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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
OF THE COUNCIL OF EUROPE
(VENICE COMMISSION)

REPORT

ON

**THE BALANCE BETWEEN FUNDAMENTAL RIGHTS AND FREEDOMS
RELEVANT TO VIOLENT PORNOGRAPHY
IN THE CASE-LAW OF CONSTITUTIONAL AND SUPREME COURTS
AND INTERNATIONAL TRIBUNALS**

**Adopted by the Venice Commission
at its 146th Plenary Session
(Venice, 6-7 March 2026)**

on the basis of comments by

Ms Herdis KJERULF THORGEIRSDOTTIR (Member, Iceland)
Mr Mārtiņš MITS (Substitute member, Latvia)
Mr Timothy OTTY (Member, United Kingdom)
Ms Mónica Aralí SOTO FREGOSO (Member, Mexico)

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I. Introduction

1. By letter of 3 December 2025, Ms Catia Polidori, President of the Committee on Equality and Non-Discrimination of the Parliamentary Assembly of the Council of Europe (PACE) requested a report of the Venice Commission of the Council of Europe on the following topic:

the balance between fundamental rights and freedoms relevant to violent pornography in the case law of European constitutional courts and international tribunals.

2. Ms Herdis Kjerulf Thorgeirsdottir, Mr Mārtiņš Mits, Mr Timothy Otty and Ms Mónica Aralí Soto Fregoso acted as rapporteurs for this report.

3. This report was drafted on the basis of comments by the rapporteurs. It was adopted by the Venice Commission at its 146th Plenary Session (Venice, 6-7 March 2026).

II. Background, methodology and scope of the report

4. The issues raised by “violent” or “extreme” pornography involve a complex debate between limiting potential harm, preventing gender-based violence, ensuring respect for human dignity and protection of vulnerable groups on the one hand and upholding the right to private life, including sexual self-determination, economic freedoms and freedom of expression on the other.

5. The underlying rationale for protecting freedom of expression is that without this touchstone, democracy itself would not survive. A further rationale underlying the protection of this right is the fostering of individual self-development. Freedom of opinion and expression are indispensable conditions for the full development of the person. They are essential for any society.¹ As all major treaty instruments recognise, however, the rights reflected in these freedoms are not absolute. The exercise of the freedoms carries with it duties and responsibilities and may be subject to formalities, conditions, restrictions and penalties provided these are themselves prescribed by law and necessary and proportionate responses to legitimate public interests.²

6. The challenges involved in finding the correct balance in this regard have been exacerbated by the extent to which the internet has transformed society, with the result that access to, and dissemination of, all kinds of information, images, video recordings and ideas has never been easier: pornography now exists primarily in digital formats accessible via computers and portable devices. High-speed internet and smartphones have made pornography ever more readily available, with consumption mainly occurring via mobile devices and via online platforms. Approximately 90% of pornographic content involving violence targets women, underscoring the gendered nature of this phenomenon.³ According to data compiled by the Swedish Women’s Organisation, between 70% and 97% of men in Nordic countries consume

¹ UN Human Rights Committee (HRC), General Comment 34, Article 19: Freedoms of opinion and expression, UN doc. CCPR/C/GC/34, 12 September 2011, para. 2.

² See e.g. Article 10 European Convention of Human Rights (Freedom of expression): “1. 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, 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.”

³ PACE, Report Gender aspects and human rights implications of pornography, [Doc. 15406](#) (2021).

pornography and young boys also have significantly increased access to pornographic material, many as young as 12 years old.⁴

7. Over the past three decades, PACE has repeatedly addressed the impact and regulation of pornography, raising the issue of the detrimental impact that “violent” pornography has on children and adolescents and warning against its particular potential to shape harmful attitudes towards women.

8. Since the 2010s, the work in PACE on this topic has bifurcated between combating child sexual abuse material (CSAM) and addressing violent pornography, the latter being characterised, by reference to the approach adopted in section 63 of the United Kingdom’s Criminal Justice and Immigration Act 2008, as material produced for sexual arousal that is grossly offensive and depicts life-threatening acts, serious sexual injury, necrophilia, or bestiality.⁵ While acknowledging freedom of expression under Article 10 of the European Convention on Human Rights (ECHR), PACE has maintained that such material raises legitimate concerns under human rights law. A PACE 2010 motion on “Violent pornography: a threat to women’s dignity and rights” framed such material as undermining women’s dignity and their right to live free from sexual violence.⁶

9. In 2024, new motions stress the alarming pervasiveness of violent pornography online, especially targeting women. They explicitly assert a causality between violent pornography and intimate partner violence, as well as the impact on children through normalisation of harmful behaviours; call for effective regulatory frameworks, clearer legal standards, and prohibition/regulation of material perpetuating harm, violence, and degradation, especially when non-consensual or degrading acts are involved (whether real or simulated) and emphasise that regulation and possibly prohibition of open access to such material is necessary.⁷

A. Delimitation of the topic and methodology of the report

10. This report does not propose a legal definition of “violent” or “extreme” pornography. However, divergent national definitions raise distinct constitutional questions and therefore form part of the comparative analysis.

11. The examination of this “violent” or “extreme” pornography inevitably intersects with other concepts that highlight specific characteristics of the overall complex phenomenon of pornography.⁸

12. The report distinguishes “violent” pornography from CSAM and “deepfake” pornography, which are addressed only insofar as relevant. Each raises issues of profound concern and would merit separate and dedicated consideration.

⁴ Sveriges Kvinnoorganisationer, Legislation against sexual violence in porn is not used, 20 September 2024 (available [online](#), last accessed 19.02.2026).

⁵ PACE, Motion for a recommendation, Violent pornography: a threat to women’s dignity and rights (2010); see also PACE, Report on “Violent and extreme pornography”, [Doc. 12719](#) (2011), referring to section 63 of the UK Criminal Justice and Immigration Act 2008.

⁶ Motion “Violent pornography: a threat to women’s dignity and rights”, [Doc. 12156](#) (2010).

⁷ See motions for a resolution on “Violent pornography”, [Doc. 15904](#) (2024) and [Doc. 15972](#) (2024).

