminal offence, if the dissemination takes place at a point in time when a counter statement cannot be published in due course.

[168.] In *Poland* the distribution of false or manipulating information is also regulated in case of the elections and referenda period. According to the Election Code Act, dissemination of electoral materials (in particular posters, leaflets and passwords), statements or other forms of election campaign containing information which is not true, gives to the candidate or electoral representative of the committee concerned the right to submit an application to the court with the view to a particularly speedy procedure:

- This application is examined within 24 hours in non-litigious proceedings.
- The court's decision may be appealed to the Court of Appeal within 24 hours, which recognizes them within 24 hours.
- The Court of Appeal's decision shall not be subject to a cassation appeal and shall be immediately enforceable.
- The publication of a correction, reply or apology takes place within 48 hours at the expense of the obligator.

[169.] The spread of false news is prohibited in *France* by Law of 29 July 1881 on the Freedom of the Press (Article 27 paragraph 1) which makes it punishable by a fine of €45,000 if made in bad faith, has disturbed or is likely to disturb public peace. Any conviction on the basis of this law is conditioned by proof of the disturbance to public order, proven or likely to be caused, and is applied only in the most serious and most obvious cases. Moreover, two bills “against the manipulation of information” (“loi n° 2018-1202” and “loi organique n° 2018-1201 relatives à la lutte contre la manipulation de l'information”) were adopted on 22 December 2018 to fight against information disorder during electoral periods while protecting the right to freedom of expression. They include new tools to fight against the spreading of “fake news” during the electoral period, such as introducing specific judicial interim measures to prevent the publication of the “false information”, imposing transparency on internet platforms, strengthening the co-operation duty of the intermediaries or granting the “Conseil Supérieur de l'Audiovisuel” the power to suspend, prevent or put an end to a television service, controlled by a foreign State, when it is proven that it attacks the fundamental interest of the States or tends to destabilise institutions.

[170.] In *Germany* the new Act to Improve Enforcement of the law in Social Networks (Network Enforcement Act, NetzDG)<sup>166</sup> entered into force in October 2017. The law aims to fight hate crime, criminally punishable fake news and other unlawful content on social networks more effectively. The law obliges the operators of large social media platforms to establish an efficient complaints management system which makes it easy for users to report unlawful content. If such content is reported to the operator, it has to take down or block this within 24h with regard to manifestly unlawful content, and generally within seven days with regard to unlawful content (i.e. content not protected by freedom of expression e.g. incitement to hatred, insult or defamation). Operators also have to publish reports about their handling of complaints. Non-compliance with these obligations can result in fines up to 50 million. Such fines will not apply with regard to the non-removal of individual posts but only for systematic failure to comply with said obligations. Also, such fines are subject to judicial review (which includes a proportionality test). The law only serves to ensure that the operators of social media platforms meet their already existing legal obligations.

<sup>166</sup> An unofficial English translation of final draft of the NetzDG can be found at: [https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG\\_engl.pdf](https://www.bmju.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf)

[171.] In *Serbia*, according to Article 9 of the Law on Public Information and Media, prior to publishing information about an occurrence, an event or a person, both the editor and the journalist shall check its origin, authenticity and completeness with appropriate due diligence for the circumstances. Also, both the editor and the journalist shall convey the accepted information, ideas and opinions authentically and fully, and if the information is taken from another medium, they shall credit that medium.

[172.] In *Spain*, the National Security Act 36/2015, of 28 September, although not specifically focusing on the threat of information disorder (“fake news”), nevertheless, in its Article 4, refers to the National Security Strategy. The Strategy approved by the Government on 1 December 2017 mentions as a threat online misinformation aimed at influencing the electoral processes.<sup>167</sup> The Strategy shall undertake new second level strategies in certain spheres such as cybersecurity. Furthermore, as a means of tackling information disorder (“fake news”) the Spanish Government has presented to the Congress of Deputies a “nonbinding proposal to protect the digital identity of users and prevent that anonymity becomes unpunished on internet” with a view to adopting appropriate measures and setting up a strategy to fight against the illegal use of data of users on internet and, secondly, to put an end to the anonymity on internet which will prevent internet users using anonymity to carry out crimes. Such a strategy will involve providers of facilities and services on internet, the Administration of Justice and the State Security Forces.

[173] The observation of election campaigns is an integral part of the *OSCE/ODIHR*'s election observation missions, which have been deployed across 56 of the 57 OSCE participating States. In recent years, the OSCE/ODIHR has increased its attention to how freedom of expression standards are respected in the online campaign and redoubled its focus on under-represented groups, for example women and national minorities. The OSCE/ODIHR is currently developing a dedicated handbook on the observation of election campaigns, as part of its comprehensive election observation methodology.

- **Multi-dimensional approach**

[174.] Given the complexity of information disorder a multi-dimensional approach is needed to tackle the problem which includes all parties involved with a view to identifying the roles and responsibilities of relevant stakeholders, such as internet intermediaries, media outlets, civil society, education establishments and the academia as well as States and international organisations.<sup>168</sup> All stakeholders should be supported in developing participatory and transparent initiatives for creating a better understanding of the impact on democracy, freedom of expression, journalism and civic space, as well as appropriate responses to these phenomena.<sup>169</sup> Regular consultation with all relevant stakeholders will ensure that an

<sup>167</sup> [http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/presidenciadelgobierno/Documents/2017-1824\\_Estrategia\\_de\\_Seguridad\\_Nacional\\_ESN\\_doble\\_pag.pdf](http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/presidenciadelgobierno/Documents/2017-1824_Estrategia_de_Seguridad_Nacional_ESN_doble_pag.pdf)

<sup>168</sup> *Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries*, Appendix 1.1.4; *Joint Declaration on the freedom of expression and “Fake news”, Disinformation and Propaganda*, cited above; Report to the Council of Europe, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, cited above, Part 5; Final report from the EU Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above.

<sup>169</sup> European Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above, § 6.a., available at <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>



appropriate balance is struck between the public interest, the interest of the internet users and affected parties and the interest of the intermediaries.<sup>170</sup>

[175.] To advise on policy initiatives to counter fake news and disinformation spread online the European Commission of the *EU* engaged with all stakeholders within the framework of a High-level group of experts. The outcome of the Group's work was a report designed to review best practices in the light of fundamental principles, and suitable responses stemming from such principles.<sup>171</sup> An Action Plan against Disinformation was adopted in December 2018.<sup>172</sup>

- **Fact-checking and trust-enhancing initiatives**

[176.] Both traditional media and social media have reacted to the concerns expressed about the distribution of false information. Several media organisations have adopted codes of principles to strengthen their fact-checking capabilities<sup>173</sup> and provided advice on how to debunk “fake news.”<sup>174</sup> Various types of measures that leverage on artificial intelligence (AI) and machine learning are being used to tackle specific facets of the disinformation phenomenon and filtering systems enabling the exposure of fact-checked information.<sup>175</sup> Some social media have stepped up their engagement in designing and deploying tools that enable users to flag possible false stories which are then examined for their accuracy by third-party fact-checking organisations.<sup>176</sup>

[177.] Social media have also started using “trust indicators” to provide more context concerning the reliability content sources, media ownership and/or verified identity so that the users are better equipped to assess whether news derive from a credible source.<sup>177</sup>

[178.] In the *Czech Republic*, a number of non-governmental initiatives focus on fact-checking such as [www.demagog.cz](http://www.demagog.cz), [www.factczech.cz](http://www.factczech.cz), [www.manipulatori.cz](http://www.manipulatori.cz) and [www.hatefree.cz](http://www.hatefree.cz). A NGO implemented project for media fact-checking was also developed in *North Macedonia*.<sup>178</sup> Similarly, “Faktisk.no AS” in *Norway* is a non-profit organisation and independent editorial organisation for fact checking of the public debate. Faktisk.no is part of the International Fact-Checking Network (IFCN) and a

<sup>170</sup> See Council of Europe, *Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries*, Appendix 1.1.4

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=0900001680790e13](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13)

<sup>171</sup> European Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above.

<sup>172</sup> Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan against Disinformation*, cited above.

<sup>173</sup> In 2016, the International Fact-Checking Network (IFCN) launched a “Code of principles for journalists to check facts”, which is signed by most major fact-checkers in the world and entails an extensive accreditation process. <https://www.poynter.org/channels/fact-checking>; See also the European Fact-checking and Debunking Initiatives in 20 European countries, Council of Europe report, DGI(2017)09, *Information disorder : Toward an interdisciplinary framework for research and policy making*, Appendix: *European Fact-checking and Debunking Initiatives*.

<sup>174</sup> Poynter Institute, *Tips on debunking fake news stories*, <https://www.poynter.org/news/6-tips-debunk-fake-news-stories-yourself>

<sup>175</sup> Final report entitled “*A Multi-Dimensional Approach to Disinformation*” from the EU Commission High Level Expert Group on Fake News, cited above, p. 16.

<sup>176</sup> *Ibid.*, p. 14; See also 2016 Reuters Institute study on European fact-checking “*The Rise of Fact-Checking Sites in Europe*”, available at <https://reutersinstitute.politics.ox.ac.uk/our-research/rise-fact-checking-sites-europe>

<sup>177</sup> In November 2017, Facebook, Twitter and Google announced their compromise to use “trust indicators” to boost transparency and credibility of information, <http://money.cnn.com/2017/11/16/technology/tech-trust-indicators/index.html>

<sup>178</sup> More detail is available at [www.proverkanafakti.mk](http://www.proverkanafakti.mk)

verified signatory of the "Fact checkers code of principles". Faktisk.no is owned by the media companies VG, Dagbladet, NRK and TV 2.

[179.] In *Estonia*, during the local government elections in September/October 2017, the NGO "Estonian Debating Society" in collaboration with online-news service "Delfi" and the daily newspaper "Eesti Päevaleht" conducted a fact-checking initiative "Faktikontroll" (Fact Control), where the members of the NGO verified statements made by politicians during the elections period. The aim of the project was to fight against wrong claims and fake 'facts'. Articles publishing the results of this initiative were highly popular among readers.

[180.] In the *Netherlands*, on the basis of a co-operation agreement between Facebook, the news website NU.nl and Leiden University, editors from both NU.nl and Leiden University have access to a special Facebook-dashboard in which articles can be labelled as 'fake news' by Facebook-users. Whenever these articles appear to be factual incorrect, the articles will be flagged.

[181.] Representatives of online platforms, leading social networks, advertisers and advertising industry agreed on a self-regulatory Code of Practice on Disinformation<sup>179</sup> within the framework of the *European Commission's* High-level group of expert on fake news and online disinformation. The European Commission will closely monitor its implementation with a third-party review by fact-checkers, academia, media and civil society organisations.<sup>180</sup>

[182.] Print press organisations and broadcasters are intensifying efforts to enforce certain trust-enhancing practices. Individual news media, international organisations such as the International Federation of Journalists<sup>181</sup>, as well as national bodies have issued journalism guidelines. Guidelines include deontological codes, ethics and standards to guarantee quality in the methods used in producing news.<sup>182</sup> Most print press and broadcasting organisations have codes of conduct. Moreover, in most countries, broadcasters are obliged to be transparent on media ownership and ensure impartiality of news.<sup>183</sup>

[183.] In *Finland*, 21 chief editors of the most important media houses published in March 2016 a joint declaration in defence of "trustworthy journalism", as opposed to new online magazines using news formats. The Finnish Union of Journalists welcomed the pledge and said it should concern also their freelancers and short timers.

<sup>179</sup> Code of Practice on Disinformation, available at <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>. The Code includes an annex identifying best practices, available at [https://ec.europa.eu/newsroom/dae/document.cfm?doc\\_id=54455](https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=54455).

<sup>180</sup> available at <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>

<sup>181</sup> International Federation of Journalists (IFJ), *Declaration of Principles of Conduct for Journalist*, first adopted in 1954 by the IFJ's World Congress and amended in 1986. They have formed the bedrock of the IFJ's uncompromising stand in defence of a quality and ethical journalism.

<https://www.ifj.org/who/rules-and-policy/principles-on-conduct-of-journalism.html>

See also UNESCO, *Journalism, 'Fake News' and Disinformation: A Handbook for Journalism Education and Training*, Published in 2018, available at

<https://unesdoc.unesco.org/ark:/48223/pf0000265552/PDF/265552eng.pdf.multi>

<sup>182</sup> Final report entitled "A Multi-Dimensional Approach to Disinformation" from the EU Commission High Level Expert Group on Fake News, cited above, 2 (ii).

<sup>183</sup> *Ibid.*

[184.] In *Serbia*, according to the Journalists' Code of Ethics:

- The media are obliged, without delay to publish correct and complete information, even though they unintentionally published information which later proved to be false accusation, rumour, insult or defamation (heading IV, paragraph 6),
- A journalist must not blindly trust sources of information, but must keep in mind that information sources often have their own interests or interests of the social groups to whom they belong, and that they adjust their statements to such interests (heading V, paragraph 2).
- Readers/viewers/listeners must be notified regarding direct benefits that the source can achieve from publishing the said information (heading V, paragraph 2).
- Keeping secret facts that might significantly affect the public perception of an event is equal to their deliberate distortion or lying (heading V, paragraph 3).
- In addition, if the sources of information are spokespersons of political parties, individuals and companies, this information must be indicated because of the possibility of their direct or indirect impact on objective reporting (heading V, paragraph 3).

[185.] Data-driven journalism based on data analysis is used by news publishers to increase accuracy in reporting. As a continuation of this development automated systems through artificial intelligence (AI) software is increasingly being used to deliver news service with more speed and broadness.<sup>184</sup> Enhancing transparency regarding the algorithmic processes used to produce news is crucial for building trust and ensuring due rights protection.<sup>185</sup> Ethics Guidelines on Trustworthy AI, prepared by European Commission's High-Level Expert Group on Artificial Intelligence, set key requirements for AI systems to be met in order to be deemed trustworthy such as on human agency and oversight, transparency, accountability, diversity, non-discrimination and fairness.<sup>186</sup>

[186.] To counteract information disorder *Spain* has encouraged the development of data journalism through, for example:

- the "Civio Foundation" which works on achieving free access to information on public policies based on evidence through journalism and innovation<sup>187</sup>.
- the programme "Medialab Prado" which since 2011 has worked on promoting data journalism.<sup>188</sup> In co-operation with the Madrid City Council it has organised two competitions on journalism data<sup>189</sup>.

<sup>184</sup> Council of Europe, *Algorithms and Human Rights: Study on the Human Rights Dimensions of Automated Data Processing Techniques and Possible Regulatory Implications*, Council of Europe study, No. DGI (2017) 12, 2018. Available at <https://www.coe.int/en/web/freedom-expression/-/algorithms-and-human-rights-a-new-study-has-been-published>, p. 5.

<sup>185</sup> Conference "Governing the Game Changer - Impacts of artificial intelligence development on human rights, democracy and the rule of law", organised by the Council of Europe and the Finnish Presidency of the Council of Europe's Committee of Ministers (Helsinki, 26- 27 February 2019), Conclusion § 9, available at <https://rm.coe.int/conclusions-from-the-conference/168093368c>

<sup>186</sup> *Ethics Guidelines For Trustworthy AI*, prepared by the European Commission's High-Level Expert Group on Artificial Intelligence and published on 8 April 2019, available at <https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>. The next steps will include the setting up of a forum discussion to foster the exchange of best practices.

<sup>187</sup> For more information see <https://civio.es/nosotros/>

<sup>188</sup> For more information see [http://medialab-prado.es/article/periodismo\\_de\\_datos\\_-\\_grupo\\_de\\_trabajo](http://medialab-prado.es/article/periodismo_de_datos_-_grupo_de_trabajo), also available in English.

<http://medialab-prado.es/article/v-taller-de-produccion-de-periodismo-de-datos-la-espana-vacia>

<http://medialab-prado.es/article/jornadas-de-periodismo-de-datos-2017-jpd17-cada-dato-cuenta>

<sup>189</sup> For more information see <http://medialab-prado.es/article/premio-periodismo-de-datos-ciudad-de-madrid-2017>

- the “Datadista” initiative which was selected by Google, Digital News Initiative Innovation Fund to produce a prototype (EUR 50,000)<sup>190</sup>.
- the “Maldita.es” project aimed at providing the readers with “tools for not being tricked”.<sup>191</sup> Through its different branches it monitors political discourse and the information circulating in social networks and analyse the message by applying data journalism techniques for verification. The “Maldita Hemeroteca” initiative was awarded the José Manuel Porquet Prize in journalism in 2015 and was a finalist for the European Press Prize in 2016.

Furthermore in 2017, the Association of Journalists in Madrid approved a code of conduct to fight “fake news” or false information.<sup>192</sup>

[187.] While AI technologies and automated techniques can help detect information disorder at a faster speed than previously as well as help ensure that the information disseminating is more trustworthy, verified content, it can also be used by actors who wish to create and spread information disorder.<sup>193</sup> There is the risk that individuals may not be able to form their opinions and take decisions independently of automated systems, and that they may even be subjected to manipulation due to the use of advanced digital technologies, in particular micro-targeting techniques.<sup>194</sup> States are therefore encouraged to address this growing threat by taking a number of steps:

- take appropriate and proportionate measures to ensure that effective legal guarantees are in place against illegitimate interferences and to empower users by promoting critical digital literacy skills.<sup>195</sup>
- assess the regulatory frameworks related to political communication and electoral processes in order to safeguard the fairness of elections and to ensure that voters have access to comparable levels of information across the political spectrum, and are protected against unfair practices and manipulation.<sup>196</sup>
- pay attention to the significant power that technological advancement confers to those – be they public entities or private actors – who may use algorithmic tools without adequate democratic oversight or control, and necessary responsibility of the private sector to act with fairness, transparency and accountability under the guidance of public institutions.<sup>197</sup>

- **Promoting media pluralism and diversity**

[188.] Access to various sources of information without discrimination allows an individual to form an educated opinion and thereby directly contributes to pluralistic political debates and informed electorates.<sup>198</sup> The growing problem of information disorder is linked to the need to

<sup>190</sup> For more information see <https://datadista.com/>

<sup>191</sup> For more information see <https://maldita.es/>

<sup>192</sup> <http://www.apmadrid.es/decalogo-para-combatir-las-fake-news-o-noticias-falsas-en-la-era-de-la-posverdad/>

<sup>193</sup> Brundage, M., Avin, S., Clark, J., Toner, H., Eckersley, P., Garfinkel, B., Dafoe, A., Scharre, P., Zeitzoff, T., Filar, B. and Anderson, H. (2018). *The malicious use of artificial intelligence: Forecasting, prevention, and mitigation*: “In addition to augmenting dissemination of misleading information, the writing and publication of fake news stories could be automated, as routine financial and sports reporting often are today”, p. 46. Available at <https://arxiv.org/ftp/arxiv/papers/1802/1802.07228.pdf>.

<sup>194</sup> *Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes*, adopted by the Committee of Ministers on 13 February 2019 at the 1337<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>195</sup> *Ibid.*, § 9.

<sup>196</sup> *Ibid.*, § 9.

<sup>197</sup> *Ibid.*, § 8.

<sup>198</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 66. See also Report of the Secretary General Thorbjørn Jagland: *Populism – How strong are Europe’s check and balances?*, cited above, p. 37

promote media pluralism and maximise diversity in the digital environment.<sup>199</sup> Public authorities should ensure an enabling environment for substantial media pluralism through the protection of the rights to free expression and diverse information, including appropriate forms of support for private sector media, and by supporting independent public service media to help produce quality information and counter information disorder.<sup>200</sup>

[189.] The Council of Europe has on numerous occasions underlined the importance of media pluralism and transparency of media ownership for safeguarding public debate in democratic societies. Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership<sup>201</sup> builds on existing framework while adjusting, supplementing and reinforcing them to the technological, financial, regulatory and other changes in the current multimedia ecosystem in Europe.

[190.] The *United Kingdom* Government announced it will undertake a review of press sustainability to encourage and protect high quality journalism which, among other things, will investigate whether advertising revenues are being unfairly diverted away from content producers and if the digital advertising market has encouraged the growth of 'click-bait'. The review will report its findings and make recommendations on what industry and Government action might be taken to ensure a financially sustainable future for high quality journalism. To bolster the United Kingdom's commitment to the promotion of media freedom and diversity as well as the protection of journalists, the UK Government is investing £100m over five years to counter State-sponsored disinformation. As part of its diplomatic efforts to promote human rights and democracy, the Foreign Secretary has announced the UK's media freedom campaign, which will include an international conference, during which the UK will seek to work with other countries and various stakeholders to defend the rights of a robust, free, vibrant and varied media (itself an antidote to disinformation).

[191.] Between September 2013 and August 2015, *Albania, Bosnia-Herzegovina, Kosovo*<sup>202</sup>, *Montenegro, North Macedonia* and *Serbia* implemented a project aimed at developing legal and institutional guarantees for freedom of expression, higher quality journalism, and a pluralistic media landscape. This project, organised by the Council of Europe in South-East Europe, was financed by a voluntary contribution of Norway.

<sup>199</sup> Final report entitled "A Multi-Dimensional Approach to Disinformation" from the EU Commission High Level Expert Group on Fake News, cited above, p. 14.

<sup>200</sup> *Joint Declaration on the freedom of expression and "Fake news", Disinformation and Propaganda*, cited above, Point No. 3. These include inter alia (i) a clear regulatory framework protecting broadcasters against political or commercial interference; (ii) an independent and resourced public service media; (iii) measures to support media diversity, including (as warranted) subsidies or other support for the production of diverse, quality content; (iv) rules addressing media concentration and transparency of media ownership; and (v) programmes to support media and digital literacy. See also Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance, cited above.

<sup>201</sup> *Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership*, adopted by the Committee of Ministers on 7 March 2018 at the 1309<sup>th</sup> meeting of the Ministers' Deputies.

<sup>202</sup> All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

- **Awareness-raising and media literacy**

[192.] Greater public awareness of the problem is essential for improving societal resilience against the threat that information disorder poses. The starting point is a better understanding of the sources of disinformation and of the intentions, tools and objectives behind, but also of our own vulnerability.<sup>203</sup> Building resilience includes specialised trainings, public conferences and debates as well as other forms of common learning including for the media. It involves empowering all sectors of society and, in particular, improving citizens' media literacy to understand how to spot and fend off information disorder.<sup>204</sup> A comprehensive response to the problem requires active participation by civil society.<sup>205</sup>

[193.] In connection with the parliamentary election in *Norway* in September 2017, the Norwegian Media Authority, in co-operation with Faktisk.no and Facebook, published ads in many national and local newspapers. The ad consisted of ten concrete tips on how to expose a fake news item, and the purpose was to enable the public to discover fake news online. The Norwegian Media Authority also published a quiz about how to differentiate between satire, fake and real news. The quiz was published on Facebook.

