

FREEDOM OF EXPRESSION: WHAT CAN LOCAL AND REGIONAL POLITICIANS DO?



**Congress of Local and Regional Authorities
of the Council of Europe**



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FREEDOM OF EXPRESSION: WHY IT MATTERS?

Freedom of expression is one of the most important human rights for both individuals and democracy to thrive. Protected under **Article 10 of the European Convention on Human Rights (ECHR)**, freedom of expression contributes to enhancing pluralism, tolerance, and openness, all values that the European Court of Human Rights has consistently upheld. This right is applicable not only to information, thoughts or ideas that are favourably received or regarded as inoffensive, but also to those that offend, shock or disturb the State or any sector of the population. Restrictions to the right to freedom of expression are admitted only under certain specific circumstances. Article 10 further protects the means of transmitting information and ideas (e.g. the press).



“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article 10 §1 of the
European Convention on
Human Rights

HOW CAN WE MATTER?

Contrary to a widespread idea, local and regional authorities have a key role to play in:

- ▶ enabling citizens to exercise their right to freedom of expression;
- ▶ protecting them from abuse and hate speech;
- ▶ promoting open, transparent and inclusive public debate.

Through decisions on public space, policing and public order, culture, media literacy, communication and transparency, municipalities and regions can make freedom of expression a living reality for all citizens.

Public debate

Public authorities cannot restrict freedom of expression just to avoid a controversial public debate. When the debate is on a matter of general public interest, local authorities should do their utmost to facilitate the conditions for freedom of expression to be fully exercised while granting the security of the participants, public order and the rights of others.

Public demonstrations

Interpreted under the lens of article 10, public gatherings are means for citizens to express their views. Local authorities shall facilitate these through public space and traffic regulation, collaboration with local police, training of police on human rights to prioritise safety and de-escalation, clear, transparent and accessible procedures for administrative authorisations, etc. Already in 2007 the Congress recalled that a “theoretical risk of disorder, or the mere presence



of opposition, is insufficient to justify restrictions on public events” (see Resolution 230 (2007)¹ on Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons).

Political and social participation

Even those residents who cannot (or not yet) vote should have opportunities to express themselves. Local councils can open participatory forums, youth councils, or consultative bodies to provide opportunities for everyone to enjoy freedom of expression.

Media and information

Local authorities are vital in supporting pluralistic local media, including by protecting their editorial independence from political or commercial influence.

Culture and arts

Article 10 of the ECHR also protects artistic expression such as a painting, the production of a play, satirical creations, and information of a commercial nature. Local authorities can promote the right to freedom of expression by providing spaces and support for local cultural and artistic activities.

Tackling disinformation and hate speech

While freedom of expression is broad and subject to little limitations, article 10 cannot be invoked to protect hate speech. Local authorities can do a lot

to promote safe and inclusive spaces for dialogue, online and offline, and to denounce and condemn all expressions of intolerance and hate.

Transparency and good governance

Freedom of expression includes the right to receive and impart information including, under certain circumstances, State held information.

Local and regional authorities should make available all information which is of public interest (e.g. budgets, policies, decisions, etc.), making sure this is accessible in an easy way including as appropriate by means of translation into different languages. In addition, local authorities can increase citizens' participation in their council meetings by providing online streaming where appropriate and engage in a proactive communication with the citizens about local developments.

DID YOU KNOW THAT?

When the European Court of Human Rights is called to rule on affairs concerning a presumed violation of the right to freedom of expression, it takes into account three criteria: the **legality** of the restriction (i.e. whether this was provided for by law), its **legitimacy** (i.e. whether it was aimed at preserving one of the legitimate aims set out in the second paragraph of Article 10), and its **necessity and proportionality** in a democratic society, which is the decisive factor in most cases for the resolution of the case. When a State affirms that the right to freedom of expression has been restricted to avoid it to infringe other rights guaranteed by the Convention and its Protocols, the Court examines whether the authorities have struck a **fair balance** in their decision.



TAKING DECISIONS

In our capacity of elected officials, we will be confronted to numerous situations where we will have to decide whether or not to apply limitations to the right to freedom of expression. Here you'll find a useful checklist.



You still need to get inspired? The Congress is publishing the fourth volume of its Human Rights Handbooks series with a lot of good practices on protecting the rights to freedom of expression and of association. Stay tuned!

“Freedom of expression is essential for citizens’ dignity and personal development, as well as for a healthy democracy. This right can only thrive when we, local and regional authorities, act as democratic enablers in our territories. By ensuring safe and inclusive public spaces, protecting peaceful assembly, encouraging cultural life, and refrain from and condemns all speech likely to legitimise discrimination or hatred, local leaders can strengthen democracy at its foundations and protect the right to freedom of expression in a practical and effective manner.”



Guðrun Mosler-Törnström, Austria (L, SOC/G/PD), Standing Rapporteur on Human Rights, Mélanie Lepoutier, France (L, ILDG) and Peter Drenth, Netherlands (R, EPP/CCE), Deputy Standing Rapporteurs on Human Rights

MY CHECKLIST

- ▶ **Restriction provided for by law:** is there a specific law or regulation in our local or national law that allows this type of speech to be restricted?
- ▶ **Legitimate aim:** would a restriction contribute to the protection of an aim recognised by Article 10(2) of the ECHR? (As a reminder, the most common grounds in cases involving controversial speech are the protection of the rights of others and the prevention of incitement to hatred.)
- ▶ **Necessity and proportionality:** would the restriction be strictly necessary in a democratic society and proportionate to the legitimate aim pursued?

The Congress of Local and Regional Authorities has a long-standing commitment to human rights promotion and protection, by supporting local and regional elected officials to shape environments where citizens can enjoy their human rights every day. Rooting human rights at the local level further reinforces good governance, creates stronger relationships with the community, and helps building trust in political and public institutions.

In 2023, the 4th Summit of Heads of State and Government of the Council of Europe in Reykjavík marked a pivotal moment where member states explicitly recognised the Congress unique role in human rights promotion and protection at local level, and called on national authorities for a better sharing of responsibilities in defending human rights in the territories.

Since then, the Congress adopted a new Human Rights Strategy to:

- ▶ promote a culture of human rights at local and regional levels;
- ▶ mainstream and address human rights in all Congress work;
- ▶ facilitate stronger political dialogue and cooperation.

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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member States, including all members of the European Union. The Congress of Local and Regional Authorities is an institution of the Council of Europe, responsible for strengthening local and regional democracy in its 46 member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees, it brings together 612 elected officials representing more than 130 000 local and regional authorities.

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