⁸ Thus, for example, ethical pornography highlights that some positions defend the possibility of creating and distributing “ethical” pornography that respects women’s rights (see Gómez Fernández, I., The dissemination of pornography as an exercise of the right to freedom of expression: notes on the judgment of the European Court of Human Rights *Pryanishnikov v. Russia*, Derecom 35 (2023), pp. 21-40 (31)) and trafficking-related pornography makes visible that pornography is one of the facets of human trafficking because it constitutes another form of sexual exploitation (see PACE, Gender aspects and implications of pornography in human rights, Report, [Doc. 15406](#) (2021)).

13. While CSAM jurisprudence may illuminate harm-based reasoning, it is recalled that many systems treat CSAM as conceptually distinct from pornography because harm is intrinsic to its production and circulation.⁹

14. So called bondage, dominance, sadism and masochism (BDSM) material warrants equally careful distinction from “violent” or “extreme” pornography because, where it is genuinely consensual, pre-planned, and safety-oriented, it may not implicate the same harms-based considerations albeit that case-law in this area may be informative as to the kind of balancing exercises which may, sometimes, be involved.¹⁰ This does not mean that particularly degrading and violent practices, such as rape pornography, should be tolerated.

15. Given the scarcity of case-law specifically addressing “violent” or “extreme” pornography, the analysis relies, for methodological purposes, on broader obscenity and pornography jurisprudence, as well as relevant supreme and constitutional court decisions. However, not all sexually explicit material engages the same constitutional interests, and therefore jurisprudence on general pornography can only provide general considerations as a starting point for the analysis.

16. Given the time constraints of this report, it has not been possible to carry out a thorough comparative study, and only some pertinent examples will be cited.¹¹ The Venice Commission wishes to underline in this context that evidence from different legal systems cannot be definitively provided in isolation from the entire legal framework, nor can it take due account of the specific broader social, political and historical background. This report will be updated, should additional relevant case-law be received by the Commission.

B. Different notions of “violent” or “extreme” pornography

17. The comparative review reveals four principal approaches to the definition of “violent” or “extreme” pornography: (i) provision for stand-alone criminal offences (e.g. Germany; United Kingdom); (ii) criminalisation of specific violent elements within general pornography offences (e.g. Czechia; Finland; Poland); (iii) inclusion of violence or degradation within the statutory definition of pornography (e.g. Norway); and (iv) reliance on general obscenity regimes developed through case-law (e.g. Canada; United States).

18. *Germany* adopts a stand-alone offence model. The German Criminal Code criminalises the distribution of “violent pornography” alongside a separate offence concerning depictions of violence.¹² It defines the concept functionally, by reference to pornographic depictions of violence or sexual acts involving humans and animals, rather than through an abstract definition. The Federal Court of Justice has defined “pornographic” material as sexual content predominantly aimed at arousing sexual excitement and exceeding socially accepted limits of decency, and “violence” as a direct aggressive act involving physical force against a person’s body.¹³ The assessment is contextual and objective. Notably, the Court has held that even consensual sadomasochistic depictions may fall within the definition of “violent pornography”

⁹ See e.g. Interpol, *Appropriate Terminology* (available [online](#)).

¹⁰ For example, ECtHR, *Laskey and Others v. The United Kingdom*, nos. 21627/93 and 2 others, 19.02.1997.

¹¹The main analysis covers: Albania, Algeria, Andorra, Bosnia and Herzegovina, Canada, Costa Rica, Czechia, Denmark, Finland, France, Germany, Italy, Lithuania, Netherlands, Poland, Republic of North Macedonia, Norway, Republic of Korea, Slovenia, Slovakia, Sweden, Switzerland, United Kingdom, United States of America. Additional country examples and case-law are included to provide further context.

¹² Section 184a and section 131 German Criminal Code respectively.

¹³ Federal Court of Justice, Judgment of 11.02.2014 (1 StR 485/13), para. 49.

under the German Criminal Code.¹⁴ By contrast, the offence of depiction of violence requires depictions of cruel or inhuman violence that glorify, trivialise or otherwise violate human dignity; its threshold is higher and conceptually distinct from the offence of violent pornography.¹⁵ Germany thus combines dignity-based and harm-related considerations, with limited relevance accorded to consent.

19. The wording of the offence of “violent pornography” in the German Criminal Code is similar to that which other countries use for the criminalisation of pornography if it contains specific elements, albeit not foreseeing a separate statutory offense for violent pornography.¹⁶ Violence is often an element named together with other “extreme” features, such as sexual acts with animals or corpses.

20. The Swiss case-law illustrates the difficulty of defining the element of “violence” in the context of the criminalisation of pornography without taking into account the broader system of the criminalisation of the depiction of violence.¹⁷ Earlier references to “hardcore pornography”¹⁸ in the Criminal Code were repealed by the legislator following a 2019 Federal Court judgment¹⁹ that had emphasised that, according to the wording, the violence threshold for criminal liability in a sexual context was lower than the “cruelty” standard under the offence on depictions of violence.²⁰

21. The *United Kingdom* employs a hybrid model. The Criminal Justice and Immigration Act 2008 defines “extreme” pornographic images by listing specific acts (life-threatening acts, serious genital injury, necrophilia, bestiality), requiring that the image be pornographic and “grossly offensive, disgusting or otherwise of an obscene character”.²¹ This regime coexists with the Obscene Publications Act 1959, which applies a broader “deprave and corrupt” test. In *Director of Public Prosecutions v Whyte*, the House of Lords clarified that the test concerns the internal moral effect on the reader, not mere shock or external harm.²² The UK framework therefore combines harm-based elements (serious injury) with morality-based reasoning centred on obscenity and moral corruption.

22. *Norway* does not define “violent pornography” separately but incorporates violence, degradation and duress into the statutory definition of “pornography”.²³ Pornography includes

¹⁴ Federal Court of Justice, Judgment of 15.12.1999 (LG Meiningen), para. 20.

¹⁵ Federal Court of Justice, Judgment of 15.12.1999 (LG Meiningen), para. 12.

¹⁶ See e.g. Finland.