[194.] In *France*, the “Délégation Interministérielle à la Lutte Contre le Racisme, l’Antisémitisme et la Haine anti-LGBT” (DILCRAH) supports several associations, such as “Génération Numérique”, “Conspi Hunter”, “France Fraternities”, and soon “E-enfance” whose goal it is to raise awareness of the danger of “Fake News”. DILCRAH also supports associations, such as the “Observatory of Conspiracy” and “What’s the fake”, which produces films broadcast on the internet, and which are intended to analyse and deconstruct conspiracy speech, and false news or “fake news”. For example, the latter association posted in November 2017 a video clip to draw awareness of the sources of “fake news” published on Twitter and Facebook. The clip was based on a study conducted by researchers from several universities, which shows that conspiracy theories and “fake news” mostly originates from the same sources.<sup>206</sup> Moreover, action is taken as part of the media and information education plan launched in March 2018 and renewed in 2019, in addition to the provisions of the law against information manipulation, which provides for media and information education measures to be put in place by the platforms (see above § 169).

[195.] In the *Republic of Moldova*, since November 2015 the Independent Press Association (IPA) in partnership with the Independent Journalism Centre and the Association of Independent Tele-journalists has conducted the media campaign against false and biased information “*Stop Fals!*”. The goal of the campaign is to diminish the effects and the impact resulted from propagandistic and manipulative information that distorts the reality, being spread out through various communication means by mass-media institutions and other politically-controlled structures, and to build the citizens' capacities to critically analyse the received information. In addition, IPA launched the application *StopFals* for mobile phones, through which the users can report information they find as being false or distorted where after IPA then checks its veracity.

<sup>203</sup> Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan against Disinformation*, cited above, Section 3. Pillar 4.

<sup>204</sup> *Ibid.*

<sup>205</sup> *Joint Declaration on the freedom of expression and “Fake news”, Disinformation and Propaganda*, cited above, § 3.e. See also *Mapping of media literacy practices and actions in EU-28* Audiovisual Observatory report published in March 2017, available at <https://www.obs.coe.int/en/web/observatoire/reports>.

<sup>206</sup> Further details available at <http://what-the-fake.com/2017/11/15/reddit-4chan-forum-fake-news/>

[196.] In the *Netherlands*, the Government started in 2019 a campaign (“Stay Curious, Stay Critical”) with the website [www.blijfkritisch.nl](http://www.blijfkritisch.nl) (“stay critical”) in order to make people aware of the existence of disinformation so as to prevent its influence on them.

[197.] Initiatives to improve media literacy skills are already undertaken across Europe and various studies are available on national policies across Europe.<sup>207</sup> For media and information literacy to be effective, it should be implemented on a massive scale with clear methods of evaluation and cross-country comparison.<sup>208</sup>

[198.] Given the particularly high number of children and youth using the internet digital citizenship education programmes that emphasise media and information literacy and human rights education are essential to help young people develop the necessary critical thinking skills to navigate the digital space. Such efforts should be implemented through various means, including formal and non-formal education.<sup>209</sup>

[199.] In *Sweden*, the national agency the Media Council is tasked with providing education and training in media and information literacy for children and young people. Since 2017, media and information literacy is also part of the Swedish school curricula so as to provide pupils with the necessary skills to analyse the sources and to distinguish between true and false information and to develop critical minds from an early age.<sup>210</sup>

[200.] *Finland* has put in place the following efforts to promote media literacy skills for children and young people:

- Many schools use newspapers every day, either as teaching material or as a teaching tool. The Finnish Newspapers Association also published source material for teachers of different subjects and levels. These are provided free of charge.
- More than 100 journalists in *Finland* participated in the autumn of 2017 in a campaign to promote fact based journalism in schools all over the country. Journalists visited schools nationwide and lectured about journalist work, in purpose to encourage the students in an independent evaluation of information and to raise their responsibility. Media literacy materials by newspaper and magazine publishers and the public broadcaster were involved in the campaign, which was supported by the Union of Journalists and several Publishers and Haaga-Helia University of Applied Sciences.

<sup>207</sup> Frau-Meigs D., Velez I., and Flores-Michel J. (eds), *Public Policies in Media and Information Literacy across Europe: Cross-Country Comparisons*, Routledge, London, 2017; Council of Europe Audiovisual Observatory, “Mapping of media literacy practices and actions in EU-28” published in March 2017. The report provides a snapshot of some trends in media literacy projects carried out by stakeholders in the 28 EU member states, with a view to highlighting some of the most diverse, interesting and innovative ones in the hope of encouraging future collaboration across Europe <https://rm.coe.int/1680783500>

<sup>208</sup> Recommendation CM/REC(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers’ Deputies, § 12; Final report from the EU Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above, 2 (iii).

<sup>209</sup> See Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, cited above, § 8. See also Council of Europe *Internet Literacy Handbook* which is a guide for teachers, parents and students available in several languages at [https://www.coe.int/t/dghl/StandardSetting/InternetLiteracy/hbk\\_en.asp](https://www.coe.int/t/dghl/StandardSetting/InternetLiteracy/hbk_en.asp)

<sup>210</sup> *Swedish kids to learn computer coding and how to spot fake news in primary school*, TheLocal.se, 13 March 2017, available at <https://www.thelocal.se/20170313/swedish-kids-to-learn-computer-coding-and-how-to-spot-fake-news-in-primary-school>.

[201.] In the *Czech Republic* progressive media education for students is implemented by the Czech NGO “People in Need” at [www.jsns.cz](http://www.jsns.cz). A popular student project has also been developed which focuses on fact checking and media education at [www.zvolsi.cz](http://www.zvolsi.cz).

[202.] In addition to media and information literacy education for children and youth, similar efforts should address citizens of all ages, including older persons, as well as all demographic groups without discrimination of any kind. Training modules should also be available for teachers, as well as for journalists and other media professionals. Developing knowledge of the media and increasing digital skills may engage libraries as well.<sup>211</sup>

[203.] The *Swedish* Library Act establishes the overarching aim of the public library system which shall promote the development of a democratic society by contributing to the transfer of knowledge and the free formation of opinions. In accordance with this Act, public libraries shall attempt to increase knowledge about how information technology can be used for the attainment of knowledge, learning, and participation in cultural life. This provision is directed at the ability to use digital technology in order to obtain and evaluate information. The Swedish Government bill stresses the fact that although many people today have great knowledge of how to use information technology, this is not true for all groups. It is also noted that even technologically proficient people may lack crucial insight regarding how to relate to digital information sources and how information can be problematized, evaluated, and critically examined. In the budget bill for 2018, the Government proposes that the National Library be commissioned to increase digital skills in Sweden. The National Library, together with the regional library activities, will coordinate an education of the country's public libraries to increased digital competence.

[204.] The “Mind over Media in EU” project is implemented in six European Union countries in eight different languages. It is part of “Media Literacy for All” pilot project funded by DG Connect. It was launched in January 2018 to teach and learn about contemporary propaganda as inspired by the ever-changing world of news, entertainment, advertising, and social media. This project is developed by the Evens Foundation in co-operation with the *Center for Citizenship Education (Poland)*, *the Association for Communication and Media Culture (Croatia)*, *Finnish Society on Media Education*, *IMEC/Mediawijs (Belgium)*, *Mediawise Society (Romania)*, and *Media Maker/Citizen Press (France)*. Its aim is to develop a European network of educators and professionals and to create an educational multilingual crowd sourced online platform “Mind over Media”. The platform actions will be accompanied by sets of contextualised educational resources and online and offline workshops and seminars for teachers, librarians and media leaders.<sup>212</sup>

<sup>211</sup> Final report from the EU Commission High Level Expert Group on Fake News, *A Multi-Dimensional Approach to Disinformation*, cited above, p. 27.

<sup>212</sup> More details available at [www.mindovermedia.eu.com](http://www.mindovermedia.eu.com). The Polish version is as follows Mind Over Media Polska. Szkoła krytycznego myślenia



- **Coordinated responses and continued research**

[205.] In recent years, information disorder has grown at a rapid scale globally and a clearer understanding of its direct and indirect implications is still emerging. Any effective action will require further co-operation between States at the national and international level, especially as regards information-sharing. It will also require continuous research on the way in which it is created and circulated, on the impact of some forms of the information disorder as well as increased transparency, and access to relevant data, combined with evaluation of responses on a regular and ongoing basis.<sup>213</sup> This is particularly important as information disorder is a multi-faceted and evolving problem that does not have one single root cause, and, therefore, not one single solution.<sup>214</sup>

[206.] At the international level, a Joint Declaration on “Fake News”, Disinformation and Propaganda<sup>215</sup> was adopted in 2017 by the UN Special Rapporteur on Freedom of Expression and Opinion, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe (OSCE), the Special Rapporteur on Freedom of Expression of the Organization of American States (OAS) and the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission on Human and Peoples’ Rights (ACHPR), which, inter alia, calls for support to all stakeholders to develop participatory and transparent initiatives for creating a better understanding of the impact of information disorder on democracy, freedom of expression, journalism and civic space, as well as appropriate responses to these phenomena.<sup>216</sup> In Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, the Committee of Ministers urges the Council of Europe member States to engage in a regular, inclusive and transparent dialogue with all relevant stakeholders with a view to sharing and discussing information and promoting the responsible use of emerging technological developments related to internet intermediaries.<sup>217</sup>

[207.] In *Spain*, to gain better knowledge of the “fake news” phenomenon the Joint Commission on National Security held a series of meetings at the end of 2017 with external experts,<sup>218</sup> including with the Director of the NATO STRATCOM Center of Excellence who mainly focused on cybersecurity issues.<sup>219</sup>

<sup>213</sup> Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan against Disinformation*, cited above, Section 3, Pillar 3.

<sup>214</sup> Final report entitled “A Multi-Dimensional Approach to Disinformation” from the EU Commission High Level Expert Group on Fake News, cited above, p.3.

<sup>215</sup> *Joint Declaration on the freedom of expression and “Fake news”, Disinformation and Propaganda*, cited above.

<sup>216</sup> *Ibid.*, 6. a.

<sup>217</sup> *Recommendation CM/REC(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries*, cited above, § 12; Report to the Council of Europe, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, cited above, Part 6: Conclusions

<sup>218</sup> More details available at

[http://www.congreso.es/portal/page/portal/Congreso/GenericPopUpAudiovisual?next\\_page=/wc/audiovisualdetalle?codSesion=10&codOrgano=319&fechaSesion=23/11/2017&mp4=mp4&idLegislaturaElegida=12](http://www.congreso.es/portal/page/portal/Congreso/GenericPopUpAudiovisual?next_page=/wc/audiovisualdetalle?codSesion=10&codOrgano=319&fechaSesion=23/11/2017&mp4=mp4&idLegislaturaElegida=12) and at

[http://www.realinstitutoelcano.org/wps/portal/rielcano\\_en/contenido?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/defensa+security/ari92-2017-milosevichjuaristi-combination-instrument-russia-information-war-catalonia](http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/defensa+security/ari92-2017-milosevichjuaristi-combination-instrument-russia-information-war-catalonia)

<sup>219</sup> More details available at

[http://www.congreso.es/portal/page/portal/Congreso/GenericPopUpAudiovisual?next\\_page=/wc/audiovisualdetalle?codSesion=12&codOrgano=319&fechaSesion=14/12/2017&mp4=mp4&idLegislaturaElegida=12](http://www.congreso.es/portal/page/portal/Congreso/GenericPopUpAudiovisual?next_page=/wc/audiovisualdetalle?codSesion=12&codOrgano=319&fechaSesion=14/12/2017&mp4=mp4&idLegislaturaElegida=12)

[208.] The *Danish* Minister of Defence – conjointly with his Swedish colleague – announced that Denmark and Sweden are to boost defence co-operation to counter what is described as a growing threat from “dangerous” fake news campaigns and cyber-incidents.<sup>220</sup> Furthermore, one of the tasks of the Commission on Freedom of Expression established at the end of 2017 is also look into the concept of fake news from a freedom of expression-point of view.

[209.] At the Western Balkans Digital Summit 2018, held in Skopje, *North Macedonia*, in April 2018, a special session addressed the “fake news” phenomenon. It brought together high-profile journalists and representatives from regional and global media as well as the European Commission and government representatives. Its purpose was to raise awareness of the “fake news” phenomenon and deliver a comprehensive overview of the shifting media landscape. The aim was also to define the actors’ responsibilities, while securing freedom of expression, media pluralism as well as the right of citizens to receive diverse and reliable information. The key players in the field provided a value-added advantage for identifying and prioritising the main challenges for the era of democracy, and mapped the path towards a multi-stakeholder strategy in the fight against “fake news” in the Western Balkans.

[210.] At the national level research studies are also being carried out to examine the problem within the respective countries. It is important that the methodology used for such research be consistent so that different countries can be accurately compared.<sup>221</sup>

[211.] Moreover, there is increasing concern with regard to the close link between information disorder and hate speech, incitement to violence or perpetration of hate crimes or even terrorist attacks (see below chapter IV. *Specific focus area: HATE SPEECH*). In some cases the problem may constitute the first stage of a process of radicalization by a loss of the usual benchmarks.<sup>222</sup> Information disorder is therefore also a security concern for most States.

[212.] The *Czech* Government has set up two specialised bodies aimed at identifying and analysing current national security threats:

- The National Security Audit (NSA) set up in 2016 deals extensively with extremist threats and assesses the suitability of existing legislation and the capacities of the security infrastructure to respond to these. According to the NSA, high risks are attributed especially to the ability of extremists to split society and weaken the State through generating antagonisms based on ethnic, religious, class or other identities as the majority population is getting polarized based on animosities resulting from different opinion positions. In this regard, the NSA mentions disinformation campaigns launched by foreign powers, using among others social media platforms as an instrument, with the aim of radicalizing society.<sup>223</sup>

<sup>220</sup> Link to the article in English at <https://www.theguardian.com/world/2017/aug/31/denmark-and-sweden-boost-defence-ties-to-fight-russian-cyber-attacks>

<sup>221</sup> Council of Europe report, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making*, cited above. The authors recommend using the conceptual map provided in the report, Part 6.

<sup>222</sup> Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Action Plan against Disinformation*, cited above, Introduction: “Disinformation campaigns, in particular by third countries, are often part of hybrid warfare, involving cyber-attacks and hacking of networks. Evidence shows that foreign state actors are increasingly deploying disinformation strategies to influence societal debates, create divisions and interfere in democratic decision-making.”

<sup>223</sup> For more information (including a link to the English translation of NSA) see at <http://www.mvcr.cz/cthh/clanek/audit-narodni-bezpecnosti>.

- The Centre Against Terrorism and Hybrid Threats under the Czech Ministry of Interior, which began operating on 1 January 2017, aims, inter alia, at tackling new asymmetric or hybrid threats, as mentioned in the National Security Strategy. The Centre monitors threats directly related to internal security, which implies a broad array of threats and potential incidents including disinformation campaigns. Based on its monitoring work, the Centre evaluates detected challenges and comes up with proposals for substantive and legislative solutions that it will also implement where possible. It also disseminates information and spreads awareness about the given issues among the general and professional public.<sup>224</sup>

#### IV. Specific focus area: HATE SPEECH

[213.] ‘Hate speech’ is a broad concept which captures a wide range of expressions of hate towards persons or groups of persons that are discriminatory.<sup>225</sup> It can endanger social cohesion and pluralism and undermines the protection and promotion of human rights for every member of society.<sup>226</sup> If left unaddressed, hate speech and incitement can lead to acts of violence, hate crimes<sup>227</sup> and eventually to conflict on a wider scale posing a serious security challenge.<sup>228</sup>

- **The challenge of defining ‘hate speech’**

[214.] At present there is no agreement internationally on the use of the term ‘hate speech’ or on its meaning.<sup>229</sup>

<sup>224</sup> For more information in English see at <http://www.mvcr.cz/cthh/clanek/centre-against-terrorism-and-hybrid-threats.aspx>.

<sup>225</sup> ARTICLE 19 ‘Hate Speech’ Explained. A Toolkit, p. 10  
[https://www.article19.org/data/files/medialibrary/38231/Hate-Speech-Explained---A-Toolkit-\(2015-Edition\).pdf](https://www.article19.org/data/files/medialibrary/38231/Hate-Speech-Explained---A-Toolkit-(2015-Edition).pdf)

<sup>226</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, preamble recital 13; UN Human Rights Council, *Report of the Special Rapporteur on minority issues*, 5 January 2015, A/HRC/28/64, § 102; Committee of Ministers’ reply to PACE Recommendation 2098 (2017) on “Ending cyberdiscrimination and online hate”, § 2.

<sup>227</sup> OSCE Ministerial Council Decision No. 9/09 on *Combating Hate Crimes*, adopted in Athens on 2 December 2009, defines hate crimes as “criminal offences committed with a bias motive”; such definition was agreed upon all OSCE, i.e. also EU and Council of Europe, member States and is further endorsed by the (EU) Council Framework Decision 2008/913/JHA on *Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law* and Guidance on the mentioned Framework Decision of November 2018, see [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55607](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55607). According to the mentioned definition, in order to be considered a hate crime, two elements need to be fulfilled: First, the act must constitute an offence under criminal law; second, the act must have been motivated by bias. Hate crimes are to be understood as primarily physical offences targeting individuals, groups of individuals or property; offences that include abusive, threatening, harassing or insulting behaviour or threats can also be a hate crime. Such an approach is also shared by the European Court’s case-law which explicitly sets forth a positive obligation to unmask and effectively investigate possible racist motives behind acts of violence under Articles 2 and 3 in connection with Article 14 of the Convention: “*Treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts which are particularly destructive of fundamental rights.*”, see, among others, *Šečić v. Croatia* (application no. 40116/02), judgment of 31 May 2007, §67. Recently, the Court has expanded the same obligation to direct threats with racist motivation under Article 8 of the Convention, see *R.B. v. Hungary* (application no. 64602/12), judgment of 12 April 2016, § 84. It is worth mentioning that, under the Court’s case law, no similar positive obligation has been introduced in cases of advocacy of/incitement to hatred or discrimination where an individual’s physical’s integrity or private life are not at stake.

See also FRA reports *Ensuring justice for hate crime victims: professional perspectives* and *Making hate crime visible in the European Union: acknowledging victims’ rights*

<sup>228</sup> OSCE/ODIHR, *What is hate crime*, available at <http://hatecrime.osce.org/what-hate-crime>

<sup>229</sup> The different definitions at international and regional levels are further broadened by private actors approach to ‘hate speech’. For example, YouTube has a definition in its community guidelines as: “content that promotes

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[215.] The Committee on the Elimination of Racial Discrimination (CERD) understands 'hate speech' as "a form of other-directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society."<sup>230</sup>

[216.] However in other contexts, such as in resolutions of the UN Human Rights Council (UN HRC), the term 'hate speech' is avoided in favour of more elaborate formulations such as "intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief,"<sup>231</sup> or "the spread of discrimination and prejudice," or "incitement of hatred."<sup>232</sup>

## Council of Europe

[217.] At the Council of Europe level, Recommendation No. R (97) 20 of the Committee of Ministers to member States on 'hate speech' refers to it as "covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin".<sup>233</sup>

[218.] With regard to the dissemination of racist and xenophobic propaganda through computer systems, the Additional Protocol to the Convention on Cybercrime defines racist and xenophobic material, in its Article 2, as "any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors".

[219.] ECRI has in its General Policy Recommendation No. 15 on combating hate speech (GPR No. 15) clarified that the term covers "the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons, as well as any harassment, insult, negative stereotyping, stigmatization or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of "race", colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex, gender, gender identity, sexual orientation and other personal characteristics or status".<sup>234</sup>

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violence or hatred against individuals or groups based on certain attributes, such as: race or ethnic origin, religion, disability, gender, age, veteran status, or sexual orientation/gender identity.

<sup>230</sup> CERD, *General Recommendation No. 35 on combating racist hate speech*, 26 September 2013, CERD/C/GC/35, § 7.

<sup>231</sup> UN HRC *Resolution 16/18 on Combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence, and violence against persons based on religion or belief*, A/HRC/Res/16/18, adopted on 24 March 2011.

<sup>232</sup> UN HRC *Resolution 16/18 on situation of human rights of Rohingya Muslims and other minorities in Myanmar*, A/HRC/Res/29/21, adopted on 3 July 2015.

<sup>233</sup> *Recommendation No. R (97) 20 of the Committee of Ministers to member States on 'hate speech'*, adopted by the Committee of Ministers on 30 October 1997 at the 607th meeting of the Ministers' Deputies.

<sup>234</sup> ECRI, GPR No. 15 on combating hate speech, preamble.

[220.] According to an EU-funded yearly review in 2016 hate speech incidents have increased over the internet; in particular xenophobia (anti-migrant hatred, often conflated with anti-Muslim hatred) is the most widespread form of hate speech in social platforms.<sup>235</sup> Furthermore, online right wing extremist views have been reported as increasingly growing.<sup>236</sup> Hate speech based on gender is also common and more often targets women than men.<sup>237</sup> The widespread experience of hate speech, abuse and threats in online spaces makes users hesitant to engage in debates on different topics on social media.<sup>238</sup> As a consequence, many users surrender their freedom of expression and refrain from participating in the debate.<sup>239</sup>

- **Developing comprehensive national strategies**

[221.] Discouraging and preventing the use of hate speech and reducing and remedying the harm caused by it requires a multitude of measures involving various sectors of the society as well as national authorities at different levels.<sup>240</sup> For these measures to be fully effective it will be necessary to ensure co-operation and coordination between the different stakeholders involved.<sup>241</sup>

[222.] There will also be a need to view the problem in a broader context so as to address the underlying root causes that give rise and enable hate speech to spread. For this purpose it is useful to develop a series of integrated policies on hate speech which might either be a focused action plan to combat hate speech or part of a broader-comprehensive strategy to fight extremism, racism and intolerance.<sup>242</sup> Such plans and strategies should include concrete tasks for ministries, municipalities and police and be drawn up and evaluated annually. It is crucial that these efforts are carried out continuously and that multi-annual national action plans on hate speech are developed.<sup>243</sup>

[223.] Some of the relevant issues to be taken account of in any comprehensive national strategy and action plan on tackling hate speech are set out in the following sections.

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<sup>235</sup> The VOX-Pol Network of Excellence (NoE) "Violent Extremism and Terrorism Online in 2016: The Year in Review"; available at [https://www.voxpol.eu/download/vox-pol\\_publication/Year-In-Review-WEB.pdf](https://www.voxpol.eu/download/vox-pol_publication/Year-In-Review-WEB.pdf)

<sup>235</sup> European Commission, *Special Eurobarometer on Media pluralism and democracy*, published in November 2016.

<sup>236</sup> European Commission, *Special Eurobarometer on Media pluralism and democracy*, cited above.