¹⁷ “[The legislative material ...] does not explain why depictions of pornographic violence are punishable and who they are intended to protect. It merely states that hard pornography should be banned. It is strange that Article 197(4) and (5) are also applied in cases where the pornographic depiction would be legal without the element of violence (as soft pornography) or – according to the cited decision of the Federal Supreme Court – would not even be considered pornographic. This gives the punishment an undesirable moral connotation. It is therefore proposed that the term ‘violence between adults’ be deleted from paragraphs 4 and 5, which was welcomed by the vast majority of participants in the consultation process. This means that pornographic material or performances depicting sexual acts involving violence between adults would no longer fall under these provisions. If necessary, criminal liability may be established under Articles 135 or 197 paragraphs 1 or 2.” (Report of the Committee on Legal Affairs of the Council of State, 17. February 2022, p. 53).

¹⁸ Article 197 Swiss Criminal Code.

¹⁹ Federal Supreme Court ruling 6B 149/2019 of 11 December 2019.

²⁰ Article 135 Swiss Criminal Code.

²¹ Criminal Justice and Immigration Act 2008 (UK), s. 63(3), (5A), (7).

²² *Director of Public Prosecutions v Whyte* [1972] AC 849 (HL).

²³ In the second paragraph of Section 317, pornography is defined as “[...] sexual depictions that have an offensive effect or are in any other way likely to have a humanly degrading or brutalising effect, including sexual depictions involving the use of corpses, animals, violence and duress. Sexual depictions that must be regarded as justifiable for artistic, scientific, informational or similar purposes are not considered pornography.”

sexual depictions that are offensive or degrading, including those involving violence, while exempting material justified by artistic or similar purposes. This reflects a dignity-oriented statutory definition embedded within the concept of pornography itself.

23. The *United States* does not recognise “violent pornography” as a distinct legal category. Regulation occurs under the constitutional doctrine of obscenity developed by the Supreme Court. In *Roth v. United States*, the Court distinguished obscenity from sex as such, limiting prohibition to material appealing to prurient interest.²⁴ The modern standard, established in *Miller v. California*, requires that (a) the work appeal to prurient interest under contemporary community standards, (b) depict sexual conduct in a patently offensive way as defined by state law, and (c) lacks serious literary, artistic, political or scientific value.²⁵ Material not meeting this three-pronged test remains protected under the First Amendment. The US model thus reflects a morality-based obscenity framework.

24. Three justificatory bases are therefore observed: (i) protection of legally recognised interests such as human dignity, sexual autonomy and equality (prominent in Germany); (ii) morality-based rationales centred on obscenity and corruption (notably in the US); and (iii) harm-based approaches focusing on serious injury or degradation.²⁶ The impact of these different rationales are particularly visible regarding consent and BDSM, with some systems treating consent as irrelevant where dignity is implicated.

25. Importantly, none of the assessed legal provisions expressly addresses the particularly harmful gender-based effects of violent or extreme pornography, insofar as it reproduces gender stereotypes; therefore, it could be said that there is an absence of a gender-perspective approach and a deficiency in that regard.

C. Gender-sensitive approach to the phenomenon of “violent” or “extreme” pornography

26. Although the Commission is not mandated to determine empirical causality, academic commentators have observed that normative concerns regarding the reinforcement of sexist attitudes and the risk of discrimination or gender-based violence should be addressed.²⁷ As these commentators point out “violent” or “extreme” pornography is not readily characterised as gender-neutral, as a result of an inevitable risk that it potentially reinforces gender stereotypes of discrimination. This in turn suggests the appropriateness of a gender-sensitive approach to regulation in this complex area.

27. The Commission considers that a purely morality-based rationale for the definition and consideration of “violent” pornography appears inadequate. This follows from the absence of a uniform European conception of morals and the margin of appreciation recognised by the European Court of Human Rights (ECtHR)²⁸ in this area and the gravity of the potential harms at stake. As evidenced by the materials referenced in paragraph 6 of this report, “violent”

²⁴ US Supreme Court, *Roth v. United States*, 354 U.S. 476 (1957).

²⁵ US Supreme Court, *Miller v. California*, 413 U.S. 15 (1973).

²⁶ An additional example of a harm-based definition can be found in the South African Films and Publications Act 65 of 1996, schedule 1: “A publication shall be classified as XX if, judged within context - (1) it contains a visual presentation, simulated or real of - (a) child pornography; (b) explicit violent sexual conduct; (c) bestiality; (d) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or (e) the explicit infliction of or explicit effect of extreme violence which constitutes incitement to cause harm; [...]”.

²⁷ See Beattie, T., Case Analysis *Pryanishnikov v Russia* (App. No.25047/05), judgment of 10 September 2019- Setting the Foundations for Human Rights Discourse on Pornography, EHRLR 6 (2019), 654 (661).

²⁸ See ECtHR, *Müller and Others v. Switzerland*, 24.05.1988, no. 10737/84, § 35; ECtHR, *Kaos GL v. Turkey*, 22.11.2016, no. 4982/07, § 49.

pornography mostly involves women as victims, therefore, the Commission suggests that this phenomenon be examined considering a broader structural context of violence against women.

28. In addition, and adopting a broader approach, it is considered more appropriate to anchor the analysis in safeguarding concrete legal interests and identifying the specific protected right or freedom - such as human dignity, sexual self-determination, or personal integrity. Furthermore, given the severity and seriousness of the depicted violence, an additional harm-based analysis is warranted.

29. In these circumstances and in an attempt, to adequately capture the different aspects of “violent” or “extreme” pornography, while paying attention to the gender aspect of the phenomenon, “violent pornography”, for the purposes of this report, is understood as: pornographic material depicting, in a realistic or apparently realistic manner

- (a) sexual acts involving non-consensual conduct, coercion, or the infliction of serious physical or psychological harm (*harm-based notion*); and
- (b) sexualised violence, humiliation or degradation which, assessed objectively and in its overall context, amounts to a grave violation of human dignity by portraying a person as an object of dehumanisation or as lacking agency, and which presents a concrete and substantial risk of reinforcing discrimination, sexual exploitation or violence against persons belonging to a protected group (*notion focusing on the protection of legally recognised interests*).