<sup>237</sup> Danish Institute for Human Rights, *Hate Speech in the Public Online Debate*, published in 2017, summary in English p. 12, available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2017/rapport\\_hadefulde\\_ytringer\\_online\\_2017.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2017/rapport_hadefulde_ytringer_online_2017.pdf)

<sup>238</sup> European Commission, *Special Eurobarometer on Media pluralism and democracy*, Conclusions, published in November 2016; available at [http://ec.europa.eu/information\\_society/newsroom/image/document/2016-47/sp452-summary\\_en\\_19666.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2016-47/sp452-summary_en_19666.pdf)

<sup>239</sup> Danish Institute for Human Rights, *Hate Speech in the Public Online Debate*, published in 2017, Summary in English p. 12, available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2017/rapport\\_hadefulde\\_ytringer\\_online\\_2017.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2017/rapport_hadefulde_ytringer_online_2017.pdf).

<sup>240</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principles 77 and 78.

<sup>241</sup> ECRI GPR No 15, Recommendation 3.e.

<sup>242</sup> ECRI GPR No. 15, Recommendation 4, and its Explanatory memorandum § 103

<sup>243</sup> *Ibid.*; Equinet, European Network of Equality Bodies, The Equinet Perspective *Extending the Agenda. Equality Bodies addressing Hate Speech*, Conclusions and Looking Forward; available at [http://www.equineteurope.org/IMG/pdf/hate\\_speech\\_perspective\\_-\\_web.pdf](http://www.equineteurope.org/IMG/pdf/hate_speech_perspective_-_web.pdf)

[224.] The *Norwegian* Government has adopted a Strategy against Hate Speech 2016-2020. The Strategy focuses on some specific areas such as:

- facilitating forums for discussion,
- combating hate speech among children and youth,
- enhancing the legal response to hate speech,
- combating hate speech in the employment sector,
- combating hate speech in the media sector,
- increasing knowledge and research on hate speech.<sup>244</sup>

[225.] The Ministry of Interior of the *Czech Republic* publishes an annual report on extremism. In 2016 it elaborated the National Security Audit (see above § 212) focusing *inter alia* on radicalisation of the population via incitement to hatred directed towards specific ethnic and religious communities.

[226.] In *Croatia*, the National Antidiscrimination Plan 2017-22 contains several measures aiming at combating hate speech, such as:

- campaigns aiming to tackle hate speech in sports
- expert seminars for law enforcements, lawyers, prosecutors, judges and NGOs on the Criminal Code provisions related to hate crime and hate speech
- round tables dedicated to discrimination, hate crime and hate speech
- hate crime and hate speech data collection improvement monitoring the EU Code of Conduct on countering illegal hate speech online
- Campaigns aiming to tackle discrimination and hate crime.

[227.] On 24 of November 2016 the *Swedish* Government adopted a national plan to combat racism, similar forms of hostility and hate crime with the following strategic areas: improved coordination and monitoring; more knowledge, education and research; civil society: greater support and more in-depth dialogue; strengthening preventive measures online; a more active legal system. Furthermore, in July 2017 the Government presented an Action Plan to safeguard freedom of expression, by protecting journalists, artists and politicians against threats and hatred.

[228.] *Spain* adopted a Comprehensive Strategy against racism, racial discrimination, xenophobia and other forms of intolerance, with the participation of the Judiciary, the Prosecutor, the Ministries of Justice, of Internal Affairs, of Health, Social Services and Equality, of Work and Social Security, and the Legal Studies Centre. On 8 June 2016 the Monitoring Committee for the Framework Convention for inter-institutional cooperation was launched in order to comply with the objectives of the Strategy.

[229.] In *Latvia*, the guidelines “Latvian Cyber security Strategy 2014-2018” examines the issue of identification and combating of hate crimes and instances of hate speech in the virtual environment and its close link to cybercrimes as automated data processing system may be used as a medium for circulation of illegal information and information damaging reputation.

<sup>244</sup> Further details available at <https://www.regjeringen.no/en/dokumenter/the-governments-strategy-against-hate-speech-20162020/id2520975/>.

[230.] *Germany* has taken action to tackle hate speech in a broader context so as to address the underlying root causes:

- In 2016, the Federal Government, for the first time, adopted a harmonised Strategy to Prevent Extremism and Promote Democracy, which targets e.g. the social sectors, local authorities and administrative districts, institutions, federations and associations, schools and prisons. It is based on a systematic, strong networking of the various players at federal, regional and local authority level and in civil society and their coordinated co-operation across the board. Approaches that have proved successful will be expanded across Germany. Efforts will also be made to intensify co-operation with the business world. The strategy also tackles the phenomenon of hate speech on the internet and in this respect an interdepartmental concept will be developed to systematically support those who join the “No Hate Speech” movement online and consistently bring those who disseminate hate speech to justice.<sup>245</sup>
- In 2017 the Federal Government adopted a new National Action Plan on Combating Racism which includes human rights policies; protection against discrimination and the prosecution of respective criminal offences; social and political education; civic and political commitment for democracy and equality; diversity in the working life; education and training as well as the strengthening of intercultural and social competence on the job; racism and hatred on the internet and research. The Chapter on racism and hate on the internet provides an overview of initiatives in this field.<sup>246</sup>

[231.] A priority area of the *Finnish* National Action Plan for Fundamental and Human Rights 2017–2019<sup>247</sup> is Fundamental Rights and Digitalisation which include freedom of expression and hate speech. Measures against hate speech are also included in every other chapter of the Action Plan. The Action Plan includes a total of 43 projects, one of which is the Fundamental Rights Barometer which will complement the European survey on the EU’s fundamental rights which is being prepared by the European Union Agency for Fundamental Rights. The barometer will map, for example, the general knowledge of fundamental rights among different population groups, conceptions about the importance of different rights and experiences on their realisation in people’s daily life.

[232.] The *Danish* Institute for Human Rights published a report in 2017 on “Hate Speech in the Public Online Debate”<sup>248</sup> which as a starting point uses the broad definition of hate speech from ECRI’s General Policy Recommendation No. 15 while supplementing it with ‘political and social statuses.

<sup>245</sup> English version of the Federal Government Strategy available at <https://www.bmfsfj.de/blob/115448/cc142d640b37b7dd76e48b8fd9178cc5/strategie-der-bundesregierung-zur-extremismuspraevention-und-demokratiefoerderung-englisch-data.pdf>

<sup>246</sup> National Action Plan on Combating Racism available at <https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/2017/nap.pdf>

<sup>247</sup> Further details available at <http://urn.fi/URN:ISBN:978-952-259-588-1>

<sup>248</sup> Report in Danish: “Hædefulde Ytringer i den Offentlige Online Debat”, 2.2 available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2017/rapport\\_haedefulde\\_ytringer\\_online\\_2017.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2017/rapport_haedefulde_ytringer_online_2017.pdf)

- **Enacting legislation in accordance with international and regional obligations**

[233.] To effectively combat hate speech national legislation should reflect international and regional standards to protect and promote freedom of expression and equality.<sup>249</sup> Under international human rights law it is the protection of dignity for all people, without discrimination, which motivates most responses to ‘hate speech’, including restrictions on the right to freedom of expression.<sup>250</sup> States should enact legislation on hate speech in accordance with their international and regional obligations and preferably include specific reference to the terms used in the relevant international and regional instruments.<sup>251</sup> They should ensure that the national law allows for the effective prosecution of illegal online hate speech in conformity with the case law of the European Court of Human Rights, while fully respecting freedom of expression<sup>252</sup>. They should also ensure that national legislation covers all forms of online incitement to violence against a person or a group of persons, bullying, harassment, threats and stalking, so that these can be effectively prosecuted under national law.<sup>253</sup>

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[234.] Under international law there is an obligation to prohibit particularly severe forms of hate speech. Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”<sup>254</sup> The Human Rights Committee has stressed that while States are required to prohibit such expression, these limitations must nevertheless meet the conditions for restrictions on freedoms of opinion and expression set out in Article 19(3).<sup>255</sup>

[235.] The term “prohibit by law” does not necessarily mean criminalisation; the Human Rights Committee has stated that it only requires States to “provide appropriate sanctions” in cases of incitement.<sup>256</sup> Civil and administrative penalties will in many cases be most appropriate, with criminal sanctions as an extreme measure of last resort.<sup>257</sup>

<sup>249</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, Preamble, principles 19-22, 27 and 29.

<sup>250</sup> *General Recommendation No. 35 on combating racist hate speech*, CERD/C/GC/35, 9 September 2013, § 8.

<sup>251</sup> ARTICLE 19, *Responding to ‘hate speech’: Comparative overview of six EU countries (2018)*, Conclusions.

<sup>252</sup> PACE Resolution 2144 (2017): *Ending cyberdiscrimination and online hate*, § 7.2.1.

<sup>253</sup> *Ibid.*, § 7.2.2.

<sup>254</sup> ECRI recommends to States that have made reservations in favour of the rights to freedom of assembly, association and expression to Article 20 of the ICCPR to consider withdrawing them since their maintenance could impede effective action to prohibit organisations which promote or incite racism and racial discrimination, propaganda for war and the advocacy of national, racial or religious hatred. ECRI also recommends States to recognise the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals under Article 14, GPR No. 15, Recommendation 2.

<sup>255</sup> General Comment No. 34 § 52. See also *Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*.

<sup>256</sup> HR Committee, *General Comment 11: prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20)*, 29 July 1983, § 2.

<sup>257</sup> ARTICLE 19, *Responding to ‘hate speech’: Comparative overview of six EU countries (2018)*, p. 11.



[236.] Other forms of hate speech may be prohibited by States to protect the rights of others under Article 19(3)<sup>258</sup> of the ICCPR, such as discriminatory or bias-motivated threats or harassment.<sup>259</sup> However, hate speech that is lawful may nevertheless raise concerns in terms of intolerance and discrimination, meriting a critical response by the State.<sup>260</sup>

[237.] Moreover, Article 4 of the ICERD<sup>261</sup> requires States to “condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in Article 5 of this Convention”.<sup>262</sup> The CERD recommends that the criminalization of forms of racist expression should be reserved for serious cases, to be proven beyond reasonable doubt, while less serious cases should be addressed by means other than criminal law, taking into account, inter alia, the nature and extent of the impact on targeted persons and groups.<sup>263</sup>

[238.] Criminal provisions directly restricting the most serious forms of hate speech are provided in the criminal laws of most countries. For example in *Latvia*, hate speech is prohibited under several provisions of the criminal law:

- Article 78 provides for criminal liability for incitement to national, ethnic, racial or religious hatred or enmity. The domestic courts have recognised that the objective side of the criminal offence can also be in the form of acts that include the use of symbols and rituals that have acquired a certain meaning in order to trigger race, national or ethnic hatred.
- Article 150 establishes liability for an act aimed at inciting hatred or enmity depending on the gender, age, disability of a person or any other characteristics (including sexual orientation of the person), if substantial harm has been caused thereby. Hatred in this context can be described as feelings that have characteristics of evil, disfavour (towards someone); enmity can be described as unjustified negative attitude towards people, their lifestyle, beliefs, feelings, habits. The scope of the provision is formulated very broadly and is not limited only to gender, age or disability of the person, but also to any other characteristics.

<sup>258</sup> See also General Comment No 34 on Article 19 of the ICCPR.

<sup>259</sup> CERD, General Recommendation No. 35 on combating racist hate speech, CERD/C/GC/35, 9 September 2013, § 12. Refers also HR Committee General Comment No. 34, §§ 22- 25, 33-35

<sup>260</sup> ARTICLE 19 ‘Hate Speech’ Explained. A Toolkit, cited above, p. 18.

<sup>261</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965. ECRI recommends that States which have made reservations in favour of the rights to freedom of assembly, association and expression to Article 4 of the ICERD consider withdrawing them since their maintenance could impede effective action to prohibit organisations which promote or incite racism and racial discrimination, propaganda for war and the advocacy of national, racial or religious hatred, GPR No. 15 on combating hate speech, Recommendation 2. The CERD Committee has also called on States that have made reservations to Article 4 to withdraw them.

<sup>262</sup> For clarification regarding the scope of these provisions vis-à-vis the protection of the right to freedom of expression see CERD, *General Recommendation No. 35 on “combating racist hate speech”*, CERD/C/GC/35, 9 September 2013.

<sup>263</sup> CERD, *General Recommendation No. 35 on “combating racist hate speech”*, CERD/C/GC/35, 9 September 2013.

[239.] Similarly, in *Poland*, hate speech is considered an offence under several provisions of the Criminal Code. In accordance with Art. 256 anyone who publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious denomination shall be subject to a fine, restriction of liberty or deprivation of liberty for up to two years. The regulations concerning verbal forms of hate crimes are also included in Art. 257 and Art. 126a of the Criminal Code. According to the Art. 257, anyone who publicly insults a population group or an individual because of national, ethnic, race or religious affiliation, or because of not being religious shall be liable to imprisonment up to 3 years. Art.126a stipulates the offence of publicly inciting others to the commission or publicly commends the commission of acts described in Articles 118 (acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group).

### Council of Europe

[240.] The European Court of Human Rights excludes hate speech from protection under the *European Convention on Human Rights* on a case-by-case approach either by applying:

- Article 17 [prohibition of abuse of rights] where hate speech is of such nature which negates the founding principles of a pluralist democracy and thus is removed from the protection of Article 10 [freedom of expression].<sup>264</sup> As a matter of principle, the Court has considered that it may be 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 any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.<sup>265</sup>
- Article 10(2) on the right to freedom of expression which allows for certain limitations. Thus, there can be no doubt that concrete expressions constituting hate speech, which may be insulting to particular individuals or groups, are not protected by Article 10 of the Convention.<sup>266</sup> It also is obvious that hate speech which implies glorification of violence will not be protected.<sup>267</sup> Where criminal sanctions have been imposed by the State, the Court has in many instances found that the imposition of a criminal conviction violated the proportionality principle.<sup>268</sup>

[241.] The *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*<sup>269</sup> intentionally and without right obliges Parties to establish criminal offences under their domestic law for:

- Dissemination of racist and xenophobic material through computer systems (Article 3)
- Racist and xenophobic motivated threat (Article 4)

<sup>264</sup> For example *Seurot v. France* (application no.57383/00), decision on the admissibility of 18 May 2004; *Delfi AS v. Estonia*, cited above; *Leroy v. France* (application no. 36109/03), judgment of 2 October 2008; *M'Bala M'Bala v. France* (application no. 25239/13), decision on admissibility of 20 October 2015. See also fact sheet on Court's caselaw on Hate Speech available at [https://www.echr.coe.int/Documents/FS\\_Hate\\_speech\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf).

<sup>265</sup> See for example *Gündüz v. Turkey* (application no. 35071/97), judgment of 4 December 2003, § 40; *Erbakan v. Turkey* (application no. 59405/00), judgment of 6 July 2006, § 56; *Féret v. Belgium* (application no. 15615/07), judgment of 16 July 2009, §63.

<sup>266</sup> See for example *Jersild v. Denmark* (application No 15890/89), Grand Chamber judgment of 23 September 1994, § 35.

<sup>267</sup> See for example *Sürek v. Turkey* (No. 1) (application no. 26682/95), Grand Chamber judgment of 8 July 1999, §62.

<sup>268</sup> *Jersild v. Denmark*, cited above, § 35.

<sup>269</sup> *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems* (ETS No. 189), adopted on 28 January 2003.

- Racist and xenophobic motivated insult (Article 5)
- Aiding and abetting the commission of any of the above offences (Article 7).<sup>270</sup>

[242.] In the *Republic of Moldova*, the General Prosecution Office issued an Action Plan on preventing and combating cybercrimes. This document has been approved by the 12 public institutions responsible for its enforcement. Its purpose is to put in place the necessary measures enabling the country to accede to the Additional Protocol to the Cybercrime Convention.

[243.] Sexist hate speech, a phenomenon only beginning to be addressed, relates to expressions which spread, incite, promote or justify hatred based on sex.<sup>271</sup> Some groups of women are particularly targeted by sexist hate speech notably young women, women in the media or women politicians<sup>272</sup> (see above Specific focus area: Freedom of expression in political discourse). The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) refers to forms of violence against women which can also be manifestations of online/offline sexist hate speech: sexual harassment (Article 40) and stalking (Article 34). It requires that Parties take the necessary legislative or other measures. Article 12 (1) provides that “Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men”.

[244.] As regards criminal law, ECRI emphasises that criminal offences in national laws should be defined clearly, but also in a way that allows their application to keep pace with technological developments.<sup>273</sup>

[245.] ECRI in its General Policy Recommendation No. 15 on combating hate speech<sup>274</sup> sets out a number of recommendations to the governments of member States, such as:

- seek to identify the conditions conducive to the use of hate speech as a phenomenon and the different forms it takes, as well as to measure its extent and the harm that it causes, with a view to discouraging and preventing its use and to reducing and remedying the harm caused, and accordingly (Recommendation 3)
- undertake a vigorous approach not only to raising public awareness of the importance of respecting pluralism and of the dangers posed by hate speech but also to demonstrating both the falsity of the foundations on which it is based and its unacceptability, so as to discourage and prevent the use of such speech, and accordingly (Recommendation 4)
- provide support for those targeted by hate speech both individually and collectively, and accordingly (Recommendation 5)

<sup>270</sup> ECRI urges States, which have not already done so, to ratify the Additional Protocol as parts of their efforts to combat hate speech, GPR Recommendation No. 15 on combating hate speech, Recommendation 1.

<sup>271</sup> The Council of Europe Gender Equality Strategy 2018-2023 includes the combat against sexist hate speech (strategic objective 1), the Internet Governance Strategy for 2016-2019 (para. 10.d); Recommendation CM/Rec (2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, cited above, § 17 and the No Hate Speech Movement youth campaign.

<sup>272</sup> For more information on sexist hate speech see Report on the Seminar Combating Sexist Hate Speech on 10-12 February 2016 by the European Youth Centre, and *Factsheet on Combating Hate Speech and Background Note on Sexist Hate Speech*, prepared by the Gender Equality Unit on 1 February 2016, available at:

<https://www.coe.int/en/web/genderequality/sexist-hate-speech>

<sup>273</sup> ECRI GPR No. 15, Recommendation 10.

<sup>274</sup> Adopted by ECRI on 8 December 2015. See also its Explanatory Memorandum.

- provide support for self-regulation by public and private institutions (including elected bodies, political parties, educational institutions and cultural and sports organisations) as a means of combating the use of hate speech, and accordingly (Recommendation 6)
- use regulatory powers with respect to the media (including internet providers, online intermediaries and social media), to promote action to combat the use of hate speech and to challenge its acceptability, while ensuring that such action does not violate the right to freedom of expression and opinion, and accordingly (Recommendation 7)
- clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those who are targeted by it while respecting the right to freedom of expression and opinion, and accordingly (Recommendation 8)
- withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech or fail to sanction its use by their members and provide, while respecting the right to freedom of association, for the possibility of prohibiting or dissolving such organisations regardless of whether they receive any form of support from public bodies where their use of hate speech is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it (Recommendation 9)
- take appropriate and effective action against the use, in a public context, of hate speech which is intended or can reasonably be expected to incite acts of violence, intimidation, hostility or discrimination against those targeted by it through the use of the criminal law provided that no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected, and accordingly (Recommendation 10)

### European Union

[246.] As a follow up to its Joint Action concerning action to combat racism and xenophobia,<sup>275</sup> the European Council's *Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law*<sup>276</sup> requires States to sanction racism and xenophobia through "effective, proportionate and dissuasive criminal penalties".<sup>277</sup> The Framework Decision establishes in its Article 1 four categories of incitement to violence or hatred offences that States are required to criminalize with penalties of up to three years. States are afforded the discretion of choosing to punish only conduct which is carried out in "a manner likely to disturb public order" or "which is threatening, abusive, or insulting".<sup>278</sup>

[247.] In *Spain*, several provisions of the Criminal Code were updated by the Organic Law 1/2015 of 30 March to conform the Council *Framework Decision 2008/913/JHA, on combating certain forms and expressions of racism and xenophobia by means of criminal law*. The amendment reflects the rejection of all acts inciting to discrimination, hate or violence towards some groups or minorities (defined by race or nation, gender, sexual preference or political grounds, including acts inciting hatred or violence on ideological

<sup>275</sup> European Council Joint Action 96/443/JHA of 15 July 1996 concerning action to combat racism and xenophobia.

<sup>276</sup> European Council, *Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law*; available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008F0913>

<sup>277</sup> *Ibid.*, preamble (13); *Guidance note on the practical application of Council Framework Decision 2008/913/jha on combating certain forms and expressions of racism and xenophobia by means of criminal law*, available at [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=5560](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=5560) See also above footnote 218.

<sup>278</sup> *Ibid.* Article 1 (2).

grounds). The new legal framework efficiently improves the courts response against conducts of hate speech regarding groups or minorities on political or ideological grounds among others.

[248.] On 1 March 2018, the EU European Commission adopted a Recommendation on measures to effectively tackle illegal content online.<sup>279</sup> The Recommendation contains a set of operational measures – accompanied by the necessary safeguards – to be taken by companies and EU Member States and applies to all forms of illegal content, including racist and xenophobic incitement to hatred and violence.

[249.] While the objective of the E-Commerce Directive<sup>280</sup> is not to harmonise the field of criminal law as such, but instead to create a legal framework to ensure the free movement of information society services between Member States<sup>281</sup>, it requires in Article 14 (1) EU member States to shield intermediaries from liability for illegal third party content where the intermediary does not have actual knowledge of illegal activity or information and, upon obtaining that knowledge, acts expeditiously to remove or disable access to the content at issue.<sup>282</sup> The Directive thus in Article 15 prohibits EU member States from imposing general obligations on intermediaries to monitor activity on their services.<sup>283</sup>

[250.] In January 2018, the Austrian Supreme Court referred a case<sup>284</sup> concerning online ‘hate speech’ to the European Court of Justice (CJEU) for clarification as to whether such an order would conflict with the provisions of the E-Commerce Directive, Article 15 (1). The CJEU proceedings are pending at the time of the publication of this guide but may be crucial towards determining future practices in this area.

- **Strengthening the prosecution of hate speech offences**

#### Effective investigation of complaints and prosecution of offenders on a non-discriminatory basis

[251.] States should ensure that prosecutions for hate speech offences are brought on a non-discriminatory basis.<sup>285</sup> Moreover they should ensure the effective participation for those targeted by hate speech in the relevant proceedings. It is important that relevant NGOs and other bodies be allowed to bring proceedings even without an individual complainant.<sup>286</sup> It will also be necessary for States to monitor the effectiveness of the investigation of complaints and the prosecution of offenders. Finally, States should ensure effective co-operation and co-ordination between police and prosecution authorities. This could include

<sup>279</sup> Commission *Recommendation on measures to effectively tackle illegal content online*, C(2018) 1177 final.

<sup>280</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.,

<sup>281</sup> *Ibid.*, preamble (8)

<sup>282</sup> *Ibid.*, Article 14(1).

<sup>283</sup> *Ibid.*, Article 5. Also the European Court of Human Rights has dealt with intermediary liability for third-party illegal content e.g. *Delfi AS v. Estonia*, cited above; *Magyar Tartalomszolgáltatók Egyesülete and Index. hu Zrt v. Hungary*, (application no. 22947/13), judgment of 2 February 2016; *Pihl v. Sweden*, cited above.