30. The Venice Commission will frame and formulate its response to the PACE request for the purposes of this report against this background.

III. Standards

31. The following standards examine violent pornography from two perspectives:

- fundamental rights and freedoms at risk from violent pornography and regulatory gaps; and
- fundamental rights and freedoms that can be invoked by actors involved in production, distribution and access.

A. Fundamental rights and freedoms at risk from violent pornography and regulatory gaps

1. Right to life and freedom from inhuman or degrading treatment

32. Under Articles 2 and 3 ECHR, States have positive obligations under certain circumstances to protect individuals against foreseeable threats to life and against inhuman or degrading treatment even where the relevant threat emanates from third parties. These obligations include duties of prevention, risk assessment, investigation and prosecution where violence is foreseeable.²⁹ The so-called Istanbul Convention³⁰ requires criminalisation of sexual violence (Art. 36) and sexual harassment (Art. 40), including in digital forms, and promotes cooperation with private actors (Art. 17). The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) has recognised online sexual

²⁹ Cf. in particular ECtHR, *Opuz v. Turkey*, 09.06.2009, no. 33401/02, and ECtHR, *Kurt v. Austria*, 04.07.2019, no. 62903/15.

³⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence (ETS No. 210).

violence, including non-consensual intimate imagery and exploitative pornography, as falling within the Istanbul Convention's scope.³¹

33. In the Inter-American system, duties to prevent and punish violence derive from Articles 4 and 5 of the American Convention on Human Rights (ACHR) and are reinforced by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention)³², which recognises women's right to live free from violence and discrimination and obliges States to prevent and punish such conduct.

34. Under the International Covenant on Civil and Political Rights (ICCPR), Articles 6 and 7, read together with Articles 2(1)-(3), require States to exercise due diligence to prevent, investigate and punish foreseeable violence by State and non-State actors.³³ The United Nations Human Rights Committee (HRC) responsible for interpretation of the ICCPR has urged States to restrict publication/dissemination of pornography portraying women and girls as objects of violence or degrading treatment).³⁴

2. Prohibition of discrimination based on gender stereotypes

35. Under Article 14 ECHR, discrimination on grounds of sex is prohibited in the enjoyment of Convention rights. Entrenched gender stereotypes, including assumptions about "traditional" gender roles, may amount to discriminatory treatment, particularly where they influence judicial practice or State inaction.³⁵ Gender-based violence has been recognised as linked to structural inequality and may therefore engage Articles 2 and 3 ECHR in conjunction with Article 14.³⁶

36. At the Inter-American level, Articles 1(1) and 24 ACHR prohibit discrimination and require States to address structural gender inequality. The Belém do Pará Convention recognises violence against women as a manifestation of discrimination and imposes due-diligence obligations to prevent, investigate and punish such violence, including technology-facilitated forms.

37. Under the ICCPR, Articles 3 and 26 provide autonomous guarantees of equality and non-discrimination. States are required to eliminate laws, practices and prejudices that subordinate women and to ensure equal protection of the law.

³¹ GREVIO General Recommendation No. 1 on the digital dimension of violence against women, pp. 18, 28.

³² Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (A-61)

³³ HRC, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004), UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para. 8.

³⁴ "As the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls, States parties should provide information about legal measures to restrict the publication or dissemination of such material." (HRC, General Comment No. 28: The equality of rights between men and women, adopted by the Human Rights Committee at the Sixty-eighth Session, CCPR/C/21/Rev.1/Add.10, 29 March 2000, § 22). Furthermore, there are specific obligations regarding the protection of children from all forms of sexual exploitation and sexual abuse, in particular regarding the exploitative use of children in pornographic performances and materials (Art. 34 (c) Convention on the Rights of the Child, UNTS vol. 1577, p. 3; and Article 3 (1)(c) of the Optional Protocol on the sale of children, child prostitution and child pornography, UNTS vol. 2171, p. 227).

³⁵ See e.g. ECtHR, *Konstantin Markin v. Russia*, 22.03.2012, no. 20458/92, §§ 127, 142.

³⁶ See e.g. in particular ECtHR, *Opuz v. Turkey*, 09.06.2009, no. 33401/02, §§ 184–202; ECtHR, *Talpis v. Italy*, 02.03.2017, no. 41237/14, §§ 141–149.

38. Under Articles 2 and 5 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as interpreted by General Recommendations Nos. 19³⁷ and 35³⁸, gender-based violence is recognised as discrimination and requires States to exercise due diligence. States must exercise due diligence to prevent, investigate, prosecute and punish acts of violence, and provide compensation and protection to victims.³⁹ The Committee has linked pornography and the commercial exploitation of women as sexual objects to gender-based violence.⁴⁰

3. Obligations regarding the regulation of “violent” pornography

39. There is no Council of Europe treaty expressly requiring the criminalisation of adult pornography as such. Binding obligations instead focus on exploitation and abuse. The Lanzarote Convention⁴¹ (Arts. 20-23) and the Budapest Convention on Cybercrime⁴² (Art. 9) require criminalisation of child sexual abuse material, while the Convention on Action against Trafficking in Human Beings⁴³ mandates criminalisation of trafficking for sexual exploitation.

40. Soft-law instruments encourage proportionate regulation to protect minors and users from violent or pornographic content. Recommendation No. R(89)7⁴⁴ promotes classification systems and, where necessary, criminal law measures; Recommendations R(97)19⁴⁵, Rec(2001)8⁴⁶ and CM/Rec(2018)7⁴⁷ address harmful media content and child protection online. The Reykjavík Declaration⁴⁸, CM/Rec(2016)3⁴⁹ on human rights and business, and

³⁷ CEDAW, General recommendation No. 19: Violence against women, HRI/GEN/1/Rev.8, paras. 6, 9.

³⁸ CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, para. 1.

³⁹ General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, paras. 24, 25.

⁴⁰ *“Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. Such prejudices and practices may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms. While this comment addresses mainly actual or threatened violence the underlying consequences of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower level of education, skills and work opportunities. 12. These attitudes also contribute to the propagation of pornography and the depiction and other commercial exploitation of women as sexual objects, rather than as individuals. This in turn contributes to gender-based violence.”* (CEDAW General Recommendation No. 19: Violence against Women, 1992, paras. 11-12).

⁴¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

⁴² Convention on Cybercrime (ETS No. 185).

⁴³ ETS No. 197.

⁴⁴ Recommendation No. R (89) 7 of the Committee of Ministers to member States concerning principles on the distribution of videograms having a violent, brutal or pornographic content.

⁴⁵ Recommendation No. R (97) 19 of the Committee of Ministers to member States on the portrayal of violence in the electronic media.

⁴⁶ Recommendation Rec(2001)8 of the Committee of Ministers to member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services).

⁴⁷ Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment.

⁴⁸ Reykjavik Declaration, United around our values, 4th Summit of Heads of State and Government of the Council of Europe, Reykjavík Summit 16-17 May 2023, p. 7.

⁴⁹ Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business.

CM/Rec(2026)2⁵⁰ emphasise platform responsibility, age-appropriate safeguards and protection against technology-facilitated violence.

41. At the European Union (EU) level, Directive 2011/93/EU mandates criminalisation of child sexual abuse material and related removal measures. The Digital Services Act⁵¹ introduces notice-and-action and systemic risk-mitigation obligations, including risks to fundamental rights and minors, while the Audiovisual Media Services Directive⁵² requires protection of minors and prohibits incitement to violence or hatred. Directive 2024/1385⁵³ on combating violence against women and domestic violence also criminalises the most widespread forms of violence online: non-consensual sharing of intimate images (including “deepfakes”), cyber stalking, cyber harassment and hate speech based on gender. The Directive also obliges Member States to ensure that such material is promptly removed.

42. At the universal level, the 1923 Convention for the Suppression of the Circulation of and Traffic in Obscene Publications (as amended in 1947) formally requires criminalisation of a broad range of conduct involving “obscene” material, although it is widely regarded as outdated.⁵⁴ More recent instruments, including the UN Convention against Transnational Organized Crime⁵⁵ and its Trafficking Protocol⁵⁶, as well as the UN Convention against Cybercrime⁵⁷, require criminalisation of trafficking and cyber-enabled sexual exploitation.

B. Fundamental rights and freedoms that can be invoked by actors involved in production, distribution and access

43. The production and dissemination of and access to violent pornography engages potential responsibility on the part of multiple actors: persons depicted, viewers or possessors, producers or distributors, and platforms. In seeking to defend their activities these actors may in turn invoke a series of rights based arguments embracing freedom of expression, right to private life or privacy, sexual self-determination, and economic freedoms. Each requires careful consideration.

1. Freedom of (artistic) expression

44. Under Article 10 ECHR, freedom of expression protects not only information and ideas that are favourably received but also those that “*offend, shock or disturb the State or any sector of the population*”.⁵⁸ The protection therefore extends to controversial, provocative or

⁵⁰ Recommendation CM/Rec(2026)2 of the Committee of Ministers to member States on accountability for technology-facilitated violence against women and girls.

⁵¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁵² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive).

⁵³ Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

⁵⁴ Cf. Beattie, T., Case Analysis *Pryanishnikov v Russia* (App. No.25047/05), judgment of 10 September 2019 - Setting the Foundations for Human Rights Discourse on Pornography, EHRLR 6 (2019), 654 (657).

⁵⁵ UNTS, vol. 2225, p. 209.

⁵⁶ UNTS, vol. 2237, p. 319.

⁵⁷ United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes, C.N.196.2025.TREATIES-XVIII.16 of 13 May 2025.

⁵⁸ ECtHR, *Handyside v. The United Kingdom*, 7.12.1976, no. 5493/72, § 49; *Sanchez v. France*, no. 45581/15, 15.05.2023, § 145.

unsettling speech. Pornography is not excluded from protection as such. At the same time, Article 10 is not absolute. Interferences may be justified if they are prescribed by law, pursue a legitimate aim (such as the protection of the reputation or rights of others, national security, public order, public health or morals), and are necessary in a democratic society, meaning they correspond to a pressing social need and are proportionate to the legitimate aim pursued.

45. Freedom of expression is likewise protected under Article 13 ACHR. Article 13(2) ACHR permits only subsequent liability, not prior censorship. Any restriction must be expressly provided by law, pursue a legitimate aim (respect for the rights or reputations of others, national security, public order, or public health or morals), and be necessary and strictly proportionate.

46. Freedom of expression is also regulated in Article 19 ICCPR. It includes the right to “*seek, receive and impart information and ideas of all kinds*”. The HRC has emphasised that this protection extends not only to information or ideas that are favourably received but also to those that “*may be regarded as deeply offensive*”.⁵⁹ Restrictions under Article 19(3) ICCPR are permissible only if they are provided by law, pursue one of the enumerated legitimate aims such as respect of the rights or reputations of others; protection of national security, public order, public health or morals, and are necessary and proportionate. The HRC has made clear that States must demonstrate a direct and immediate connection between the expression and the specific threat invoked, and that restrictions must be the least intrusive means of achieving the protective function.

47. With regard to commercial expression, all three systems recognise that pornography falls within the scope of freedom of expression, but they generally afford it a lower level of protection than political or public-interest speech.⁶⁰

2. Right to private life

48. The right to private life is protected under Article 8 ECHR. The Court interprets “private life” broadly, covering personal autonomy, sexual life and the development of personal identity.⁶¹ This includes the right to make choices concerning one’s own body⁶² from which derives the right to have sexual relations and, *inter alia*, to engage in activities perceived as physically or morally harmful or dangerous to oneself.⁶³ Article 8(2) permits restrictions that are in accordance with the law, pursue legitimate aims, including protection of health or morals, or the rights and freedoms of others, and are necessary in a democratic society.