<sup>284</sup> *Glawischnig-Piesczek v. Facebook Ireland Limited*. The case concerns proceedings brought by the former Austrian Green party leader Eva Glawischnig, who was subjected to offensive comments (termed ‘hate speech’) posted by a fake account on Facebook. Glawischnig first brought a suit against Facebook in 2016. The court of first instance ordered Facebook to remove the posts and all verbatim copies, and an appeals court also ruled that Facebook must apply the injunction globally. Glawischnig appealed, claiming Facebook should also have to find and remove similar posts.

<sup>285</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, cited above, principle 41.

<sup>286</sup> PACE, Report on Ending cyberdiscrimination and online hate, cited above, § 43.

co-operation with other States in tackling the transfrontier dissemination of prohibited hate speech, whether in a physical or electronic format.<sup>287</sup>

[252.] In *Greece*, in the context of the fight against racism, two Divisions and sixty-eight Offices against Racist Violence have been established within the Police and are currently operating throughout the country. Their basic responsibility is to investigate crimes that may cause discrimination, hatred or violence against persons or groups of persons defined by reference to race, colour, religion, descent, national or ethnic origin, sexual orientation, gender identity, or disability. In addition, they notify without delay the competent Prosecutor, whenever they conduct a preliminary investigation in cases of racist violence.

#### Training of criminal justice actors

[253.] The judiciary, law enforcement agencies and public bodies should be provided with comprehensive and regular training including on relevant international human rights standards. This would include receiving guidance on the prosecution of incitement cases and the assessment of the cases based on international human rights law<sup>288</sup> to recognise the seriousness of hate speech and to apply the law effectively. In particular the police should have the technical capacity to investigate and know where to turn for assistance, if need be. They need to know what mechanisms can be used to identify anonymous internet users, how to contact social media and other relevant platforms in online hate cases, and how to work with victims of online hate speech.<sup>289</sup> Such training should include awareness of cultural diversity in today's society so as to be able to identify individuals and communities most at risk of being targeted by hate speech and to understand the impact of negative stereotypes, prejudices and any form of intolerance.<sup>290</sup> It will also be necessary to include gender considerations into such training on hate speech.<sup>291</sup>

[254.] In *Poland*, since 2005 workshops on "Combating racist and xenophobic offences" have been carried for the police officers of investigative units of criminal services. The workshops focus on the legal aspects of fighting crimes motivated by prejudices, including offences committed through the internet. An important element consists of discussion on international legal and constitutional regulations referring to hate speech and freedom of expression. In total, between 2005 and 2017, approximately 120 police officers attended from all police offices which conducted preliminary proceedings related to hate crimes.

[255.] In *Turkey*, the Human Rights and Equality Institution established by the Law No. 6701 has the duty to provide training on human rights and the fight against discrimination. Furthermore, guides concerning investigations are being prepared within the context of the project "Developing Investigation Techniques of Public Prosecutors and Enhancing Activities in accordance with European Standards of Human Rights".

<sup>287</sup> ECRI GPR No. 15, Recommendation 10.

<sup>288</sup> ECRI GPR No. 15, Recommendation 10.

<sup>289</sup> PACE, Report on Ending cyberdiscrimination and online hate, § 51.

<sup>290</sup> Although it is necessary to distinguish between hate speech and hate crime (see above footnote 227) it is worth noting that in the context of addressing hate crimes, OSCE/ODIHR has developed *Training against Hate Crimes for Law Enforcement* ("TAHCLE") which in its Annex 6 includes awareness of cultural diversity, available at <https://www.osce.org/odihr/tahcle?download=true>. Also ODIHR's "Prosecutors and Hate Crimes Training (PAHCT)" includes in its Annex 5 awareness of cultural diversity although it does not deal with hate speech, available at <https://www.osce.org/odihr/pahct?download=true>

<sup>291</sup> In the context of addressing hate crimes, ODIHR has developed "Prosecutors and Hate Crimes Training (PAHCT)" which includes gender considerations, available at <https://www.osce.org/odihr/pahct?download=true>

[256.] In *Belgium*, within the framework of the joint circular of the Minister of Justice, the Minister of the Interior, and the College of Public Prosecutors to the Court of Appeal "Circular on the investigation and prosecution policy on discrimination and hate crimes (including discrimination based on sex)" of 2013 (Circular COL 13/2013), training courses on cyberhate are offered to magistrates, judicial trainees and judges on cyberhate in co-operation with the Interfederal Centre for Equal Opportunities and against Racism (Unia). In 2017 the training of judges of reference included the subject of discrimination. Moreover, specific training is organised for the police where the issue of hate speech is discussed as well as how to strike a fair balance between humour in the workplace, harassing behaviour and freedom of expression. The aim of the circular is to standardise policies in the field of research and prosecution on discrimination and hate crime, in particular cyberhate, and to this end specific collaborations are envisaged. For example, coordinating magistrates meet each year with bench magistrates in order to evaluate the application of the circular and to make adjustments or develop instruments with a view to ensuring its implementation.

[257.] In the *Czech Republic*, as part of the Government's "Campaign against Racism and Hate Crime", various capacity building activities for police officers have been implemented. In particular, a Czech NGO "In iustitia" organised trainings for 400 police officers (including, for instance, spokespersons and investigators).

[258.] In co-operation with the *Estonian Academy of Security Sciences*, police officers receive sensitivity trainings to improve their skills on how to communicate with victims and how to motivate victims to seek help and services under the victim's support system

[259.] In *Germany*, further training for judges and prosecutors regularly focuses on the complex issue of political extremism as a challenge for society and the justice sector. The German Judicial Academy (Deutsche Richterakademie, DRA) — a cross-regional educational facility jointly funded by Federation and Länder to provide in-service training for judges and public prosecutors from throughout Germany — offers regular interdisciplinary courses focusing in detail on a wide range of issues revolving around right-wing extremism, xenophobia and anti-Semitism. In addition, the German Institute for Human Rights in co-operation with the Federal Ministry of Justice and Consumer Protection is planning a more far-reaching project to develop further training modules on racism incorporating the legal framework on human rights. These modules will then be tested and made available for inclusion in the established initial and further training structures of the German Länder. This will help judges and prosecutors respond appropriately to crimes motivated by racism and hatred, and provide them with the necessary skills in criminal proceedings to affront the experiences of those who have been affected by racism.

[260.] In *Latvia*, several types of trainings and awareness-raising activities are conducted such as:

- The foundation "Latvian Judicial Training Centre" (LJTC) provides initial and on-going training to judges and court staff on topics related to hate speech in an annual training programme. Training on issues related to racism is incorporated in anti-discrimination topics or training on the Court's practice. Some of the activities use an interdisciplinary approach to improve general understanding across different legal professions. For example, in April 2017 a seminar on "Honour and dignity, limitations on freedom of speech" took place, and in November a seminar on "Hate crimes and freedom of speech" was organised.

- The Office of the Prosecutor General also offers relevant training and education. Thus a seminar “Equality and elimination of discrimination” took place in 2012. In 2012 and 2013, several prosecutors attended seminars organised by the Academy of European Law, for example, on gender equality and on EU non-discrimination law.
- Likewise the prosecutors attended in 2013 a conference organised by the Riga Graduate School of Law and the Ministry of Foreign Affairs “Promotion of tolerance in Latvia: legislation, practice and politics”, as well as the 2015 seminar organised by the Latvian Human Rights Centre on approaches to prevention of hate crimes and hate speech.

[261.] In *Georgia*, with the support of the Council of Europe and within the framework of the joint Programme “Human Rights for Everyone” between EU and Office of the UN High Commissioner for Human Rights (OHCHR) a training was held in June 2017 on “Freedom of Expression, Including Issues Related to Hate Speech” in which participated 17 judges of the common courts.<sup>292</sup> This was a follow-up to a training course in October 2016 attended by 20 judges.<sup>293</sup>

[262.] In *Spain*, training courses of the General Council of the Judiciary, included a three-day course in February 2017 on “Crimes of hatred and discrimination” for the Prosecutor Coordinator of the Service of Crimes of Hatred and Discrimination of the Provincial Attorney's Office of Barcelona. Moreover, the Spanish Bar Association organised in Seville “Training sessions on hatred crimes and discrimination” in order to create a specific Court Duty (Free Justice) on defending victims of such crime.

[263.] In *France*, magistrates are trained on existing national and international instruments, particularly during training sessions on freedom of expression including hate speech. Specific sessions are also offered on hate speech. To ensure that racially motivated and/or homo/transphobic offences are recorded initial and ongoing training is provided to the staff of the National Police. Pedagogical tools of a procedural nature are made available online to investigators.

- **Self-regulation by public and private institutions**

[264.] Although the use of hate speech is a matter of general public concern and occurs in a wide variety of different fora, those using it will in many instances have particular affiliations – including as employees and users of facilities – with one or more different bodies, institutions and organisations. These can be both public and private entities and will include parliaments and other elected bodies at the national, regional and local level, ministries and other public bodies, the civil or public service, political parties, professional associations, business organisations and schools, universities and other educational institutions, as well as a very wide range of cultural and sporting organisations. Thus, these bodies, institutions and organisations should in their code of conduct make it clear that the use of hate speech by persons affiliated with them is entirely unacceptable, and they should take action to prevent or sanction such use.<sup>294</sup>

<sup>292</sup> Further details available at [http://www.hsoj.ge/eng/media\\_center/news/947-freedom-of-expression-including-issues-related](http://www.hsoj.ge/eng/media_center/news/947-freedom-of-expression-including-issues-related)

<sup>293</sup> Further details available at: [http://www.hsoj.ge/eng/media\\_center/news/746-gamoxatvis-tavisufleba-matshoris-sidzulvilis](http://www.hsoj.ge/eng/media_center/news/746-gamoxatvis-tavisufleba-matshoris-sidzulvilis)

<sup>294</sup> ECRI GPR No. 15, Recommendation 6 and its Explanatory memorandum §§ 114-115.



[265.] For more details on self-regulation by political parties and elected bodies as well as public institutions see above section a. *Self-regulation* under “Measures to combat political statements that incite to violence or hatred”.

[266.] In addition, there are a number of international or regional codes or charters that are applicable to bodies, institutions and organisations operating within member States such as the Disciplinary Code of the International Federation of Football Association (FIFA) and the guidelines of the European Union Football Association (UEFA). The reach of these codes can be quite wide, notably in the case of those connected with sporting activities, as they apply not only to those engaged in the sport itself or involved in its organisation and management but they also apply to those attending or supporting the activities.<sup>295</sup>

[267.] In May 2016, the European Commission agreed with Facebook, Twitter, YouTube and Microsoft — on a voluntary Code of Conduct on countering illegal hate speech online<sup>296</sup> to help users notifying illegal hate speech in these social platforms, improve the support to civil society as well as the coordination with national authorities. The IT companies agreed to assess the majority of users’ notifications in 24h also respecting EU and national legislation on hate speech and commit to remove, if necessary, those messages assessed illegal. The companies also agreed to further work on improving the feedback to users and being more transparent towards the general society. Evaluations are regularly being carried out of monitoring exercises, based on notifications issued by civil society organisations and on a methodology that has been commonly agreed upon. The results of the third evaluation in January 2018 showed important progress made at different levels.<sup>297</sup>

[268.] In *Croatia*, the Code of Ethics for Civil Servants was adopted in 2011 and it sets forth the rules of conduct for civil servants as well as the ethical principles governing the dealings of civil servants. Also, civil servants are entitled to protection against harassment, i.e. any behaviour which has the purpose or effect of violating the dignity of civil servants and creates an intimidating, hostile, degrading or offensive environment. In each governmental body, its chief official appoints an ethnics commissioner among civil servants who is responsible for monitoring the application of this Code of Ethics in their respective governmental bodies.

[269.] The Statute of the Football Association of *Serbia* of 27 August 2017 provides in Article 4 that discrimination of any kind, including hate speech against a country, a person or a group of people on the basis of ethnicity, race, sex, language, political opinion or any other basis is strictly forbidden and punishable by disciplinary measure. Moreover, the Journalists Code of Ethics from 2006 (supplemented in 2013) prescribes in Heading IV, para. 1, that all journalists must oppose hate speech and any kind of violence. Para. 15 of the Code also prescribes that journalists’ profession is incompatible with any kind of stereotypes. In addition, colloquial, abusive and imprecise reference to a group is prohibited. It is also stipulated that information about criminal offences, nationality, race, religious belief, ideology and political affiliation, sexual orientation, social and marital status can only be mentioned in reports if those characteristics are directly relevant for the criminal offence committed.

<sup>295</sup> ECRI GPR No. 15, Explanatory memorandum § 119.

<sup>296</sup> Further details available at [https://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=54300](https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300).

<sup>297</sup> Further details available at <https://merlin.obs.coe.int/iris/2018/3/article7.en.html>.

[270.] In *Finland*, any person who considers that there has been a breach of good professional practice by media may bring this to the attention of the Council for Mass Media (CMM) which is a self-regulating committee established in 1968 by publishers and journalists in the field of mass communication. Its task is to interpret good professional practice and defend the freedom of speech and publication. Once the CMM has established that good professional practice has been breached, it issues a notice which the party in violation must publish within a short time span. Under certain circumstances involving important principles, the CMM can initiate an investigation. It can also issue policy statements regarding questions of professional ethics. The CMM handles complaint investigations free of charge, within an average timeframe of five months. The Chairman may give independent resolutions on matters which clearly do not refer to a breach of good professional practice and are of no significant importance. The Ministry of Justice has annually allocated the CMM a grant which in 2017 was 80,000 euros.

- **Increasing the reporting of hate speech**

[271.] It is important that those having suffered damage on account of hate speech are aware of the right to seek redress. They should be made aware of their rights to redress not only through criminal but also through administrative and civil proceedings. There are various measures that ensure such awareness in particular public campaigns not only making it clear that hate speech is unacceptable but also explaining how those targeted can respond or seek redress. It can in some cases be useful to focus such campaigns on persons belonging to particular groups such as minorities or vulnerable groups. Information about the various possibilities of taking action might in addition to central government be disseminated through local governments.<sup>298</sup>

[272.] There may also be other factors seen as obstacle to reporting hate speech, such as it not being worth the trouble and not being certain of the complaint being handled in a serious manner, concerns of the complexity and expenses of making a complaint, or even fear of repercussions from those using hate speech. Thus, there is a necessity of putting in place a complaint procedure or hate speech reporting mechanism that is as straightforward, user-friendly and inexpensive as possible. Appropriate training for those dealing with complaints, whether public authorities or private organisations, is essential to ensure a process as smooth as possible.<sup>299</sup>

[273.] In *Finland*, the project Against Hate by the Ministry of Justice during 1 January 2017 to 30 November 2019 aims to develop the work against hate crime and hate speech. The project focuses on the development of hate crime reporting, on the enhancement of the capacity of the police, prosecutors and judges to act against hate crime and hate speech, and on the development of support services for victims of hate crime.<sup>300</sup> A communications campaign aiming to combat hate speech was launched February 2019 as part of the project. The campaign aims to increase internet users' awareness of what kinds of content constitute punishable hate speech and seeks to encourage people to report punishable hate speech to the police. The Against Hate campaign consists of TV public service announcements, a social media campaign and online materials to help people identify punishable hate speech. The core message of the campaign is that hate speech can be a punishable offence. The internet is subject to the same rules as anywhere else. The idea of

<sup>298</sup> ECRI GPR No. 15, Explanatory memorandum §§ 108-109.

<sup>299</sup> ECRI GPR No. 15, Explanatory memorandum, §§ 110-111.

<sup>300</sup> Further details available at <https://oikeusministerio.fi/en/project?tunnus=OM005:00/2018>

the campaign is to take part in the public discussion on hate speech from the perspective of the punishability of the act. The campaign hashtag is #againsthate.<sup>301</sup>

[274.] In the *Netherlands* it is possible to send notification regarding discrimination on the internet not only directly to a social media platform, but since 2013 also to the complaints office for online discrimination “MiND” (Meldpunt internetdiscriminatie) which, examines whether the online utterance in question constitutes a criminal offence. If it is possible, removal of the utterance is requested. If the request is not fulfilled, the issue is escalated within the social media company concerned. In instances where the notification is still not acted upon, the case is referred to the Public Prosecution Service.

[275.] In *Germany*, to counter hate speech on the internet the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, since 2015 supports the activities of “jugendschutz.net” which is the joint competence centre for the protection of minors on the internet at federal and state level. Jugendschutz.net, which is not a public authority, has a legal mandate laid down in the Interstate Treaty for the Protection of Minors on the internet (JMStV). It offers a hotline for reporting on harmful content in the internet. Hereafter, it assesses the reported case, evaluates the apparent origin and tries to find out who is responsible for the content.

[276.] In *Austria*, several helpdesks and reporting offices have been established to support persons who want to report and take action against illegal contents, including hate speech, for example:

- Reporting office “ns-Wiederbetätigung” at the Federal Ministry of the Interior concerning websites or articles of neo-Nazi, racist or anti-semitic content;
- Reporting office “Stoptline” established by ISPA (Internet Service Providers Austria) concerning national socialist contents or child pornography;
- Reporting office “Gegen Hass im Netz” established by the Federal Chancellery and the non-governmental institution ZARA (Zivilcourage und Antirassismus-Arbeit) concerning online hate speech. The work is conducted by legally and psychologically trained staff of ZARA who provide information, advice and support, including legal advice, to victims and witnesses of online hate speech, cyber-mobbing and other forms of verbal and psychological violence on the internet. Its services are free of charge and are provided via chat, messenger, e-mail, phone or in person.

[277.] In *Latvia*, the State Police increasingly uses social media platforms – Facebook, Twitter – to inform the public and encourage reporting. Furthermore, in addition to the traditional forms of reporting hate crimes to the State Police or the Security Police (in person, via phone or in a written form), the reporting can be done by using particular websites<sup>302</sup>. Information received by these sites is then forwarded to the competent law enforcement authorities.

[278.] *France* has established a specific online complaints system which consists of:

- An online pre-complaint system to facilitate victim’s actions and improve the handling of disputes regarding discrimination, racist or anti-LGBT insult, racist or anti-LGBTI defamation, and hate provocation, This project has been validated for experimental purposes in an inter-ministerial action plan for the years 2018 to 2020 (Plan Interministériel de Lutte contre le Racisme et l’Antisémitisme - PILCRA). However, any hate speech must be reported to the judicial authority by filing a complaint.

<sup>301</sup> Further details available at [https://oikeusministerio.fi/en/article/-/asset\\_publisher/vihapuheen-vastainen-against-hate-kampanja-kaynnistyy](https://oikeusministerio.fi/en/article/-/asset_publisher/vihapuheen-vastainen-against-hate-kampanja-kaynnistyy).

<sup>302</sup> The websites in question are <http://www.naidanoziegumi.lv> (in Latvian) and <http://cilvektiesibas.org.lv> (in Latvian, Russian and English).

- A reporting platform of the General Inspectorate of the National Police (IGPN) and the General Inspectorate of the National Gendarmerie (IGGN) for citizens who feel victims or who have witnessed conduct likely to constitute professional misconduct, an ethical breach or even an offence by a member of the police force.
- Partner associations and specialised “aid to victims” police officers present in the police stations on whom victims and witnesses can rely. Law enforcement officers receive training in the reception of victims and other users: they learn how to manage difficult relations and how to deal with different categories of users by applying the provisions of the “Charter of the reception of the public and victim assistance”.

In addition, a platform “Stop-Discrimi” was developed by the national gendarmerie for its staff who considers themselves victims of discrimination or harassment. An identical platform “Signal-discrimi” intended for national police personnel was created on 22 September 2017. Likewise, a national listening unit “Allo Discrimi” was opened for all officers of the General Secretariat of the Ministry of the Interior (central administration and prefectures). With regard to the judicial aspect, victims also have the possibility to turn to the Access to Law and Justice and Victims Assistance Service (SADJAV).

[279.] *France* has also created a fast and effective mechanism for reporting illegal content on the internet - the platform “Pharos” (plateforme d’harmonisation, de recoupement et d’orientation des signalements) which is part of the Central Office for Combating Information Technology Crime (OCLCTIC). It centralizes reports by Internet users of content and racist behaviour broadcasts on the Internet.<sup>303</sup> The platform received more than 17,000 reports of hate messages and discrimination in 2016. In the area of discrimination, professional reporting agreements have been signed with a number of partners to enable them to benefit from privileged reporting tools via Pharos. Thus, the reports made by the Internet users, the investigation services or the NGOs make it possible to collect a great mass of data, which are then used for the purposes of investigation.

[280.] In *Greece*, a special hotline has been created and a special form for complaints is available on the Police website<sup>304</sup> so that those concerned may anonymously and with full respect for the privacy of their communication, complain or notify the Police, 24h/day, about any unlawful act committed with racist characteristics or motives. On the same webpage, information has been posted on Police Services against Racist Violence in the Greek and English languages.

[281.] In *Finland* in the light of cases of threatening and slandering campaigns against journalists experienced in late 2015 and early 2016, the Union of Journalists (UJF) has addressed the problem in numerous seminars, meetings, debates and union magazine and website Articles. In 2013, UJF together with the Finnish Media Federation made a recommendation on the actions in editorial offices in case of threats and threatening situations against journalists. These included reporting violations to police. Early 2016, the Union Magazine made and published a large survey on threats against journalists according to which every one of six journalists had received threatening messages, mainly through e-mail or social media, but some also face-to-face or over telephone.

<sup>303</sup> For more details see website at [www.internet-signalement.gouv.fr](http://www.internet-signalement.gouv.fr)

<sup>304</sup> The website in question is available at [www.astynomia.gr](http://www.astynomia.gr)

- **Supporting victims of hate speech**

[282.] An important element of tackling hate speech is to ensure that those who are affected by it are supported and able to recover from their experiences. The impact of hate speech on the lives of those targeted can be severe.

[283.] Victims of hate speech should not fear consequences from reporting it or providing evidence as witnesses to it. There should therefore be in place a specific criminal prohibition on any retaliation action.<sup>305</sup>

[284.] Beyond redress through legal proceedings there can also be supporting measures that reassure and help the victims return to their normal life. Such measures could include, among others, support groups, counselling, public declarations or condemnations of the attacking speech.

[285.] In the *Czech Republic*, Act no. 45/2013 (on victims of crime) provides for rights to victims of crime and financial support. Victims of hate crime and in some instances of hate speech fall under the legal category of especially vulnerable persons for which enhanced protection and support is available. Legal assistance is provided to victims of crime so as to ensure the functioning of the system in practice.<sup>306</sup>

[286.] Victim Support *Denmark*, an organisation offering free services available to everyone, whether or not a crime has been reported and regardless of when it happened, is available to victims and witnesses of hate speech. The organisation acts under a duty of confidentiality and as an organisation independent from the Danish authorities. Victim Support Denmark does not replace support from public institutions, but provides an independent supplement.<sup>307</sup>

- **Enhancing research and monitoring, including data collection**

[287.] Whereas hate speech seems to be spreading, in particular in the social media, the actual extent of the spread and impact of hate speech remains uncertain. In order to have a better understanding of the circumstances that can give rise to the use of hate speech and its particular forms, as well as to measure both the extent of such use and its impact, there is a need for further research in the form of surveys and field studies and, where practicable, of a comparative nature. This means that data collection and analysis regarding the actual use of hate speech should be undertaken on a consistent, systematic and comprehensive basis.<sup>308</sup> Such research and monitoring of hate speech, which is crucial for developing adequate policies, should be done separately from data collection of hate crime as the two phenomena may require different responses. States should support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote co-operation in undertaking this task between them and public authorities.<sup>309</sup>

<sup>305</sup> ECRI GPR No. 15, Explanatory memorandum § 110.