49. The right to private life is protected under Article 11 ACHR, which guarantees protection against arbitrary or abusive interference with private life. The Inter-American Court of Human Rights (IACtHR) has interpreted this provision broadly to encompass personal autonomy and sexual life.⁶⁴ Restrictions would need to be lawful, pursue a legitimate aim, such as protection of morals or the rights of others, and satisfy strict proportionality review. The Court tends to apply particularly rigorous scrutiny where State regulation intrudes into intimate personal choices.⁶⁵

⁵⁹ HRC, General Comment No 34, Article 19: Freedoms of Opinion and Expression, 12.09.2011, UN Doc CCPR/C/GC/34, para. 11.

⁶⁰ See e.g. ECtHR, *Markt Intern Verlag GmbH and Klaus Beermann v. Germany*, 20.11.1989, no. 10572/83, §§ 26, 33-37. See also HRC, General Comment No. 34, para. 11.

⁶¹ ECtHR, *Pretty v. The United Kingdom*, 29.04.2002, no. 2346/02, § 61.

⁶² ECtHR, *Pretty v. The United Kingdom*, 29.04.2002, no. 2346/02, § 66.

⁶³ ECtHR, *K.A. et A.D. c. Belgique*, 17.02.2005, nos. 42758/98, 45558/99, § 83.

⁶⁴ IACtHR, *Atala Riffo and Daughters v. Chile*, Judgment of 24 February 2012, §§ 161–166.

⁶⁵ IACtHR, *Artavia Murillo et al. (“In Vitro Fertilization”) v. Costa Rica*, 28.11. 2012, §§ 142-146.

50. The right to private life is also protected under Article 17 ICCPR, which prohibits arbitrary or unlawful interference. The HRC has interpreted this to include protection of sexual life and personal autonomy.⁶⁶ The term “arbitrary” means that even lawful interference must be reasonable, necessary and proportionate.⁶⁷

3. Economic freedoms (freedom of contract, free competition, freedom to work and to exercise a profession)

51. Across the ECHR, ICCPR and ACHR systems, so-called economic freedoms, such as freedom of contract, free competition, and the freedom to work or exercise a profession, receive only partial protection.

52. Under the ECHR, economic interests are primarily protected through Article 1 of Protocol No. 1 to the ECHR and occasionally through Article 8. The Court has accepted that business licences may qualify as “possessions”⁶⁸ but grants States a wide margin of appreciation in economic and social policy, emphasising that the Convention does not guarantee a general freedom of enterprise or contract.⁶⁹ The ACHR protects property under Article 21 and the Court has permitted restrictions for reasons of public utility or social interest, subject to legality and proportionality.⁷⁰ Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) expressly recognises the right to work of everyone, which includes the right of every person to the opportunity to gain his or her living by work freely chosen or accepted. It further imposes on States Parties the obligation to take appropriate steps to safeguard this right under conditions safeguarding fundamental political and economic freedoms to the individual. In its General Comment No. 18, the Committee on Economic, Social and Cultural Rights emphasised that respect for the individual and his or her dignity is expressed through the freedom of the individual regarding the choice to work, while emphasizing the importance of work for personal development as well as for social and economic inclusion. Moreover, the International Labour Organization’s Convention No. 122 concerning Employment Policy (1964) refers to “full, productive and freely chosen employment”, thereby linking States Parties’ obligation to create conditions of full employment with their duty to ensure the elimination of forced labour. Under the ICCPR, there is no explicit protection of economic freedoms as such and the HRC reviews economic regulation mainly through non-discrimination (Art. 26) or protection against arbitrariness.⁷¹

53. Under the EU Charter of Fundamental Rights, Article 11 protects freedom of expression and information, Article 7 protects private life; any restriction must satisfy the requirements of Article 52(1), i.e. legality, essence of the right, proportionality, and legitimate objective. In addition, economic freedoms under the Treaty on the Functioning of the European Union (TFEU) are engaged where pornography involves cross-border services or media distribution. In particular, Articles 56-62 TFEU protect the freedom to provide services, and Articles 34-36 TFEU govern the free movement of goods (potentially relevant to physical media). National restrictions on pornographic or violent content that affect cross-border provision must therefore comply with EU internal market law and be justified on recognised public-interest grounds (such as protection of minors or public morality) in a proportionate manner.

⁶⁶ HRC, General Comment No. 16, Article 17 (Right to Privacy), UN doc. HRI/GEN/1/Rev. 9, 08.04.1988 para. 5.

⁶⁷ HRC, General Comment No. 16, Article 17 (Right to Privacy), UN doc. HRI/GEN/1/Rev. 9, para. 4.

⁶⁸ ECtHR, *Tre Traktörer AB v. Sweden*, App. No. 10873/84, 07.07. 1989, §§ 53–55.

⁶⁹ ECtHR, *James and Others v. The United Kingdom*, App. No. 8793/79, 21.02. 1986, § 46; see also *Niemietz v. Germany*, no. 13710/88, 16.12.1992, § 29.

⁷⁰ IACtHR, *Salvador Chiriboga v. Ecuador*, 06.05.2008, paras. 60–71.

⁷¹ HRC, *Broeks v. Netherlands*, Comm. No. 172/1984, UN doc. CCPR/C/29/D/172/1984 (1987).

C. Abuse of rights

54. Under Article 17 ECHR, no person may rely on Convention rights to engage in activities aimed at the destruction of the rights and freedoms set forth in the Convention. The Court applies Article 17 restrictively and primarily in cases involving totalitarian, racist, or Holocaust-denying expression.⁷² Where Article 17 applies, it excludes the application from the scope of substantive protection without proceeding to a proportionality analysis.⁷³

55. The ACHR does not contain a direct equivalent to Article 17 ECHR. Instead, Article 29 functions as an interpretative clause preventing the Convention from being interpreted in a manner that suppresses or limits rights beyond what it provides.⁷⁴

56. The ICCPR contains an abuse clause in Article 5(1), which provides that nothing in the Covenant may be interpreted as implying any right to engage in activity aimed at the destruction of rights and freedoms recognised therein. However, the HRC has rarely relied on Article 5 and analyses contested expression under Article 19(3)⁷⁵ and, where relevant, Article 20 (mandatory prohibition of advocacy of hatred).⁷⁶

IV. Analysis

57. The report first examines the available jurisprudence in the assessed jurisdictions specifically addressing violent and extreme pornography, and will then turn to relevant case-law concerning broader or related concepts. The following analytical section highlights only particularly pertinent decisions examined to date.

A. Jurisprudence on “violent” or “extreme” pornography

58. There is only relatively scarce case-law specifically addressing the fundamental rights and freedoms implications of “violent” or “extreme” pornography both on the national as well as on the regional level.

59. In *R. v. Butler* the Canadian Supreme Court applied a harm-based approach, targeting materials that degrade or dehumanise, especially women. The Supreme Court first affirmed that sexually explicit material, such as pornography, constitutes “expression” within the meaning of the Charter⁷⁷, regardless of its content or social value. The Court found that the criminal prohibition on obscene material was indeed an infringement of the freedom of expression, since it restricted the right to express through the usage of content. The central constitutional question became whether that infringement could be justified under Section 1 of the Charter in addressing what qualifies as “obscene”. The Court held that the determination of obscenity must focus on the material harm caused, stating, “[h]arm in this context means that it predisposes persons to act in an anti social manner, in other words, a manner which society formally recognizes as incompatible with its proper functioning. The stronger the inference of a risk of harm, the lesser the likelihood of tolerance.” The Court identified certain categories of material as particularly likely to be harmful, including sexually explicit material that is combined with violence, cruelty, or degradation. Having found a *prima facie* interference with freedom of expression, the Court discussed the issue of whether the limitation imposed

⁷² See e.g. ECtHR, *Garaudy v. France*, 24.06.2003, no. 65831/01.

⁷³ ECtHR, *Norwood v. The United Kingdom*, no. 23131/03, 16.11.2004.

⁷⁴ IACtHR, Advisory Opinion OC-5/85, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, 13 November 1985, paras. 52-56.

⁷⁵ Cf. HRC, General Comment No. 34, CCPR/C/GC/34 (2011), paras. 11, 21-36, 50-52. See also HRC, *Hertzberg et al. v. Finland*, Comm. No. 61/1979 (1982).

⁷⁶ HRC, General Comment No. 34, CCPR/C/GC/34 (2011), paras. 21-36, 50-52.

⁷⁷ Section 2(b) of the Charter.

by the Criminal Code⁷⁸ could be justified under the Charter. The Court accepted that the objective of the section in the Criminal Code to prevent harm to individuals and society arising from certain forms of sexually explicit material was substantial and significant. The prohibition was found to be rationally connected to this objective and proportionate in scope, particularly because it targeted only material whose dominant characteristic involved undue exploitation of sex. On this basis, the Court upheld the constitutionality of section of the Criminal Code, concluding that the limitation on expression was a justified one under the Charter.⁷⁹ This ruling marked a significant shift in the legal understanding of sexual exploitation of women.

60. In *Czechia*, the Constitutional Court rejected the complaint of a complainant convicted of endangering morality for producing and distributing videotapes with pornographic content involving violence and disrespect for human beings. The Court stated that although freedom of expression and artistic creation also includes works that may shock or offend, it is not absolute and may be restricted by law for protecting public morality. It emphasised that the artistic nature or social usefulness of a work is irrelevant to this legal assessment if the work meets the criteria of pornography that threatens morality. At the same time, it rejected the thesis that artistic creation cannot, in principle, be immoral. It concluded that the conviction for distributing videotapes with violent pornographic content did not violate the applicant's freedom of expression or artistic creation, as the interference was legitimate, necessary, and proportionate in the interest of protecting public morals.⁸⁰

61. In *Germany*, courts have upheld convictions under the “violent pornography” section of the Criminal Code prohibiting possession and dissemination of violent pornographic material.⁸¹ With regard to the question of whether or not “hard” pornography can be art in the sense of the Basic Law, the Federal Court of Justice has also held: *“Only by recognising the interconnection between the two areas is it possible to weigh up whether, in individual cases, priority should be given to artistic freedom or other values enshrined in the constitution [...]. If exclusivity were to be maintained, the assessment of a work as art would, in the case of [the offence concerning pornography of the] Criminal Code [...], already eliminate criminal liability at the factual level, without any weighing of interests being necessary. However, such a solution appears unsatisfactory [...] as it would disproportionately restrict the protection of legal interests punishable by law and, above all, remove the protection of minors in many areas. The compatibility of art and pornography thus postulated must also apply in principle to so-called hard pornography [...] in the German Criminal Code. The broader the concept of art is defined, the less such manifestations can be excluded from the realm of art.”*⁸² In a case on the offence of “depictions of violence”, the *Federal Constitutional Court* has held that the “element of the offense ‘in a manner that violates human dignity’ [...] satisfies the requirement of specificity insofar as it is understood to mean depictions of cruel or inhuman acts of violence that are intended to create or reinforce in the viewer an attitude that denies the fundamental value and respect to which every human being is entitled.”⁸³ The undetermined term is linked to the “social value and respect to which human beings are entitled, which prohibits treating people as mere objects of the state or subjecting them to treatment that fundamentally calls into question their status as subjects. Human dignity in this sense is not only the individual dignity of the person concerned, but the dignity of human beings as a species. [...] It cannot be taken away from any human being.”⁸⁴

⁷⁸ Section 163 of the Criminal Code.

⁷⁹ Similar to this judgment, the South African Constitutional Court in *De Reuck v DPP* [2003] 10 WLUK 394 found that the degradation of children through CSAM is a serious harm which is likely to impair their dignity and contributes to a culture which devalues the person of the child.

⁸⁰ IV. ÚS 606/03, 19.4.2004.

⁸¹ Federal Court of Justice, 2 StR 310/04 - Judgment of April 22, 2005 (LG Kassel), para. 44.

⁸² Federal Court of Justice, 14.07.1955 - 1 StR 172/55 (Opus pictorum), paras. 15-16.

⁸³ 1 BvR 698/89, Judgment of 20.10.1992, Second guiding principle.

⁸⁴ 1 BvR 698/89, Judgment of 20.10.1992, para. 113.