<sup>306</sup> E.g. see <http://www.in-ius.cz/dwn/praktalegdopo/zotc-web-final.pdf>.

<sup>307</sup> Link the website to Victim Support Denmark (in Danish *Offerrådgivningen*) in English available at <https://www.offerraadgivning.dk/om/english/>.

<sup>308</sup> ECRI GPR No. 15, Explanatory memorandum §§ 74 and 78.

<sup>309</sup> ECRI GPR No.15, Recommendation 3e.

[288.] Finally, it is important that the results of the collected data and its analysis is widely disseminated not only to those bodies and persons that have a responsibility for tackling hate speech, but also to the public at large which will also send a clear message that hate speech is unacceptable.<sup>310</sup>

[289.] A report by the *Finnish* Ministry of Justice found that hate speech had become the most common form of discriminatory behaviour targeting minorities. Of the 1475 people polled for the report, 61 % stated that hate speech had eroded their general sense of safety over the preceding 12 months, indicating that the problem has become worse over a relatively short period.<sup>311</sup>

[290.] The EU-project Research – Report – Remove: Countering Cyber Hate Phenomena (2016-2017), developed by the International Network Against Cyber Hate (INACH), collects data from all project members from multiple countries (Austria, Belgium, France, Germany, the Netherlands and Spain) in order to synthesise a comprehensive and extensive picture of cyber hate in Europe in the 21st century. As part of this EU-project, the *Austrian* Federal Chancellery and the Ministry for Europe, Integration and Foreign Affairs is responsible for:

- Gathering systematic knowledge about the phenomenon, its origins and sources, as well as forms and influences through comparative research.
- Developing standards to document and analyse cyber hate and to improve takedown procedures by establishing guidelines for Internet Service Providers (ISPs) and social network sites and by providing support and advice to the political, legal and educational communities.
- Establishing a central contact point will help to develop a sustainable and effective cross-border online complaint mechanism available worldwide to all users from their home or mobile device.
- Monitoring activities that shall help developing an early warning system by continuously observing and analysing hateful content on the internet.

The project in Austria will particularly focus on the monitoring of antisemitism, hate against Roma and Sinti, hate against Muslims and homophobia.

[291.] In *Spain*, the Statistical Criminal System is underway, allowing the State Security Forces to identify offences regarding actions of extremism and terrorism, in order to record, obtain, evaluate and extract statistical data regarding racism and xenophobia. One of the main adjustments of the system was adopting the ECRI's definition for racism or xenophobia so as to ensure a broad approach to racism.

[292.] *France* has developed a victimization survey approach consisting of the practice of interviewing individuals, whose anonymity is guaranteed, in order to know whether or not they have been victims of criminal offences. Beyond the quantified data provided by the investigative or judicial services, it provides quantitative data on victims of hate speech and their treatment, in order to better target public policies in this area. Such victimization surveys were conducted in 2016 by the National Demographic Institute (INED), as well as by the National Institute of Statistics and Economic Studies (INSEE) on an annual basis since 2007.

<sup>310</sup> ECRI GPR No. 15, Explanatory memorandum § 86.

<sup>311</sup> "Survey on hate speech and harassment and their influence on different minority groups", available at [http://julkaisut.valtioneuvoisto.fi/bitstream/handle/10024/76633/omso\\_7\\_2016\\_vipu-raportti\\_158\\_s.pdf](http://julkaisut.valtioneuvoisto.fi/bitstream/handle/10024/76633/omso_7_2016_vipu-raportti_158_s.pdf)

[293.] The *United Kingdom* Government supported the Institute of Jewish Policy Research's work on Antisemitism in contemporary Great Britain. The research was based on the largest and most detailed survey of attitudes towards Jews and Israel ever conducted in Great Britain. It concludes that 3 % of the British population can be seen as hard line antisemites and a further 30 per cent believe in one or more antisemitic tropes. Furthermore, the third-party reporting organisation « Tell MAMA » which carries out work around tackling anti-Muslim hatred in the United Kingdom has developed a close partnership with the police. From 1 January to 31 December 2016, 3,694 anti-Muslim hate incidents were reported to Tell MAMA by victims, witnesses, third parties or the police, compared to 2,622 in 2015 and 729 in 2014. This increase reflects a greater encouragement and confidence around reporting as well as an increasing number of data sharing agreements with individual police forces.

[294.] In *North Macedonia*, there is a Guide to Monitor Hate Speech, issued by the Agency of Audio and Audiovisual Media Services.<sup>312</sup> It encompasses international standards and principles relating to freedom of expression and hate speech, coupled with the relevant case-law of the European Court of Human Rights, and the applicable national legislation. The Guide is intended to be used as a concrete tool by both broadcasters and the Agency alike. The Guide has received wider regional acknowledgment and recognition.

[295.] The *Nordic Ombudsmen for Equality and Non-Discrimination* cooperate on combating hate speech and misogyny within a Nordic network (sharing good practices and studies on hate speech, learning from the national action plans of the neighbouring countries against hate speech etc.).

- **Education and awareness-raising, including intercultural dialogue**

[296.] An important tool in combating and preventing hate speech is education - both inside and outside the formal education system - and awareness-raising about the dangers posed by the use of hate speech, as well as the promotion of respect for diversity within society.<sup>313</sup>

#### Education

[297.] Schools should take on online behaviour as part of their work in the field of education for democratic citizenship.<sup>314</sup> This will require the capacity of teachers and educators to be enhanced so that they can deliver the necessary educational programmes. Appropriate support should thus be provided for the training as well as for the production of the materials to be used in these programmes.

[298.] In *Austria*, freedom of expression is taken into account in human rights education including the necessity of restrictions. To this end, the following actions are taken:

<sup>312</sup> Available in Macedonian at <http://avmu.mk/wp-content/uploads/2017/05/Vodic-za-monitoring-za-govorot-na-omraza-Mak.pdf>, in Albanian at <http://avmu.mk/wp-content/uploads/2017/06/Shpjegues-p%C3%ABr-monitorimin-e-%E2%80%9Egjuh%C3%ABs-s%C3%AB-urrejties.pdf>, and in English at <http://avmu.mk/wp-content/uploads/2017/11/Guide-to-monitor-hate-speech-FINAL-9.pdf>

<sup>313</sup> ECRI GPR No. 15, Recommendation 4 and its Explanatory memorandum §§ 91, 93 and 99; *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principles 61, 73-74.

<sup>314</sup> See *Bookmarks manual for combating online hate speech through human rights education*, published to support the No Hate Speech Movement youth campaign of the Council of Europe for human rights online as young people are directly concerned as agents and victims of online abuse of human rights. Available at <http://www.theewc.org/Content/Library/Research-Development/Project-documents-and-reports/Bookmarks-Combating-hate-speech-online-through-human-rights-education>.

- In 2017/18, under the heading “Against radicalisation and marginalisation: strengthening democratic culture and digital courage”, online hate speech was addressed, and counter-strategies developed. Civil courage and solidarity actions as well as political and social participation were also covered.<sup>315</sup>
- In 2016, several materials on human rights were prepared concerning prevention of violence and digital competence, addressing hate speech, (for use in school and extracurricular). Moreover, a handbook was translated into German on work in schools from 2014, elaborated in the course of the Council of Europe’s initiative “Movement against Hate speech”.
- The guideline “Aktiv gegen Hasspostings” by the “Safer Internet” initiative was supported by the Federal Ministry of Education and actively communicated to schools.

Milestone 2017 was the network meeting “Prevention and Intervention in cases of (cyber)mobbing” in November 2017. The importance of a comprehensive school strategy for the physical and psychological well-being and approval of the “CHARTA – establishing a violence-free school culture” was highlighted.

[299.] *Spain* is part of the Google Project: “AGAINST HATE AND RADICALISM #WEAREMORE”. The project includes courses for over 28,000 boys and girls between the ages of 14 and 18 and more than 600 educators of youth groups, associations, public and private schools.<sup>316</sup>

[300.] In *Greece*, a number of educational programmes, student competitions and information activities, encouraging mutual respect and freedom of expression in Primary and Secondary Education, are being carried out or approved by the Ministry of Education. For the Muslim minority children in Thrace a series of training and awareness-raising courses is being implemented, aiming at fighting racism, extremism and bullying while promoting tolerance and respect for diversity.

[301.] In *Poland*, a website with all relevant information about hate speech was created within the framework of the Citizens for Democracy programme.<sup>317</sup> Moreover, the project “Hate - I’m against » is being implemented in co-operation with the European Wergeland Centre under the Citizens for Democracy programme, financed with funds from the European Economic Area (EEA). Finally, a Council of Europe youth campaign aiming at reducing the levels of acceptance of hate speech was also carried out in years 2012-2017.

[302.] *France* has adopted several action plans to raise awareness of hate speech among young people. Thus, the fight against racism and anti-Semitism was designated “Great national cause” in 2015.

[303.] As part of the Government’s long-term objective by 2025 to make *Finland* a country where everyone can feel at home, the Ministry of Education and Culture launched the following two actions and campaigns:

- an Action Plan (“Meaningful in Finland”) in 2016 to prevent hate speech and racism and to foster social inclusion. The objectives cover e.g. improving the skills of teaching staff and other professionals who work with children and young people.<sup>318</sup>
- a campaign called ‘I say NO to hate speech’ October 2017.<sup>319</sup>

<sup>315</sup> See at <http://www.politik-lernen.at/site/praxis/workshopreihe2017>.

<sup>316</sup> More information is available at <http://www.somos-mas.es/>.

<sup>317</sup> The website is available at <http://www.mowanienawisci.info/>.

<sup>318</sup> See at [http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75432/Meaningful\\_in\\_Finland.pdf](http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/75432/Meaningful_in_Finland.pdf)

<sup>319</sup> See at [http://minedu.fi/en/article/-/asset\\_publisher/sitoudun-torjumaan-vihapuhetta-haastekampanja-alkaa-2-10-](http://minedu.fi/en/article/-/asset_publisher/sitoudun-torjumaan-vihapuhetta-haastekampanja-alkaa-2-10-).



[304.] To promote well-being and prevent bullying and harassment of any kind in the school culture in *Finland*:

- the KiVa anti-bullying programme was adopted by all Teacher training schools.
- the Kivakoulu ("Nice school"), which is supported by the Ministry of Education and Culture and aims at reducing school bullying, was used by about 90% of all comprehensive schools (ca. 2500 schools) leading to good results. The University of Turku coordinates and develops the programme.
- a programme "Study Buddies" (Opintokamut), which is funded by the Ministry of Education and Culture, aims at decreasing bullying, improving life- and learning skills, motivation and mental wellbeing of youth in upper secondary schools. The programme piloted in 2016–2017 and mainstreamed broadly to all upper secondary schools (including in VET) in 2018.
- a comprehensive guidebook for schools and educators about strengthening democratic inclusion, preventing hate speech and violent radicalism, which takes into account international materials available, such as from UNESCO and the Council of Europe was published in 2017 by the National Agency for Education.<sup>320</sup>

#### Awareness-raising including intercultural dialogue

[305.] Civil society initiatives are essential to engage in particular young people in fighting against online hate. The Council of Europe's No Hate Speech Movement aims to mobilise young people to stand up for human rights online, via national campaigns to counter online hate. A key factor in this effort is to build and share skills so as to have a multiplier effect, and to empower young people to work together with others to become much more effective actors against hate than any individual could be alone.

[306.] Intercultural dialogue – involving an open and respectful exchange of views between individuals and groups belonging to different cultures – should be facilitated so as remove barriers to understanding. This could be implemented through undertaking shared cultural events and research projects, the provision of language courses, and student exchange programmes and the holding of workshops to explore particular issues of concern. It will again be important for all public authorities to play an active part in this dialogue so that their example can be an encouragement for others to follow.<sup>321</sup>

[307.] In *Croatia*, the Ministry of Interior organised campaigns in schools for raising awareness of hate speech problems and implemented activities in accordance with the No Hate Speech Movement campaign of the Council of Europe.

[308.] In *Estonia*, the Ministry of Social Affairs has been involved in drawing up a guide to promote public familiarity with the Equal Treatment Act, published by the Tallinn University of Technology, as part of the "Diversity enriches" campaign. It contained references to the provisions stipulating that incitement to racist hatred is a criminal offence. A brochure to inform civil servants about racist crimes was also issued.

[309.] In *Belgium*, to support the Council of Europe campaign No Hate Speech Movement, the government of Flanders created the "No Hate Speech Platform Vlaanderen" together with a number of partners from civil society. The aim of the platform is to raise awareness and to offer tools to children and young people to take action against hate speech themselves.<sup>322</sup>

<sup>320</sup> See at [http://www.oph.fi/download/182479\\_rakentavaa\\_vuorovaikutusta.pdf](http://www.oph.fi/download/182479_rakentavaa_vuorovaikutusta.pdf).

<sup>321</sup> ECRI GPR No. 15, Recommendation 4, and its Explanatory memorandum § 95.

<sup>322</sup> The website is available at <https://nohate.mediawijs.be/>

[310.] ActionAid *Denmark* launched in 2015 the project ‘Together Against Racism’ in collaboration with teachers, social workers and journalists in order to counter everyday and structural racism in Denmark through awareness-raising, trainings and debate initiatives.<sup>323</sup> In 2017, the municipality of Copenhagen started a volunteer initiative with five Youtubers in order to create awareness on online bullying. It contains a number of videos where young people speak of their own experiences with bullying and what to do in order to stop online bullying.<sup>324</sup>

[311.] The *Finnish* Union of Journalists had a Twitter-campaign against hate speech in social media in 2016 to prepare for the *UNESCO’s World Press Freedom Day (WPF) Conference* in Helsinki in 2016. Many Union members and others gave the “responsibility of expression oath by tweeting: “I express myself – mindful of human rights. Hate speech won’t silence me. I’m responsible for what I say. #SANANVASTUUVALA”. Moreover, the Network against Hate Speech, founded by governmental organisations and NGOs working on human rights, launched awareness-raising campaigns (in the social media, media, schools and public transportation) and organised educational events against hate speech and recently published a guidebook for young people against gendered hate speech.

- **Dialogue with media at large including social media platforms, civil society and other relevant actors**

[312.] To efficiently tackle hate speech, it will often be necessary to coordinate and cooperate with media at large including social media platforms, civil society and other relevant actors. Such co-operation is important for the elaboration of communications and engagement strategies on hate speech, including steps such as outreach to local communities, partnerships with civil society, public awareness campaigns to combat hate speech and a media strategy to ensure the appropriate dissemination of information on hate speech prosecutions to the public.

[313.] Cooperation, consisting in particular of the sharing of experiences, technological solutions and best practices, is essential.<sup>325</sup> Online platforms should be encouraged to develop effective processes to detect, identify and remove illegal content, including hate speech, especially through automatic detection and filtering technologies driven by algorithms.<sup>326</sup>

[314.] It is also important for States to ensure that a regulatory framework for diverse and pluralistic media is in place, which promotes pluralism and equality.<sup>327</sup> Such a framework should respect the fundamental principle that any oversight of the media should only be undertaken by bodies which are independent of the government, publicly accountable, and operate transparently.<sup>328</sup> Moreover, the framework should promote the right of different communities to freely access and use media and information and communications technologies for the production and circulation of their own content, as well as for the

<sup>323</sup> The description of the project in English is available at <https://www.ms.dk/en/together-against-racism>.

<sup>324</sup> Link to the initiative in Danish is available at <https://www.kk.dk/nyheder/youtubere-tager-kampen-op-mod-online-mobbere-i-koebenhavn>

<sup>325</sup> EU European Commission *Recommendation on measures to effectively tackle illegal content online*, cited above, (30).

<sup>326</sup> *Ibid.*, 18. See also Maja Brkan, *Freedom of expression and Artificial Intelligence: on personalisation, disinformation and (lack of) horizontal effect of the Charter*, cited above, p. 7.

<sup>327</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 69; ARTICLE 19 ‘Hate Speech’ Explained. A Toolkit, cited above, p. 52.

<sup>328</sup> See *Recommendation Rec (2000) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector*, adopted by the Committee of Ministers on 20 December 2000 at the 735th meeting of the Ministers’ Deputies.

reception of content produced by others, regardless of frontiers.<sup>329</sup> Indeed, there appears to be increasing recognition from media companies that they have an interest in ensuring that all users of their services have a safe and inclusive experience.<sup>330</sup>

[315.] In *Germany*, in 2015 the Federal Ministry of Justice and Consumer Protection established the Task Force against illegal online hate speech which brings together internet providers and organisations of civil society.<sup>331</sup> The participants - Facebook, Google (for its video platform YouTube) and Twitter and by several civil organisations like the Association of the German Internet Industry (ECO), the Voluntary Self-Regulation of Multimedia providers (FSM), as well as organisations committed to the fight against racism and right-wing-violence - agreed to implement a series of best practices and objectives in order to ensure that all hate speech is reviewed and removed from the social media platforms without delay. This self-regulatory approach resulted in some initial improvements. The task force has played an important role in bringing together the internet companies with relevant civil society organisations in order to intensify their collaboration, to raise awareness of the problem of hate speech on the internet and the need to strengthen counter speech and to foster a culture of communication (nevertheless the large social media platforms were not sufficiently successful in establishing effective user complaints mechanisms and deleting illegal content on a voluntary basis which was the reason for the adoption, in 2017, of the new Act to Improve Enforcement of the Law in Social Network, (see above paragraph 170).

[316.] In *France*, the “Délégation Interministérielle à la Lutte Contre le Racisme, l'Antisémitisme et la Haine anti-LGBT” (DILCRAH) and the Delegation for security industries and cyber threats from the Ministry of the Interior established in 2017 a dialogue between the various State services and the internet operators (Google, Facebook, Twitter, Dailymotion, Jeuxvideo.com, Gandi, OVH), in order, on the one hand, to ensure better execution of judicial orders, and, on the other hand, to promote the emergence of self-regulation of hatred on the internet by an effective treatment, by the internet operators of reported hate speech.

[317.] In *Finland*, the Advisory Board for Ethnic Relations (ETNO) is a broad-based consultative body established by the Government and co-ordinated under the auspices of Ministry of Justice. It is mandated to:

- (1) promote interaction between ethnic minorities, public authorities, employer and employee unions, NGOs and political parties in Parliament,
- (2) monitor the state on ethnic relations, promote the participation of migrant and ethnic minorities, their sense of security and positive attitudes on diversity,
- (3) provide expertise to all ministries on matters related to migration, integration and equality,
- (4) partake in research related to the promotion of good relations,
- (5) disseminate general information on good ethnic relations to society.

In addition to its national advisory board, ETNO has seven regional advisory boards throughout the country co-ordinated by regional centres for Economic Development, Transport and the Environment. In order to encourage constructive dialogue at regional and local level, regional boards utilise local expertise especially from migrant, ethnic and/or religious communities in collaboration with local civil service actors from municipalities and regional Government. ETNO organises one of the major annual forums on ethnic relations ETNO forum. ETNO provides information and partakes in the capacity building of migrant,

<sup>329</sup> ARTICLE 19, *The Camden Principles on Freedom of Expression and Equality* (2009), principle 5.

<sup>330</sup> PACE, Report on Ending cyberdiscrimination and online hate, §57.

<sup>331</sup> More information is available at <http://www.fair-im-netz.de>.

ethnic and religious organisations. In addition ETNO publishes reports on matters related to ethnic relations. ETNO has a number of Good Will Ambassadors who use their expertise and well established public profiles to further good ethnic relations around the country. For example, ETNO's annual theme for 2016 was Enhancing Decent Dialogue Culture. ETNO is to establish a workgroup on cultural and religious dialogue for a third consecutive term: the working group aims to promote interreligious dialogue and co-operation between religious communities.

[318.] A useful tool for the wider understanding of the concept of hate speech is the regional publication "Media regulatory authorities and Hate Speech" prepared within the framework of the Council of Europe and the European Union project "Reinforcing Judicial Expertise on Freedom of Expression and the Media in South-East Europe (JUFREX)".<sup>332</sup> It includes theoretical background information concerning the issue of hate speech, the relevant legislation of the participating countries from the region as well as the case-law of the ECtHR and concrete cases on hate speech dealt with by the regulatory authorities of Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, Serbia and Kosovo.<sup>333</sup>

[319.] A particular contribution to combating hate speech can be made by NGOs, equality bodies and national human rights institutions, whether individually or in co-operation with one another.<sup>334</sup> They can play an integral role in developing and implementing policies to tackle the root causes such as inequality and discrimination.<sup>335</sup>

[320.] In *Latvia*, between 1 July and 31 October 2014, the NGO Latvian Centre for Human Rights implemented the project "Strengthening of NGO Capacity to Limit Incitement to Hate on Internet". During the project NGO experts monitored the content and comments published on internet news portals, online versions of newspapers and magazines as well as social networks. The purpose was to identify hateful content, to report on that and to test how effective the different reporting methods are.

[321.] In 2017, the *Danish* Institute for Human Rights prepared a report "Hate Speech in the Public Online Debate".<sup>336</sup> The report contained a number of recommendations including the proposal to prepare a national action plan focusing on both lawful and unlawful hate speech.

<sup>332</sup> More details are available at <https://edoc.coe.int/en/media/7431-media-regulatory-authorities-and-hate-speech.html>

<sup>333</sup> All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

<sup>334</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principles 67 and 68; ECRI GPR No. 15, Recommendation 4, and its Explanatory memorandum § 101.

<sup>335</sup> European network of equality bodies, *The Equinet Perspective 'Extending the Agenda. Equality Bodies addressing Hate Speech'* published in 2018, Executive summary: While few national equality bodies have an explicit mandate on hate speech, many have, however, interpreted their mandate to include hate speech. [http://www.equineteurope.org/IMG/pdf/hate\\_speech\\_perspective\\_-\\_web.pdf](http://www.equineteurope.org/IMG/pdf/hate_speech_perspective_-_web.pdf)

<sup>336</sup> Report in Danish includes a summary in English available at [https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling\\_2017/rapport\\_ha\\_defulde\\_ytringer\\_online\\_2017.pdf](https://menneskeret.dk/sites/menneskeret.dk/files/media/dokumenter/udgivelser/ligebehandling_2017/rapport_ha_defulde_ytringer_online_2017.pdf)

- **Counter-speech**

[322.] Counter-speech in the form of alternative narratives is increasingly viewed as key in responding effectively to hate speech. Such response should include stressing that diversity is a source of enrichment, call for mutual understanding and respect for each other, and demonstrate both the falsity of the foundations on which hate speech is based and its unacceptability.<sup>337</sup> Those targeted by hate speech also have the right to respond through counter-speech.<sup>338</sup>

[323.] In *Croatia*, during the celebration of the Human Rights Day 2017, the Office for Human Rights and Rights of National Minorities initiated a campaign based on a counter-speech as a reaction to the adhesive labels containing ethnic hate speech that appeared at several bus stations. Instead of the hanging tree shown on the labels, the Office designed an adhesive label with a message of humanity appearing in the treetop.

[324.] In the *Czech Republic*, the Hate Free Culture project focuses, among others, on refuting hoaxes and contributing with positive stories about negatively stereotyped communities in the public debate. Another project initiated by the Open Society Fund is “Jsme to my” (*It is us*) which aims at improving negative public opinion towards migrants.<sup>339</sup>

[325.] In *Serbia*, two NGOs “The Umbrella Organization of Youth of Serbia (KOMS)” and the “Institute for Media and Diversity - Western Balkans” organised trainings in Belgrade in July 2017 which dealt with hate speech and its relationship with freedom of expression, appropriate reaction to hate speech as well as the creation of counter and alternative narratives to hate speech. These trainings were conceived as a training for youth educators and were part of the Council of Europe's No Hate Speech Campaign.

[326.] Within the framework of co-operation between the members of the *Equinet* (European Network of Equality Bodies) to combat hate speech at European and national level, strong focus is put on communication against hate speech (*i.e.*, on social media) and on creating counter-speech to strengthen the values of equality and non-discrimination.<sup>340</sup> The equality bodies are also cooperating with Facebook and Twitter to develop their policies against hate speech, racism and misogyny.

## V. FREEDOM OF EXPRESSION IN RELATION TO SPECIFIC OTHER HUMAN RIGHTS

[327.] Many of the preceding paragraphs set out general principles regarding the scope and limitations of freedom of expression. This section attempts to highlight in more detail issues and challenges that arise in the relation between freedom of expression and specific other human rights, and the way in which those rights are to be balanced.

<sup>337</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, preamble; ECRI GPR No. 15, Recommendation 4 and its Explanatory memorandum §§ 88 and 90.

<sup>338</sup> ECRI GPR No. 15, Explanatory memorandum § 92.

<sup>339</sup> See <http://jsmetomy.cz/kdo-jsou-uprchlici-a-kdo-jsme-my-odpovedi-hledame-v-kampani-jsme-to-my/>

<sup>340</sup> The Equinet Perspective *Extending the Agenda. Equality Bodies addressing Hate Speech*; available at [http://www.equineteurope.org/IMG/pdf/hate\\_speech\\_perspective\\_-\\_web.pdf](http://www.equineteurope.org/IMG/pdf/hate_speech_perspective_-_web.pdf)

[328.] Human rights are universal, indivisible, interdependent and interrelated<sup>341</sup> and should be enjoyed by everyone without discrimination.<sup>342</sup> In today's increasingly diverse societies in Europe there is a need to find a fair balance between conflicting interests which may result from the exercise of competing human rights and fundamental freedoms.<sup>343</sup> On one hand, freedom of expression is necessary for the fulfilment and enjoyment of a wide range of other human rights, including the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs.<sup>344</sup> On the other hand, the exercise of the right to freedom of expression carries with it special duties and responsibilities and it may therefore be subject to certain restrictions. Special attention should thus be paid to the link between freedom of expression and the right to private life, freedom of thought, conscience and religion, freedom of assembly and association and finally the prohibition of discrimination.<sup>345</sup>

### A. Freedom of expression and right to private life

[329.] One of the most obvious situations requiring a balancing between the right to freedom of expression and other rights arises when the exercise of this freedom by one person affects another person's right to private life, as guaranteed by Article 8 of the European Convention on Human Rights.<sup>346</sup>

[330.] The protection of the reputation of others is still used as one of the most common grounds for limiting freedom of expression.<sup>347</sup> Both the Committee of Ministers and the Parliamentary Assembly<sup>348</sup> have urged member States to ensure that defamation laws include freedom of expression safeguards in conformity with European and international human rights standards and the principle of proportionality. The Commissioner for Human Rights has further underlined that freedom of expression must be guaranteed more effectively in criminal defamation proceedings and has spoken out against imprisonment as a sanction for defamation.<sup>349</sup> Both imprisonment and the imposition of disproportionate damages can produce a significant chilling effect on journalists.<sup>350</sup>

[331.] It is well-established in the case-law of the European Court that the right to protection of reputation and honour is included in Article 8 of the Convention as part of the right to respect for private life.<sup>351</sup> The Court has formulated several principles that are applicable

<sup>341</sup> United Nations, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, I.5.

<sup>342</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, preamble, recital 4.

<sup>343</sup> *Ibid.*, principle 5.

<sup>344</sup> *Ibid.*, principle 19.

<sup>345</sup> *Ibid.*, principles 8 and 27.

<sup>346</sup> See *Guidelines on Safeguarding Privacy in the Media*, approved jointly in June 2018 by the CDMSI and the Committee of Convention 108 (Council of Europe Data Protection Convention), available at <https://rm.coe.int/guidelines-on-safeguarding-privacy-in-the-media-additions-after-adopti/16808d05a0>

<sup>347</sup> Draft a report on the 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 (2005); "Study on the alignment of laws and practices concerning defamation with the relevant caselaw of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality" (2012), prepared by the CDMSI.

<sup>348</sup> PACE Resolution 1577 (2007) "Towards decriminalisation of defamation" and the corresponding Recommendation 1814 (2007), both texts adopted on 4 October 2007.

<sup>349</sup> Fourth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Populism - How strong are Europe's checks and balances?*, p. 37.

<sup>350</sup> Council of Europe publication of the study on "Freedom of expression and defamation. A study of the case-law of the European Court of Human Rights" (2016) by Tarlach McGonagle in collaboration with Marie McGonagle and Ronan Ó Fathaigh.

<sup>351</sup> *A. v. Norway* (application no.28070/06), judgment of 9 April 2009, § 64; *Delfi AS v. Estonia*, cited above, § 137.

when a balance between freedom of expression and the right to private life is sought.<sup>352</sup> First of all, the Court has noted that for the State to have an obligation to conduct a balancing exercise, in other words for Article 8 to come into play, “an attack on a person’s reputation must attain a certain level of seriousness and be made in a manner causing prejudice to personal enjoyment of the right to respect for private life”.<sup>353</sup> The Court also consistently recalls the general principles regarding the freedom of expression, that is to say, that freedom of expression constitutes one of the essential foundations of a democratic society, that it 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, and that any exceptions to freedom of expression must be construed strictly and the need for any restrictions must be established convincingly.<sup>354</sup> The distinction between statements of fact and value judgements likewise remains relevant.<sup>355</sup>

[332.] As regards the balancing of private life and the freedom of the press, the Court uses the following criteria in evaluating the compliance with the requirements of Article 10, particularly the “necessity” and “proportionality” requirements:<sup>356</sup>

- a. the extent to which the impugned comments, remarks or publication contributed to a debate of general interest;
- b. the degree of fame of the person whose private life interests are the reason for the balancing exercise, namely, his/her role or function, and the nature of the activities that are the subject of the report;
- c. the prior conduct of the person concerned, including whether or not respective information has already appeared in an earlier publication;
- d. the journalist’s method of obtaining the information and its veracity, namely whether the journalist was acting in good faith and on an accurate factual basis, providing “reliable and precise” information in accordance with the ethics of journalism;
- e. the content and form of the publication, the manner in which the person concerned was represented, as well as the extent to which the publication was disseminated and the level of gravity of potential negative consequences the person concerned might have suffered after the publication,
- f. the severity of the sanction imposed, if any.

[333.] One of the rights that interacts most significantly with the right to freedom of expression is the right to data protection guaranteed under Article 8 of the ECHR. To protect the right to respect of private life, with regard to the automatic processing of personal data, the Council of Europe elaborated the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>357</sup> (see above III. A. “Access to information online and offline”). The Convention enshrines, inter alia, in its Articles 8 and 9, the individual’s right to know that information is stored on him or her and, if necessary, to have it corrected.<sup>358</sup> The new Protocol amending the Convention<sup>359</sup> reinforces the protection of privacy in the digital

<sup>352</sup> See also Factsheet on “Protection of reputation” available at [https://www.echr.coe.int/Documents/FS\\_Reputation\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Reputation_ENG.pdf)

<sup>353</sup> *Delfi AS v. Estonia*, cited above, § 137.

<sup>354</sup> *Axel Springer AG v. Germany* (application no.39954/08), Grand Chamber judgment of 7 February 2012, §78.

<sup>355</sup> *Diena and Ozolins v. Latvia* (application no.16657/03), judgment of 12 July 2007, § 79.

<sup>356</sup> *Von Hannover v. Germany (no. 2)* (application nos.40660/08 and 60641/08), Grand Chamber judgment of 7 February 2012, §§ 109-113.

<sup>357</sup> *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108), opened for signature in Strasbourg on 28 January 1981.

<sup>358</sup> Article 9 (1) (e) of Modernised Convention 108, also includes the right to erasure (“the right to be forgotten”).

<sup>359</sup> The *Protocol amending the Convention* (CETS No. 223) was adopted at the 128<sup>th</sup> session of the Committee of Ministers (Elsinore, Denmark, 17-18 May 2018). See also FRA *Handbook on European data protection - 2018* edition.

arena by extending the catalogue of information to be transmitted to individuals when they exercise their right of access. Furthermore, individuals are entitled to obtain knowledge of the reasoning underlying the data processing, the results of which are applied to her/him, which is particularly important in terms of personal profiling. Individuals also have the right not to be subject to a decision affecting him or her which is based solely on an automated processing, without the individual having her/his views taken into consideration.<sup>360</sup>

[334.] In EU member States, the General Data Protection Regulation (GDPR)<sup>361</sup> is directly binding and applicable since 25 May 2018. It aims to harmonise the framework for the digital single market, put individuals in control of their personal data and formulate a modern data protection governance. According to Article 85 of the GDPR, entitled “Processing and freedom of expression and information” member States shall reconcile the right to personal data protection with the right to freedom of expression and information. In particular, exemptions and derogations from specific chapters of the Regulation shall be made for journalistic purposes or the purpose of academic, artistic or literary expression, insofar as they are necessary to reconcile the right to personal data protection with the freedom of expression and information.<sup>362</sup>

[335.] Legislation in several member States includes special provisions regarding the protection of personal rights against violations by media. Those national laws often provide that private information may be published without the consent of the person concerned only if such information is of public interest which prevails over the individual interest not to disclose it. Victims of violations are usually entitled to request publication of a reply or retraction, and to claim damages.

[336.] In *Germany*, as a consequence of the European Court’s judgment *Von Hannover v. Germany (no. 1)*, the German Federal Court of Justice developed a concept of graduated protection, according to which the greater the information value for the public the more the interest of a person for the protection of his or her private life has to yield and vice versa.

[337.] In *Switzerland*, the Federal Office of Communication launched an information campaign “Petites histoires d’Internet”,<sup>363</sup> which gives simple and accessible advice on the protection of one’s own private sphere in the internet.

[338.] In the *Czech Republic*, when seeking balance between freedom of expression and the right to respect for private and family life, the Constitutional Court follows a ten-step test as suggested by the Venice Commission in its Amicus Curiae Opinion on the relationship between the freedom of expression and defamation with respect to unproven defamatory allegations of fact.<sup>364</sup> In *Hungary*, the Minister of Justice has recently asked the Venice Commission for its legal opinion on question related to the protection of privacy. The answers of the Commission were taken into account during the preparation of the relevant draft bill.

[339.] In *Portugal*, freedom of expression and the critical comparison of domestic decisions with the case-law of the European Court of Human Rights are still included in the curricula for

<sup>360</sup> Article 9 of the Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data.

<sup>361</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>362</sup> CJEU, Case C-3/07 *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy*, judgment on 16 December 2008. See also *Tietosuojavaltuutettu v. Satakunnan Markkinapörssi Oy and Satamedia Oy (application no. 931/13)*, Grand Chamber judgment of 27 June 2017, § 198.

<sup>363</sup> Further details available at <http://www.thewebsters.ch/fr/>.

<sup>364</sup> Venice Commission, Amicus Curiae Opinion ref. no. CDL-AD(2004)011 of 17 March 2004 (on the relationship between the freedom of expression and defamation with respect to unproven defamatory allegations of fact)



judicial training activities and at conferences organised by the Centre for Legal Studies. In addition to this general training, in 2016, 2017 and 2018 specific events were organised on the theme "Humour, Law and Freedom of Expression" involving magistrates, journalists, university professors, writers, historians, comedians, actors, religious representatives and with high level of participation and interest. Audio and video recordings of these events are now available as well as an e-book on the topic.<sup>365</sup>

[340.] The need to balance two competing rights occurs not only in cases involving press and other forms of mass media, but also in cases where the disputed expression comes from a private individual. Indeed, under Article 8 the State has also positive obligations which may involve the adoption of measures designed to secure respect for private and family life, even in the sphere of the relations of individuals between themselves.<sup>366</sup> In such cases the necessity of the measure interfering with the freedom of expression is assessed to a large extent on the basis of principles applicable to media cases; the margin of appreciation the States enjoy and the quality of legal reasoning given at the domestic level are of particular importance.

[341.] In most member States the right to protection of reputation, honour and privacy is protected by means of civil and/or criminal law; criminal offences of insult or defamation are usually punishable by a fine.

## **B. Freedom of expression and freedom of thought, conscience and religion**

[342.] A new ethic of responsible intercultural relations in Europe and in the rest of the world is made necessary by the cultural diversity in modern societies, and requires that a responsible exercise of the right to freedom of expression should endeavour to respect the religious beliefs and convictions of others.<sup>367</sup> Responsible exercise of the right to freedom of expression should not overstep the limits of acceptable criticism, as established by the European Court of Human Rights.<sup>368</sup>

[343.] In the case of attacks on religious beliefs, the conflicting interests at stake will typically be, on the one hand, the applicant's right to communicate his or her ideas on religious beliefs to the public, and, on the other hand, the right of other persons to respect of their right to freedom of thought, conscience and religion.<sup>369</sup> Here the issue may be the extent to which State authorities may take action against expression in order to protect the religious sensibilities of adherents of particular faiths by preventing or punishing the display of insulting or offensive material that could discourage adherents from practising or professing their faith through ridicule.<sup>370</sup> The scope of Article 10's guarantee for freedom of expression encompasses, after all, ideas which "offend, shock or disturb", and in any case the maintenance of pluralist society also requires that adherents of a faith at the same time accept that their beliefs may be subject to criticism and to the propagation of ideas that directly challenge these beliefs.<sup>371</sup> It should also be recalled that historically the criticism of religious dogmas lies at the very beginning of the development of freedom of expression

<sup>365</sup> More information on these events is available at <http://www.cej.pt/cej/recursos/ebooks/outros/eb>

<sup>366</sup> *Von Hannover v. Germany* (application no. 59320/00), judgment of 24 June 2004, §57; *Mitkus v. Latvia* (application no. 7259/03), judgment of 2 October 2012, §125; *Ion Cârstea v. Romania* (application no. 20531/06), judgment of 28 October 2014, §30.

<sup>367</sup> *Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, adopted by the Venice Commission at its 76<sup>th</sup> Plenary Session (Venice, 17-18 October 2008), document CDL-AD(2008)026, § 95.

<sup>368</sup> *Ibid.*

<sup>369</sup> *Otto-Preminger-Institut v. Austria* (application no. 13470/87), judgment of 20 September 1994, §§ 55-56.

<sup>370</sup> *Ibid.*; *Wingrove v. the United Kingdom*, judgment of 25 November 1996, § 60.

<sup>371</sup> *Otto-Preminger-Institut v. Austria*, §47; *Klein v. Slovakia* (application no. 72208/01), judgment of 31 October 2006, § 47.

and, indeed, human rights in general. On the other hand, those who exercise the freedom of expression under Article 10 also undertake duties and responsibilities, among them an obligation to ensure the peaceful enjoyment of the rights of other persons, e.g. those guaranteed under Article 9 of the Convention.<sup>372</sup>

[344.] However, it is not exclusively or even primarily for the courts to find the right balance between freedom of religion and freedom of expression, but rather for society at large, through rational discussions between all parts of society, including believers and non-believers.<sup>373</sup> Intercultural dialogue is promoted both by the Council of Europe and the European Union through their policies and programmes in the field of youth and in other sectors, such as education, multilingualism, culture and integration. In the Council of Europe it is understood as an ‘open and respectful exchange of views between individuals, groups with different ethnic, cultural, religious and linguistic backgrounds and heritage on the basis of mutual understanding and respect. It operates at all levels – within societies, between the societies of Europe and between Europe and the wider world’.<sup>374</sup> The White Paper on Intercultural Dialogue “Living Together As Equals in Dignity”, launched by the Council of Europe in 2008 provides guidance on how to manage Europe’s increasing cultural diversity – rooted in the history of our continent and enhanced by globalisation. It argues that our common future depends on our ability to safeguard and develop human rights, as enshrined in the European Convention on Human Rights, democracy and the rule of law and to promote mutual understanding.

[345.] Since 2008 the Council of Europe has organised a series of Exchanges on the religious dimension of intercultural dialogue, with the participation of representatives of religious communities, non-religious convictions, NGOs and other civil society actors, as well as representatives of member States’ governments. The 2017 Exchange focused on “Migrants and refugees: challenges and opportunities – What role for religious and non-religious groups?”

[346.] According to its core public mandate, the *Austrian* Broadcasting Corporation shall ensure due regard to the importance of legally recognized churches and religious communities.

[347.] World conferences on Inter-Religious and Inter-Civilization Dialogue are organised in *North Macedonia* with the support of UNESCO, triennially since 2007. The Council of Europe 2010 Exchange of the Religious Dimension of the Intercultural Dialogue dedicated to “The role of the media in fostering intercultural dialogue, tolerance and mutual understanding: freedom of expression of the media and respect towards cultural and religious diversity” was held in Ohrid.

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

[348.] Freedom of expression and the freedom of thought, conscience and religion are closely interrelated rights<sup>375</sup> and the interaction between them usually appears in two situations. Firstly, such interaction appears in situations where these two freedoms come into

<sup>372</sup> *Otto-Preminger-Institut v. Austria*, §§ 47, 55-56; *Klein v. Slovakia*, judgment of 31 October 2006, § 47.

<sup>373</sup> Venice Commission, *Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred*, cited above, § 94.

<sup>374</sup> *White Paper on Intercultural Dialogue “Living Together As Equals in Dignity”*, launched by the Council of Europe Ministers of Foreign Affairs at their 118th Ministerial Session (Strasbourg, 7 May 2008).

<sup>375</sup> A/HRC/31/18 Report of the Special Rapporteur on freedom of religion or belief (Focus: Two closely interrelated rights: freedom of religion or belief and freedom of opinion and expression).

conflict, and where the protection of the freedoms enshrined in Article 9 of the Convention falls within the concept of “the protection of the rights of others” as a legitimate aim in restricting the freedom of expression. Secondly, in certain situations exercise of the freedom of expression is a result of the freedom of thought, conscience and religion, for example, where a person or a group of persons wish to transmit their religious ideas and opinions in a way that does not qualify as a “manifestation” of belief under Article 9 of the Convention.

[349.] Subject to paragraph 2 of Article 10 of the Convention, 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 shock, offend or disturb the State or any sector of the population. However, whoever exercises the rights and freedoms enshrined in the first paragraph of that Article also has “duties and responsibilities” within the meaning of the second paragraph. Amongst them - in the context of religious opinions and beliefs - may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs.<sup>376</sup> Indeed, the Court held that, in order to ensure religious peace, States have to prevent that some people should feel the object of attacks on their religious beliefs in an unwarranted and offensive manner.<sup>377</sup>

[350.] The Court has also been very clear in saying that hate speech against, *inter alia*, a religious group<sup>378</sup> is excluded from the protection of Article 10 of the Convention. At the same time the Court has recognised that “those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith”.<sup>379</sup>

[351.] Furthermore, the ICCPR provides, in its Article 20(2), that every kind of propaganda for national, racial or religious hatred, which constitutes incitement to discrimination, hostility, or violence must be prohibited by law.

[352.] In *Spain*, the Ministry of Justice carries out specific actions, such as a competition on good local practices on managing religious diversity, trainings and awareness-raising activities focused on the fight against religious intolerance.

- **Religious symbols in public areas**

[353.] Increased cultural diversity has led to an intensive debate in many European countries on the public display of religious symbols,<sup>380</sup> such as the wearing of the *burqa* and the *niqab*. The European Court of Human Rights has delivered several rulings regarding restrictions on the wearing of items of clothing or other conspicuous signs of religious belief. In its decisions, the Court has highlighted the importance of the way in which the national authorities have reached their decisions. In this respect, actual and good faith domestic engagement with the principles enshrined in the European Convention on Human Rights, will be a significant factor in the Court’s assessment. The compatibility with Article 9 of such

<sup>376</sup> *Otto-Preminger-Institut v. Austria*, cited above, § 49.

<sup>377</sup> *Ibid.*, § 56. See also *E.S. v. Austria* (application no. 38450/12), Grand Chamber judgment 25 October 2018, §53.

<sup>378</sup> *Norwood v. the United Kingdom* (application no. 23131/03), admissibility decision of 16 November 2004.

<sup>379</sup> *Otto-Preminger-Institut v. Austria*, cited above, § 47; *Klein v. Slovakia*, cited above.

<sup>380</sup> *Lautsi and others v. Italy* (application no. 30814/06), Grand Chamber judgment of 18 March 2011. Concerned the presence of crucifixes in State-school classrooms.

restrictions will depend on the reasons advanced for the restrictions and also on the proportionality of the interference and whether a fair balance has been struck.

[354.] The grounds for limitation have to be assessed carefully in each case taking into account its particular circumstances. In *Ahmet Arslan and Others v. Turkey*<sup>381</sup> the Court found a violation of Article 9 holding, in particular, that there was no evidence that the applicants had represented a threat to the public order or that they had been involved in proselytism by exerting inappropriate pressure on passers-by during their gathering. The Court emphasised that in contrast to other cases, the case concerned punishment for the wearing of particular dress in public areas that were open to all, and not regulation of the wearing of religious symbols in public establishments, where religious neutrality might take precedence over the right to manifest one's religion.<sup>382</sup> In *S.A.S. v. France*<sup>383</sup> which concerned the ban on veil of the face, the Court held that France had a wide margin of appreciation in the present case, in particular as there was little common ground amongst the member States of the Council of Europe as to the question of the wearing of the full-face veil in public. The Court thus observed that there was no European consensus against a ban. Consequently, the impugned ban could be regarded as proportionate to the aim pursued, namely the preservation of the conditions of "living together" as an element of the "protection of the rights and freedoms of others".<sup>384</sup>

[355.] The Court has also examined a number of cases on the wearing of religious symbols in schools and other educational institutions – both by pupils and students<sup>385</sup> as well as by teachers.<sup>386</sup> In *Leyla Şahin v. Turkey*,<sup>387</sup> the Grand Chamber reiterated the wide margin of appreciation (i.e. discretion) which it affords to States on this matter.<sup>388</sup>

[356.] The Court of Justice of the European Union (CJEU) issued a joint judgment on the interpretation of EU Equal Treatment Directive<sup>389</sup> in the cases of two women, from France and Belgium, who were dismissed for refusing to remove headscarves.<sup>390</sup> In both cases the CJEU gave a broad interpretation of the protected characteristic "religion or belief" in conformity with the freedom of thought, conscience and religion as enshrined in Article 9 of the European Convention and Article 10 of the EU Charter. In line with the ECtHR jurisdiction the CJEU considers that not only the fact of having a religious belief, but also the public manifestation of that belief is protected. Though, in the *Achbita*-case the Court used a narrow interpretation of the concept of discrimination according to the EU Equal Treatment Directive, it considered a general prohibition to manifest whichever religion or belief on the workplace (thus including philosophical and political symbols) could lead to indirect discrimination. Based on the freedom to conduct a business, as enshrined in Article 16 of the EU Charter, the CJEU recognised also the right for private, commercial companies to pursue an image of

<sup>381</sup> *Ahmet Arslan and Others v. Turkey* (application no. 41135/98), judgment of 23 February 2010.

<sup>382</sup> *Ibid.* §§ 50-52.

<sup>383</sup> *S.A.S. v. France* (application no. 43835/11), Grand Chamber judgment of 1 July 2014.

<sup>384</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 7. See also *Manual on the wearing of religious symbols in public areas* by Prof. Malcolm D. Evans, cited above.

<sup>385</sup> See, for example, *Kervanci v. France* (application no. 31645/04), judgment of 4 December 2008; *Aktas v. France* (application no. 43563/08), decision of 30 June 2009; *Ranjit Singh v. France*, (application no. 27561/08) decision of 30 June 2009.

<sup>386</sup> See for example *Dahlab v. Switzerland* (application no. 42393/98), decision 15 February 2001.

<sup>387</sup> *Leyla Şahin v. Turkey* (application no. 44774/98), Grand Chamber judgment of 10 November 2005, §§ 115-116. See also *Kose and Others v. Turkey* (application no. 26625/02), decision of 24 January 2006.

<sup>388</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 15. See also *Lautsi and others v. Italy*, cited above.

<sup>389</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

<sup>390</sup> Cases C-157/15, *Samira Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v. G4S Secure Solutions NV* and 188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole Univers*, CJEU of 14 March 2017.

neutrality of belief towards customers. The employer must achieve this legitimate aim with appropriate and necessary means. In the *Bouagnaoui*-case the CJEU stated that the willingness of an employer to take account of the wishes of a customer no longer to have the services of that employer provided by a worker wearing an Islamic headscarf cannot be a sufficient justification if this employer itself has no neutrality policy.

[357.] In *France*, the principles of secularism and neutrality are strictly applied in public services. Thus, neither civil servants nor agents charged with a public-service mission can manifest their religious beliefs, e.g. by wearing religious signs, in exercising their functions; this applies also to employees in the State education services. In State primary and secondary schools and educational institutions, the wearing of signs or dress by which pupils openly manifest a religious affiliation is also prohibited; however this does not apply to State universities. Moreover, no one may, in public places, wear clothing that is designed to conceal the face.

[358.] In *Germany*, the wearing of religious symbols in public is covered by the religious freedom guaranteed by the German Basic Law. In 2015, the Federal Constitutional Court held that religious avowals conveyed by a public school teacher's outward appearance may only be legally restricted if the general peace at schools or the State's neutrality is sufficiently endangered in a specific way.

[359.] In *Spain*, the Observatory for Religious Pluralism prepared different guides for the management of religious diversity, which deal with various matters such as the use of religious symbols in the public or work sphere.

[360.] In *Norway*, the Courts Administration Board in a case in June 2010 concerning the use of religious and political conditional garments and symbols in the courts concluded that there should be no prohibition on the use of political or religious conditional symbols or garments in court. According to existing law, all judges should execute their task in a manner that provides trust and respect. In addition, the ethical principle for judges' behaviour affirms that a judge should behave in a way that no reasonable questions can be asked about his or her neutrality. Furthermore, if a party has an objection to the use of religious and political conditional garments and symbols, he or she can raise a question about the judge's impartiality.

- **Whistle-blowing**

[361.] The protection of Article 10 of the European Convention extends to the workplace in general and to civil servants in particular.<sup>391</sup> At the same time employees have a duty of loyalty, reserve and discretion to their employer.<sup>392</sup> Civil servants often have access to information which the government, for various legitimate reasons, may have an interest in keeping confidential or secret. However, a civil servant may become aware of in-house information, including secret information, whose divulgence or publication corresponds to a strong public interest. The signaling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large. In

<sup>391</sup> *Wille v. Liechtenstein* (application no. 28396/95), Grand Chamber judgment of 28 October 1999.

<sup>392</sup> *De Diego Nafría v. Spain* (application no. 46833/99), judgment of 14 March 2002.

determining the proportionality of an interference with a civil servant's freedom of expression in such a case, the Court<sup>393</sup> must also have regard to a number of other factors:

- i. whether the person who has made the disclosure had at his or her disposal alternative channels for making the disclosure
- ii. the public interest in the disclosed information
- iii. the authenticity of the disclosed information
- iv. the detriment to the employer. Is the public disclosure so important in a democratic society that it outweighs the detriment suffered by the employer?
- v. whether the disclosure is made in good faith
- vi. the severity of the sanction imposed on the person who made the disclosure and its consequences.

[362.] In *Hungary*, an integrity management system supports public servants in cases related to integrity, based on the Government Decree no. 50/2013. This includes e.g. appointment of integrity advisors, anti-corruption training for civil servants, risk assessment related to corruption.

[363.] The *Norwegian* Ministry of Local Government and Modernisation helps fund a website called Etikkportalen (The Ethics Portal) run by the Norwegian Association of Local and Regional Authorities. It is a website with information such as news, guidelines and templates for codes of conducts to secure and safeguard freedom of expression for both local politicians and employees.<sup>394</sup>

[364.] In *Denmark* if employees are dismissed because of their public statements, there are several ways to settle a dispute regarding whether the dismissal (and thus the statement) was justified or not. The dispute can be settled by arbitration, or the case can be tried by the Danish Labour Court. Employees in the public sector can furthermore file a complaint to the Danish Ombudsperson. Public employees, who are employed under special conditions as civil servants, can also have their case tried before the Danish Civil Service Tribunal, a special court for cases related to civil servants. Examples of recent practice include the Ombudsman observation regarding the dismissal of a school teacher who had complained about the school management.<sup>395</sup> In a recent arbitration case a hospital porter was awarded compensation after he was dismissed for an alleged breach of loyalty.<sup>396</sup>

[365.] Whistleblowing is a fundamental aspect of freedom of expression and freedom of conscience and is important in the fight against corruption and tackling gross mismanagement in the public and private sectors. As regards whistle-blowers, the Court considers, inter alia, that the penalties imposed on employees who have criticised the operation of a service or disclosed conduct or illegal acts found at their place of work may constitute a violation of their right to freedom of expression within the meaning of Article 10 paragraph 1 of the Convention.<sup>397</sup> Furthermore, the Court has added additional prerequisites in order to broaden the protection offered by Article 10 of the Convention to whistle-blowers. On the one hand, it must be taken into account whether the individual had alternative channels for the disclosure. Moreover, it is necessary to have regard to the public interest

<sup>393</sup> *Guja v. Moldova* (application no. 14277/04), Grand Chamber judgment of 12 February 2008; *Heinisch v. Germany* (application no. 28274/08), judgment of 21 July 2011; *Bucur and Toma v. Romania* (application no. 40238/02), judgment of 13 January 2013.

<sup>394</sup> The address is [www.etikkportalen.no](http://www.etikkportalen.no).

<sup>395</sup> Referenced in case no. 16/01523 (FOB 2016-37) 'Upper Secondary School acted contrary to the guidelines on freedom of expression for public employees' (in Danish *Gymnasium handlede i strid med rammerne for offentligt ansattes ytringsfrihed*).

<sup>396</sup> Referenced in FV 2016.0207.

<sup>397</sup> *Guja v. Moldova*, cited above.

involved in the disclosed information and to the authenticity of the information disclosed. On the other side of the scale, the Court must weigh the damage, if any, suffered by the public authority as a result of the disclosure in question and assess whether such damage outweighed the interest of the public in having the information revealed. The motive behind the actions of the reporting person is another factor in deciding whether a particular disclosure should be protected or not. Lastly, in connection with the review of the proportionality of the interference in relation to the legitimate aim pursued, attentive analysis of the penalty imposed on the applicant and its consequences is required.<sup>398</sup>

[366.] Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers<sup>399</sup> sets out a series of principles to guide member States when reviewing their national laws or when introducing legislation and regulations or making amendments as may be necessary and appropriate in the context of their legal systems. It underlines the need for national frameworks to foster an environment that encourages reporting or disclosure in an open manner. Individuals should feel safe to freely raise public interest concerns.

[367.] The European Union Directive (EU) 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure<sup>400</sup> stresses that it is essential that the exercise of the right to freedom of expression and information which encompasses media freedom and pluralism is not restricted, in particular with regard to investigative journalism and the protection of journalistic sources. The measures, procedures and remedies provided for in this Directive should not restrict whistleblowing activity. Therefore, the protection of trade secrets should not extend to cases in which disclosure of a trade secret serves the public interest, insofar as directly relevant misconduct, wrongdoing or illegal activity is revealed.

[368.] The proposal for a European Union Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law will guarantee a high level of protection for whistleblowers in the EU member States who report breaches of EU law by setting new, EU-wide standards. The proposed text will establish safe channels for reporting both within an organisation and to public authorities. It will also protect whistleblowers against dismissal, demotion and other forms of retaliation and require national authorities to inform citizens and provide training for public authorities on how to deal with whistleblowers.<sup>401</sup>

[369.] Several member States have recently adopted special legislation or other measures on the protection of whistle-blowers. For example *Georgia* has introduced several in order to provide additional guarantees for whistleblowers in particular, the whistle-blower protection rules have been extended to any person outside the public sector and are not limited to current or former civil servants. In *Georgia* as well as in *Hungary* whistle-blowing may also be made electronically; in the latter, the Commissioner for Fundamental Rights is in charge of effectively protecting whistleblowers. The *Netherlands* established by law an independent house for whistleblowers in 2016.

<sup>398</sup> *Ibid.* §§ 73-78

<sup>399</sup> CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies.

<sup>400</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, 15 June 2016 OJ L 157/1, (19) and (20).

<sup>401</sup> The proposed Directive is available at [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-218\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2018-218_en).

[370.] In the course of transposing European directive 2016/943/EU, *Germany* will introduce amendments to its national legislation specifying that the disclosure of trade secrets is lawful if its purpose is to expose professional or other misconduct or illegal activity in order to protect the general public interest.

[371.] In 2017, the *Norwegian* government adopted a revised Code of ethics for the civil service. One subject that has been of great controversy is the limitation of the right to freedom of expression when civil servants express personal opinions within their own areas of work. The revised Code emphasises the fundamental nature of freedom of expression in a democracy, and that the duty of loyalty of civil servants is owed also to society as a whole. The section on whistleblower protection in the Code was revised in order to enhance the protection of employees and accentuate that the general rules on the freedom of expression and the special rules on protection of whistleblowers are complementary.

[372.] Following the considerations and recommendations by the *Danish* Committee on Freedom of Expression for Public Employees and Whistleblowing Systems, the Ministry of Justice published in October 2016 a guide on the freedom of expression of public employees supplemented in October 2017 by an online course on the subject. The aim of the guide and course is to increase the involvement of public employees in the public debate and to promote sincerity and debate on the working conditions in the public sector.

[373.] In *France*, the Bill on transparency, the fight against corruption and the modernisation of the economy<sup>402</sup> created a general and protective status for whistleblowers. According to Article 8-III of this bill, public and private bodies of at least 50 employees, State administrations, municipalities with more than 10 000 inhabitants, public establishments for cooperation between local authorities of which they are a member, departments and regions must set up proceedings to collect alerts from members of staff and external collaborators.

- **Blasphemy, religious insult and incitement to religious hatred**

[374.] Personal religious beliefs and convictions of persons may be offended by blasphemous expression in regard to objects of veneration.<sup>403</sup> However, since it is not possible to discern throughout Europe a uniform conception of the significance of religion in society, it is not possible to arrive at a comprehensive definition of what constitutes a permissible interference with the exercise of the right to freedom of expression where such expression is directed against the religious feelings of others. A certain margin of appreciation is therefore to be left to the national authorities in assessing the necessity and extent of such interference.<sup>404</sup>

[375.] The respect for the religious feelings of believers can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration or offensive attacks on religious principles and dogmas; these may in certain circumstances be regarded as malicious violation of the spirit of tolerance, which must also be a feature of a democratic society.<sup>405</sup>

<sup>402</sup> Law “Sapin 2” No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of the economy - Sapin II law.

<sup>403</sup> Harris, O’Boyle, and Warbick, *Law of the European Convention on Human Rights*, Third edition, Oxford University Press 2014, p. 669.

<sup>404</sup> *Otto-Preminger-Institut v. Austria*, cited above, § 50. See also *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 15.

<sup>405</sup> *Otto-Preminger-Institut v. Austria*, cited above, § 47. See also *E.S. v. Austria*, cited above.



[376.] In its Recommendation 1805(2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion, the PACE considers that “national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence”.<sup>406</sup>

[377.] In its Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, the Venice Commission found in particular that criminal sanctions are only appropriate in respect of incitement to hatred, including religious hatred; that it is neither necessary nor desirable to create an offence of religious insult, without the element of incitement to hatred as an essential component; and that the offence of blasphemy should be abolished.<sup>407</sup>

[378.] In most member States, there is no criminal offence of blasphemy as such. Whereas attacks on God, religion, Church or religious institutions are not criminalized, attacks on believers are often classified as criminal offences, in order to protect the right of others and to preserve religious peace and public order.<sup>408</sup>

[379.] The *French* legislation gives priority to freedom of expression when it comes to promoting the debate of ideas and opinions around religions. Nevertheless it protects believers against any incitement to hatred, discrimination or violence. Thus, in line with the Court’s case-law, freedom of expression is limited, in this particular area, only when it degenerates into hate speech or incitement to discrimination. Similar regulations exist in *Norway*.

[380.] In *Germany*, apart from general criminal offences of racist and xenophobic crimes, which also cover offences against persons on the ground of their religion, the Criminal Code contains provisions on specific offences of defamation of religions, religious and ideological associations and of disturbing the exercise of religion. The main purpose of those provisions is to protect public safety and the population’s trust in legal security.

[381.] In *Poland*, criminal sanctions can be imposed to whoever offends the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration or religious rites.

[382.] In 2017, the *Danish* Parliament decided to abolish section 140 of the Danish Criminal Code on certain forms of contempt and mockery of religious symbols (blasphemy). However other provisions in the Criminal Code may – depending on the circumstances – be applicable to the defamation of religious symbols, inter alia provisions on serious criminal damage, racism, defamation, hate speech and disturbance of a service or another public church ceremony, etc.

<sup>406</sup> PACE Recommendation 1805 (2007) on Blasphemy, religious insults and hate speech against persons on grounds of their religion, adopted on 29 June 2007

<sup>407</sup> Report CDL-AD(2008)026 on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred, adopted by the Venice Commission at its 76<sup>th</sup> Plenary Session (Venice, 17-18 October 2008), §§ 89-90.

<sup>408</sup> *Members of the Gldani Congregation of Jehovah’s Witnesses and others v. Georgia* (application no. 71156/01), judgment 3 May 2007.

### C. Freedom of expression and freedom of assembly and association

[383.] The purpose of the freedom of peaceful assembly and freedom of association protected by Article 11 of the Convention is to allow individuals and groups to come together to collectively address and resolve challenges and issues that are important to society, and where those interests are political in the widest sense, the function of the Article 11 freedoms is central to the effective working of a pluralistic and the democratic system.<sup>409</sup> The Court considered that the protection of personal opinions, as secured by Article 10, is one of the objectives of freedom of peaceful assembly and association as enshrined in Article 11.<sup>410</sup>

[384.] For example, in *Denmark*, NGOs play an important role in the established political process in Denmark, and contribute by working towards greater influence for marginalized groups and interests. NGOs are often involved, when bills are submitted to consultation, whereby they have a potential influence on the regulatory content.

[385.] Several official documents, declarations and guidelines warn against the imposition of undue restrictions on the exercise of freedom of expression and assembly in situations of crisis, notably in the framework of measures taken by States to combat terrorism.<sup>411</sup> The Court considered it “unacceptable from the standpoint of Article 11 of the Convention that an interference with the right to freedom of peaceful assembly could be justified simply on the basis of the authorities’ own view of the merits of a particular protest”.<sup>412</sup> Instead, States have an obligation to foster a permissive environment for peaceful gatherings.<sup>413</sup>

[386.] In most member States meetings, events and assemblies held in public places are subject to a prior notification or registration (not approval), which aims only at ensuring the necessary (police) protection; exceptions can be made in case of spontaneous assemblies. They can be prohibited only if they call, *inter alia*, for disobedience, war, violence, national, racial or religious hatred or undermine public safety or security. State interference with freedom of assembly may usually be challenged before the courts.<sup>414</sup>

[387.] In *Latvia*, the Law on Meetings, Processions, and Pickets stipulates that it is prohibited to act against the independence of the Republic, to incite to violent change of the country’s political system, to call for disobedience of laws, propagate violence, national and racial hatred, open Nazism, fascism, or communism ideology, to propagate war, or to glorify or incite to committing crimes and other offences. In 2013, this Law was amended, providing that a local government can adopt a decision prohibiting an event if it is established that having it organised will endanger the rights of others, the democratic state system, public security, welfare or morals and the above-mentioned threats cannot be eliminated through putting restrictions on the course of the event.

<sup>409</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 23.

<sup>410</sup> *Ezelin v. France* (application no.11800/85), judgment of 26 April 1991, § 37.

<sup>411</sup> See in particular the *Berlin Declaration of 2004 of the International Commission of Jurists on upholding human rights and the rule of law in combating terrorism*; United Nations Global Counter-Terrorism Strategy adopted by member states on 8 September 2006; *Guidelines of the Committee of Ministers of the Council of Europe on the protection of freedom of expression and information in times of crisis*, 26 September 2007; OSCE *Manual on Countering Terrorism, Protecting Human Rights*, 2007.

<sup>412</sup> *Hyde Park and Others v. Moldova (no. 1)* (application no. 33482/06), judgment of 31 March 2009, § 26.

<sup>413</sup> Fourth annual report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe, *Populism - How strong are Europe’s checks and balances?*, cited above, Chapter 3, Introduction.

<sup>414</sup> See OSCE/ODIHR – Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, adopted on 4 June 2010; OSCE/ODIHR, *Handbook on Monitoring Freedom of Peaceful Assembly and Human Rights Training Guide to Policing Assemblies*.

[388.] Similarly in the *Republic of Moldova*, the Law on Assemblies adopted in 2008 guarantees the freedom of peaceful assembly. The Law introduces such principles as proportionality and legality when restricting the right to freedom of assembly, non-discrimination and the presumption in favour of holding meetings. The Law forbids assemblies that urge to war, national, racial, ethnical, religious hatred, incite to discrimination or public violence, undermine the national security and the territorial integrity of the state that follow the commission of crimes, violate the public order or morality, the rights and freedoms of others or endanger their lives or health.

[389.] In March of 2015, the Supreme Court of *Estonia*, upon the application of Chancellor of Justice, found that three day requirement for giving notice of support strike is not lawful. As a result, since July of 2015, after the provision was repealed, there is no term for advance notice at all.

[390.] In *Georgia*, following the Constitutional Court judgment annulling the blanket prohibition to demonstrate within 20 meters around several public buildings and the provision providing for an immediate termination of a protest blocking a public thoroughfare or violating other legal requirements, a new Law on Assemblies and Demonstrations was adopted and entered into force in 2011.

[391.] In *Hungary*, organised events in public places, such as peaceful gatherings, rallies and demonstrations, can be prohibited only if they are likely to seriously disturb the operation of representative bodies or courts, or if traffic cannot be arranged on other routes. According to the Hungarian Constitutional Court, the protection of freedom of assembly also covers peaceful public gatherings where the nature of the event necessitates a gathering at short notice (rapid assemblies) or spontaneously, without any preceding organisation.

[392.] In the *Netherlands*, the Mayor of Amsterdam launched in 2018 a Guide for dealing with public manifestations in order to facilitate these as much as possible.<sup>415</sup>

[393.] In *Serbia*, the provision of the 1992 Public Assembly Act allowing local authorities to prohibit holding of an assembly if it would obstruct public transport was abolished by the new 2016 Act.

[394.] Any restriction on peaceful assembly and association has to be strictly defined. This also applies to the work of NGOs which should be allowed proper conditions and an enabling environment to function.<sup>416</sup>

#### **D. Freedom of expression and prohibition of discrimination**

[395.] International human rights law requires States to jointly protect and promote the rights to freedom of expression and the right to equality: one right cannot be prioritised over the other, and any tensions between them must be resolved within the boundaries of international human rights law. The *Camden Principles on Freedom of Expression and Equality* promotes greater consensus about the proper relationship between respect for freedom of expression and the promotion of equality.<sup>417</sup>

<sup>415</sup> For more details see the Dutch website at <https://www.amsterdam.nl/wonen-leefomgeving/veiligheid/demonstratierecht/>

<sup>416</sup> *Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe*, cited above. See also *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 68.

<sup>417</sup> The *Camden Principles on Freedom of Expression and Equality* were prepared by ARTICLE 19 on the basis of discussions involving a group of high-level UN and other officials, and civil society and academic experts in

[396.] The European Convention on Human Rights provides for non-discrimination in the enjoyment of rights, and in this context specifically freedom of expression, respectively in Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention. The Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies encourages member States to ensure the promotion of the principle of equality and the right of every person to be free from all forms of discrimination on any ground.<sup>418</sup>

[397.] In the context of culturally diverse societies, the task to combat all forms of intolerance and discrimination is particularly important. The Court has established a clear link between combating racism and promoting a vision of a democratic society based on respect for diversity.<sup>419</sup> Based on the premises that “racial discrimination is a particularly invidious kind of discrimination”<sup>420</sup> and that “racial violence is a particular affront to human dignity”,<sup>421</sup> it requires “special vigilance and a vigorous reaction”<sup>422</sup> from State authorities.<sup>423</sup>

[398.] A careful balance needs to be struck between allowing societies to be plural spaces, in which all voices and viewpoints can express themselves, and prevention of hate speech. Hate speech is linked to racist and xenophobic attitudes and can thus lead to discrimination, stigmatization of whole cultures or groups and even to violence.

[399.] As underlined by the Committee on the Elimination of Racial Discrimination (CERD), Article 4(a) 4 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination requires States parties to penalise four categories of misconduct: (i) dissemination of ideas based upon racial superiority or hatred; (ii) incitement to racial hatred; (iii) acts of violence against any race or group of persons of another colour or ethnic origin; and (iv) incitement to such acts.<sup>424</sup>

[400.] The Court has likewise held that even though tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society, “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 any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued”.<sup>425</sup> In the case of denial of the Holocaust<sup>426</sup>, defamation in public of a specific group of persons,<sup>427</sup> incitement to racial hatred<sup>428</sup> or racist statements<sup>429</sup> the Court did not find a violation of Article 10 of the

international human rights law on freedom of expression and equality issues at meetings held in London on 11 December 2008 and 23-24 February 2009. The Principles represent a progressive interpretation of international law and standards, accepted State practice (as reflected, inter alia, in national laws and the judgments of national courts), and the general principles of law recognised by the community of nations.

<sup>418</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 29.

<sup>419</sup> *Nachova v. Bulgaria* (application nos. 43577/98 and 43579/98) Grand Chamber judgment of 6 July 2005, §145. See also *Bekos and Koutropoulos v. Greece* (application no.15250/02), judgment of 13 December 2005; *Timishev v. Russia* (application nos. 55762/00 and 55974/00), judgment of 13 December 2005; *Ognyanova and Choban v. Romania* (application no. 46317/99), judgment of 23 February 2006.

<sup>420</sup> *Timishev v. Russia*, § 56.

<sup>421</sup> *Nachova v. Bulgaria*, § 145.

<sup>422</sup> *Timishev v. Russia*, § 56; *Nachova v. Bulgaria*, § 145.

<sup>423</sup> Françoise Tulkens, Contribution, on freedom of expression and racism in the case law of the European Court of Human Rights, to ECRI’s Expert Seminar on Combating Racism while Respecting Freedom of Expression (Strasbourg, 16 and 17 November 2006).

<sup>424</sup> CERD, *General Recommendation No. 15: Organized violence based on ethnic origin*, 1993.

<sup>425</sup> *Erbakan v. Turkey* (application no.59405/00), judgment of 6 July 2006, § 56.

<sup>426</sup> *D.I. v. Germany* (application no. 26551/95), Commission decision on the admissibility of 26 June 1996.

<sup>427</sup> *Pavel Ivanov v. Russia* (application no. 35222/04), decision on admissibility of 20 February 2007.

<sup>428</sup> *Garaudy v. France* (application no. 65831/01), decision on the admissibility of 24 June 2003.

<sup>429</sup> *Glimmerveen and Hagenbeek v. the Netherlands* (applications nos. 8348/78 and 8406/78), Commission decision on the admissibility of 11 October 1979.

Convention. Moreover, Article 17 on the prohibition of abuse of rights excludes from the protection of the Convention those comments and statements that amount to hate speech and negate the fundamental values of the Convention (see above Part II - *Specific focus area: HATE SPEECH*, § 240).

[401.] Furthermore, in order to help member States to build inclusive societies in which difference is respected while core liberties and rights are upheld, the Committee of Ministers adopted Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies. The Guidelines recall that pluralism is built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious and other beliefs, artistic and socio-economic ideas, works and concepts.<sup>430</sup> However, pluralism, tolerance and broadmindedness may not be sufficient: a pro-active, a structured and widely shared effort in managing cultural diversity is needed. Intercultural dialogue is a major tool to achieve this aim, without which it will be difficult to safeguard the freedom and well-being of everyone living on our continent<sup>431</sup> (on intercultural dialogue see also above under B. Freedom of expression and freedom of thought, conscience and religion).

[402.] In most member States a special Act on Antidiscrimination or on Equal Treatment prohibits all forms of discrimination; it sometimes sets up a State agency or institution to combat discrimination (inter alia, *Germany, Republic of Moldova, Turkey*). National plans or strategies to fight racism and discrimination or to promote inclusive diversity are often adopted (inter alia, *Croatia, Germany, Georgia, Republic of Moldova, the Netherlands*). Authority to monitor implementation of anti-discrimination legislation may also be vested with the Public Defender or Ombudsman, entitled to examine individual complaints (inter alia, *Georgia, Greece*).

[403.] In *Finland*, new non-discrimination legislation took effect in January 2015 strengthening the legal protection of victims of discrimination, enlarged the scope of prohibitions of discrimination and expanded the obligations to promote equality.<sup>432</sup> It obliges authorities, employers and providers of education and training to assess and promote equality. The Act on Equality between Women and Men prohibits discrimination based on gender, gender identity and gender expression. An Equality Plan covering all grounds of discrimination is obligatory for all employers who regularly employ more than 30 persons, for organisers of education and for authorities. Equality planning is a platform to promote diversity and positive actions targeting sections of the society that require special treatment. The Ministry of the Justice has published online material on equality impact assessment and equality planning, organised trainings and workshops on equality planning and produced different kind of awareness raising material on equality and non-discrimination.<sup>433</sup>

<sup>430</sup> *Gorzelik and Others v. Poland* [GC], no. 44158/98, 17 February 2004, § 92.

<sup>431</sup> *White Paper on Intercultural Dialogue "Living Together As Equals in Dignity"*, launched by the Council of Europe Ministers of Foreign Affairs, at their 118th Ministerial Session (Strasbourg, 7 May 2008), 2.1.

<sup>432</sup> [www.syrjintatieto.fi](http://www.syrjintatieto.fi) in Finnish.

<sup>433</sup> <http://yhdenvertaisuus.finlex.fi/en/>

[404.] In *Finland*, the Ministry of Justice maintains a national discrimination monitoring system which consists of:

- (1) collecting up-to date discrimination information and research and publishing it at a specific website,
- (2) an annual discrimination study, and
- (3) a report on discrimination in Finland published once every electoral term (4 years).

The latest report on discrimination in Finland was published on in December 2017.<sup>434</sup>

[405.] In the *Belgian* region of Flanders a project called “Integration pact” (2017-2019) consists of a partnership between an organisation representing ethnic-cultural organisations in Flanders and Brussels, public authorities, employers, trade unions, education actors and media, aimed at creating broad public support and initiatives to combat discrimination and to promote mutual respect.

[406.] The *Republic of Moldova* introduced a new administrative offence related to violation of labour equality.

[407.] The *Estonian* Diversity Charter is a voluntary commitment put in place by the Tallinn University of technology in 2012, which can be signed by any company, public institution or civil society organisation that values a discrimination-free work environment and works towards fostering diversity. It provides a platform for its members (currently 80) to learn from experts and from one another, to share best practices and promote diversity and inclusion; it also collaborates within other diversity charters in the EU within the EU Platform of Diversity Charters. A 5-year project “Diversity enriches”, aimed at increasing awareness about equal treatment and at fighting against intolerance, was carried out.

[408.] In *France*, a “citizenship internship” (“stage de citoyenneté”) can be imposed to those who commit racist or anti-Semitic offences. These internships diversify the judicial answers likely to be given to this type of acts. It is an educational response that must recall the republican values of tolerance and respect for human dignity. The issues of living together, relating to each other and differences are discussed.

[409.] There is also a need to ensure equality between women and men in culturally diverse societies and to ensure a systematic integration of a gender equality dimension in securing human rights and fundamental freedoms.<sup>435</sup> Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism stresses that language and communication are essential components of gender equality and must not consecrate the hegemony of the masculine model.<sup>436</sup> It calls for the use of non-stereotypical communication to educate, raise awareness and prevent sexist behaviour.<sup>437</sup> For example, it recommends ending the use of sexist expressions, and using gender-sensitive language.<sup>438</sup>

<sup>434</sup> Such reports on discrimination in Finland are available at [www.dataondiscrimination.fi](http://www.dataondiscrimination.fi).

<sup>435</sup> *Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies*, principle 32. The Council of Europe Gender Equality Strategy 2018-2023 includes the combat against sexist hate speech (strategic objective 1).

<sup>436</sup> *Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism*, adopted by the Committee of Ministers on 27 March 2019 at the 1342<sup>nd</sup> meeting of the Ministers' Deputies, II.A. See also *Committee of Ministers Recommendation Rec(2003)3 on the balanced participation of women and men in political and public decision-making*, adopted by the Committee of Ministers on 12 March 2003 at the 831<sup>st</sup> meeting of the Ministers' Deputies, Explanatory Memorandum.

<sup>437</sup> *Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism*, II.A.

<sup>438</sup> *Ibid.*

The Recommendation furthermore underlines that the internet and social media are both vehicles for freedom of expression and promoting gender equality, but they also allow perpetrators to express their abusive thoughts and engage in abusive behaviour.<sup>439</sup> States are encouraged to take responsibility for combating hate speech and ensuring that the same rules apply to sexist hate speech as those developed for racist hate speech when it comes to the use of criminal law sanctions.<sup>440</sup> It takes into account artificial intelligence and how algorithms can transmit and strengthen existing gender stereotypes and therefore may contribute to the perpetuation of sexism.<sup>441</sup>

[410.] In *Belgium*, a new Law was passed in 2014 to combat sexism, which is now classified as a criminal offence. A charge of sexism in the public space was retained and resulted in a conviction in late 2017.<sup>442</sup>

[411.] In *Spain*, a particular attention is paid to the effective equality between women and men in the media: specific rules are contained in the 2007 Law and in the General Law on Advertisement, and the Spanish Institute for Women and Equal Opportunities deals, through the Observatory of the Image of Women, with complaints concerning advertisements or contents which are considered as sexist.

## VI. CONCLUSIONS

### ***Protection of freedom of expression***

[412.] Freedom of expression constitutes one of the essential foundations of a democratic society. This right is not absolute; it carries with it duties and responsibilities and can be subject to limitations in accordance with Article 10 (2) of the European Convention on Human Rights.

[413.] Member States enjoy a margin of appreciation in their fulfilment of positive and negative obligations with regard to freedom of expression. This margin of appreciation will differ according to the context, in particular the historic, demographic and cultural context.

[414.] The good and promising practices received from a number of member States show that freedom of expression is given high priority in their legal systems and national policies. Several States have recently adopted new legislation or revised their existing legislation; some have set up commissions to examine the protection of freedom of expression in their society, in particular in the light of the development of the internet. There are also examples of co-operation at the regional and international levels on promoting diversity of cultural expressions. It is important that freedom of expression online is protected in the same manner as offline.

### **Access to information**

[415.] Access to information is a central part of freedom of expression. While developments in information and communication technologies have created new opportunities to disseminate information, they have also brought new challenges. It is therefore good practice

<sup>439</sup> Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism, II.B.

<sup>440</sup> *Ibid.*

<sup>441</sup> *Ibid.*

<sup>442</sup> [https://igvm-iefh.belgium.be/fr/actualite/premiere\\_condamnation\\_pour\\_sexisme\\_dans\\_lespace\\_public](https://igvm-iefh.belgium.be/fr/actualite/premiere_condamnation_pour_sexisme_dans_lespace_public)

to provide access to information in general, including to public information and official documents, offline and also online to everyone without discrimination.

[416.] When the Council of Europe Convention on Access to Official Documents enters into force, it will have a positive impact on access to information.

### ***Specific actors and their relation to freedom of expression***

#### Media

[417.] The media is the most important tool for freedom of expression in the public sphere. Media-related policy must take full account of present and future developments in information and communication technologies, embracing a broad notion of media which is appropriate for multi-dimensional reality. All actors – whether new or traditional – should be offered a policy framework which guarantees an appropriate level of protection of freedom of expression and provides a clear indication of their duties and responsibilities.

[418.] It is important for States to engage in dialogue with all actors in the media ecosystem in order for them to be properly apprised of the applicable legal framework. Moreover it is important to adopt strategies to promote and develop public service media so as to guarantee a satisfactory level of pluralism, diversity of content and choice.

[419.] The role of the media carries with it responsibilities to act in good faith and on an accurate factual basis, in accordance with the ethics of journalism.

#### Civil society actors

[420.] Civil society actors, including human rights defenders, which express a diverse range of views and interests, play an important role in protecting and promoting human rights in culturally diverse societies. It is essential that States and civil society actors work together to promote freedom of expression in culturally diverse societies.

#### Internet intermediaries

[421.] The internet plays a particularly important role with respect to the right to freedom of expression by enhancing the public's ability to seek, receive and impart information without interference and regardless of frontiers.

[422.] It is primarily the obligation of States to make sure that laws, regulations and policies applicable to internet intermediaries effectively safeguard the human rights and fundamental freedoms of users. At the same time internet intermediaries have the responsibility to respect the internationally recognised human rights of their users and of third parties affected by their activities. Codes of ethics aiming, notably, to prevent the spread of abusive language and imagery, of hatred and of incitement to violence will be useful to achieve that end. States and intermediaries therefore have a shared responsibility and they are encouraged to work together.



## ***Specific focus area: Freedom of expression in political discourse***

### Freedom of political debate

[423.] Political discourse must be strongly protected as an essential part of any effective pluralist democracy. The main focus should be on promoting freedom of expression and increasing media literacy.

### Responsibility of political leaders and political parties

[424.] Political leaders, in their role of opinion leaders, have a particular responsibility which is inherent to free speech in culturally diverse societies. They should speak and act in such a way as to foster a climate of mutual understanding, respect and diversity, based on universally recognised human rights.

### Combating political statements that incite to violence or hatred

[425.] In culturally diverse societies, a progressive range of measures should be in place to combat political statements that incite to violence or hatred:

- ° Self-regulatory schemes, such as codes of conduct (or ethics) and similar sets of standards, are in many instances the most effective means of preventing and condemning manifestations of racism, xenophobia and intolerance in political discourse. Such codes of conduct should be reinforced and applied through the use of sanctioning mechanisms.
- ° Public financial and other forms of support should be withdrawn from political parties and other organisations that clearly promote hatred, intolerance and xenophobia or fail to sanction its repeated use by their members.
- ° Only as a last resort should such measures lead to the prohibition and dissolution of political parties and organisations.

### Higher degree of tolerance of criticism towards politicians

[426.] Politicians will need to display a greater degree of tolerance towards criticism than a private individual notably in a situation in which they themselves make public statements that are susceptible to criticism. However, political figures are not expected to tolerate discrimination based on grounds prohibited by Article 14 of the Convention, nor do they have to tolerate racist or hate speech directed at them. The widespread experience of hate speech, abuse and threats, in particular in online spaces and often directed at women politicians, needs to be addressed to ensure that all citizens, including politicians, feel free to safely take part in a political debate where pluralist opinions can be expressed.

## ***Specific focus area: Information disorder (“fake news”)***

### Approaches to tackle information disorder

[427.] Concern has been expressed at the international, regional as well as at the national level about the impact that information disorder can have on democratic political processes and values in a society. In particular, it may harm individuals' reputation and privacy, as well as incite to discrimination, hostility or violence against certain groups in society. Any response to tackle information disorder should be based on a human rights approach guaranteeing, on the one hand, freedom of expression and freedom to receive and impart information and, on the other hand, the protection of public order and the rights of others. Moreover, given the complexity of information disorder, a multi-dimensional approach is needed to tackle the problem which includes all parties involved with a view to identifying the roles and responsibilities of relevant stakeholders.

Fact-checking and trust-enhancing initiatives

[428.] Self-regulatory codes may strengthen the fact-checking capabilities of media. Media co-operation with third-party fact-checking organisations, such as independent editorial organisations, civil society organisations and academia, may serve the same goal. The use of “trust indicators” by social media may provide more context concerning the reliability of content sources, media ownership and/or verified identity so that the users are better equipped to assess whether news derive from a credible source.

Promoting media pluralism and diversity

[429.] A key means of addressing information disorder is to promote media pluralism and diversity. Thus, presence of strong, independent and adequately resourced public service media is crucial for setting and maintaining high standards of journalism. Regular monitoring by States of media pluralism in national media markets may serve to counter threats to media freedom and pluralism, including the lack of transparency of media ownership.

Awareness-raising and media literacy

[430.] Improving media and information literacy for all sectors of society is a means of building societal resilience against the threat posed by information disorder. Initiatives to improve media literacy skills are undertaken across Europe; however in order to be effective, such initiatives should be implemented on a massive scale with clear methods of evaluation and cross-country comparison.

Coordinated responses and continued research

[431.] As information disorder has grown at a rapid scale globally and a clearer understanding of its direct and indirect implications is still emerging, there is a need for continued research on the impact of disinformation in Europe in order to evaluate the measures taken by different actors and constantly adjust the necessary responses.

Freedom of expression and AI

[432.] The development of artificial intelligence (AI) will likely have implications for the exercise of the freedom of expression, presenting both challenges and opportunities. This phenomenon is still emerging and the international response to it is yet to be fully developed.

***Specific focus area: HATE SPEECH***

[433.] Intergovernmental committees and monitoring bodies emphasize the need to combat hate speech so that freedom of expression does not encourage harm and intolerance against others. Combating ‘hate speech’ requires sustained and wide-ranging efforts, including strong equality and non-discrimination legislation and policy frameworks.

Legislation

[434.] It will be important to enhance national legislation on hate speech on the basis of the existing relevant international and regional standards to ensure the coverage of all grounds on which victims may be targeted, and that criminal as well as civil and administrative responses are in place to address hate speech. In this respect, it is important for member States to be guided by the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights, the Committee of Ministers’ Recommendation Rec(97)20

to member States on “hate speech” and ECRI’s General Policy Recommendation No. 15 on combating hate speech.

[435.] It will be important to enhance national legislation on hate speech on the basis of the existing relevant international and regional standards to ensure the coverage of all grounds on which victims may be targeted, including sexist hate speech, and that criminal as well as civil and administrative responses are in place to address hate speech. In this respect, it is important for member States to be guided by the European Convention on Human Rights, the jurisprudence of the European Court of Human Rights, the Committee of Ministers’ Recommendation Rec(97)20 to member States on “hate speech”, the Committee of Ministers Recommendation Rec(2019)1 to member States on preventing and combating sexism and ECRI’s General Policy Recommendation No. 15 on combating hate speech.

#### Enhancing research and monitoring, including data collection

[436.] Data collection and analysis regarding the actual use of hate speech should be undertaken on a consistent, systematic and comprehensive basis. Such research and monitoring of hate speech, which is crucial for developing adequate policies, should be done separately from data collection on hate crimes as the two phenomena may require different responses.

#### Possible other responses

[437.] Comprehensive national strategies and co-operation of relevant stakeholders will help to tackle the problem effectively. Possible responses to hate speech include improving the efficacy of investigations, training relevant actors, counter-speech, and support for victims.

#### Online hate speech

[438.] Whilst the positive role played by digital technology companies in society is recognised, social media platforms and internet intermediaries are increasingly being seen as enablers of hate speech. Generally, addressing hate speech online and hate speech enabled by digital technologies is seen as a priority issue for both policy-makers and civil society.

[439.] The widespread experience of hate speech, abuse and threats in online spaces needs to be addressed to ensure that all citizens feel free to safely express themselves in the online sphere. This requires further reflection based on research and collection of data with a view to putting in place appropriate regulation and develop new innovative means of combating hate speech in the online space.

#### Need for co-operation

[440.] Online hate speech is a cross-border problem that can best be tackled by sharing experiences and good practice between States. A better understanding of the phenomenon will require co-operation and coordination among States to obtain comparable research by using harmonised definitions of hate speech. This would further mean that data collection and analysis regarding the actual use of hate speech should be undertaken on a consistent, systematic and comprehensive basis.

Non-governmental organisations, equality bodies and national human rights institutions

[441.] Non-governmental organisations, equality bodies and national human rights institutions could usefully take action to explore and develop full and comprehensive strategies to address hate speech. They could also develop their communication work to include sustained and substantial work on promoting alternative narratives and build the alliances and networks required to drive and implement this work to full effect. States' support for their work to combat hate speech will be useful.

**RECONCILING FREEDOM OF EXPRESSION AND OTHER HUMAN RIGHTS**

[442.] Freedom of expression as well as other fundamental human rights and freedoms must be adequately and effectively guaranteed in the national legal systems.

Freedom of expression and right to private life

[443.] Article 8 of the Convention, as interpreted by the ECtHR, protects the right to private life which includes several aspects, such as the protection of reputation or rights of others. The protection of the reputation of others requires balancing with the freedom of expression according to the criteria developed by the ECtHR. Likewise, freedom of the press needs to be balanced with the right to private life of the individuals concerned.

Freedom of expression and freedom of thought, conscience and religion

[444.] In culturally diverse societies, the responsible exercise of the right to freedom of expression should endeavour to respect the religious beliefs and convictions of others. Responsible exercise of the right to freedom of expression should not overstep the limits of acceptable criticism, as established by the ECtHR.

[445.] The right balance between freedom of religion and freedom of expression is primarily achieved through rational discussions between all parts of society, including believers and non-believers. To this end intercultural dialogue, and namely exchanges on the religious dimension of intercultural dialogue, can play an important role.

*Religious symbols in public areas*

[446.] The ECtHR has delivered several rulings regarding restrictions on the wearing of items of clothing or other conspicuous signs of religious belief. The Court has highlighted the importance of the way in which the national authorities have reached their decisions. The compatibility with Article 9 of such restrictions will depend on the reasons advanced for the restrictions and also on the proportionality of the interference and whether a fair balance has been struck.

*Whistleblowing*

[447.] Whistleblowing is a fundamental aspect of freedom of expression and freedom of conscience and is important in the fight against corruption and tackling gross mismanagement in the public and private sectors. The protection of whistleblowers should accord with the criteria developed by the ECtHR.

*Blasphemy, religious insult and incitement to religious hatred*

[448.] Criminal sanctions are only appropriate in respect of incitement to hatred, including religious hatred; it is neither necessary nor desirable to create an offence of religious insult, without the element of incitement to hatred as an essential component.

Freedom of expression and freedom of assembly and association

[449.] Freedom of peaceful assembly and freedom of association allow individuals and groups to collectively address and resolve challenges and issues that are important to society. These freedoms are central to a pluralistic and democratic system.

[450.] Several official documents, declarations and guidelines warn against the imposition of undue restrictions on the exercise of freedom of expression and assembly in situations of crisis, notably in the framework of measures taken by States to combat terrorism. Instead, States have an obligation to foster a permissive environment for peaceful gatherings.

Freedom of expression and prohibition of discrimination

[451.] International human rights law requires States to jointly protect and promote the right to freedom of expression and the right to equality. Hate speech based on gender is common and more often targets women than men, it also affects women in a different way. The widespread experience of hate speech, abuse and threats including in online spaces, by women, especially some groups of women (young women, women public figures) limits their freedom of expression and their participation in different types of activities. Gender aspects therefore need to be taken into account in all policies related to freedom of expression and prevention of hate speech.