62. In *Finland*, the Supreme Court affirmed the constitutionality of criminal liability for distributing image programs containing violent pornography under the Criminal Code⁸⁵ and rejected defences in particular based on vagueness and retroactivity, holding that distributors must proactively ensure legality.⁸⁶ The Vaasa Court of Appeal held that consent can justify causing minor injuries during consensual BDSM, if it is fully informed, voluntary, and based on advance agreement but it is not valid for acts causing serious or irreparable harm (e.g. aggravated assault or death), even if all parties agree. For violent pornography, consent does not excuse content that involves real, serious violence or injury. Advance planning and consent are crucial, but the law does not allow anyone to consent to severe physical harm or lethal violence.⁸⁷

63. In *Poland*, courts have repeatedly stressed that the right to privacy does not constitute an absolute sphere immune from criminal law. The Supreme Court has made clear that the possession of extreme or violent pornographic material, even when confined to an ostensibly private domain, does not enjoy constitutional protection where the material itself embodies a fundamental affront to human dignity or contributes to the perpetuation of sexual violence.⁸⁸

64. In the *UK*, in *R v Walsh*⁸⁹, the defendant was prosecuted under the Criminal Justice and Immigration Act 2008 for possession of “extreme pornographic images,” alleged to depict consensual BDSM acts amounting to serious injury to intimate body parts. The case crystallised the tension between the criminalisation of “extreme” pornography and the protection of private autonomy and consensual adult sexual expression.⁹⁰ Critics of the wording of section 63 argued that criminalising mere possession of consensual adult material intrudes into the sphere of private life and sexual autonomy, blurring the line between violence and consensual BDSM practices.⁹¹

65. In *Switzerland*, the Federal Court of Justice upheld convictions for violent pornography and confiscation of the related material,⁹² involving numerous films depicting the beating and humiliation of women.⁹³ It held that in a sexual context the violence threshold for criminal liability is lower than the “cruelty” standard for the offence on “depictions of violence”, and that humiliating violent sexual depictions may be punishable even without all “classic” pornography markers.

66. So far, the ECtHR has not comprehensively addressed the topic of “violent” or “extreme” pornography. However, there are several cases that are of relevance for the topics at hand (*see for further case-law also the discussion under B*).

67. First, in *K.A. et A.D. v. Belgium* the ECtHR held that criminal law cannot, in principle, intervene in the area of consensual sexual practices that are a matter of individual free will

⁸⁵ Ch. 17, para.18.

⁸⁶ KKO, R2011/253 (1 July 2013).

⁸⁷ Cf. decision of 4 April 2025.

⁸⁸ IV KK 251/20 and V KK 248/22.

⁸⁹ *R v Walsh* (Kingston Crown Court, 8 August 2012) (unreported).

⁹⁰ The defendant was acquitted of five counts of possessing extreme pornography.

⁹¹ Cf. Rackley, Erika, & McGlynn, Clare, *Prosecuting the Possession of Extreme Pornography: A Misunderstood and Misused Law*. *Criminal Law Review* 2013, pp. 400-405 (405); McGlynn, Clare, Rackley, Erika, *Criminalising Extreme Pornography: A Lost Opportunity*, *Criminal Law Review* (2009) 245-260 (249).

⁹² This judgment concerns the former wording of the Article 197(4)-(5) Swiss Criminal Code. The Federal Court of Justice has upheld the conviction of the defendant for repeatedly producing pornography for his own consumption. It imposed a suspended fine of 60 daily rates (probation period of two years) on him.

⁹³ 6B_149/2019 (11 December 2019).

except for “particularly serious reasons”, such as, for example, not respecting the wishes (overstepping consent) of a “victim” of such practices.⁹⁴

68. Second, in the case of *Laskey and Others v. the United Kingdom*, the ECtHR examined the question whether consensual sadomasochistic acts should be viewed as matters of sexual expression rather than violence. According to the applicants, the line beyond which consent is no defence to physical injury should only be drawn at the level of intentional or reckless causing of serious disabling injury. The Government contended that the criminal sanction was not only warranted because of the nature of the harms inflicted (allegedly amounting to torture) but also that the criminal law should seek to deter certain forms of behaviour on public-health grounds but also for broader moral reasons such as the ensuring the respect which human beings should confer upon each other. The Court considered the criminal sanction of the applicants as necessary in a democratic society for the protection of health within the meaning of Article 8(2), in particular as the determination of the level of harm that should be tolerated by the law in situations where the victim consents is in the first instance a matter for the State concerned, since what was at stake concerned, on the one hand, public health considerations and the general deterrent effect of the criminal law, and, on the other, the personal autonomy of the individual.

69. Third, the most recent case of greatest indirect assistance in this regard - *Pryanishnikov v. Russia*⁹⁵ - was not itself about “violent pornography” specifically, but about the refusal of a reproduction licence that effectively blocked distribution of the applicant’s films. The Court found a violation of Article 10 because the domestic authorities relied on unsubstantiated suspicions of “pornography” and unspecified internet material, failed to identify any concrete content - violent or otherwise - and imposed an overly broad, disproportionate restriction without proper balancing or considering less restrictive measures.

70. However, Judge Pinto de Albuquerque’s concurring opinion engaged in a more extensive discussion of “violent” and “extreme pornography,” going beyond the issues strictly necessary for the determination of the case on its facts. He agreed that there was a violation of Article 10 on the facts but criticised the Court for failing to address the broader pornography issues raised by the Government and the domestic court. In his view, the Court should have clarified the Convention-compatibility of blanket criminalisation of adult pornography, the State’s positive obligation to protect children, and the need for a principled approach in light of the Istanbul Convention and the harmful effects of “violent” and “extreme” pornography on women and gender equality. He supported a co-regulatory model combining self-regulation, classification and education, while maintaining that States have a positive duty to prevent minors’ access, potentially through age-verification safeguards with data-protection guarantees and criminal penalties for deliberate distribution. Adopting a gender-sensitive approach, he further argued that certain categories warrant criminal restriction, while leaving States discretion — including through the adoption of non-criminal measures for violent material — to avoid the over-expansion of criminal law and intrusive enforcement.⁹⁶

71. Neither the Inter-American Human Rights system, nor the HRC nor any other UN treaty body decision has dealt with balancing fundamental rights and freedoms concerning “violent” or “extreme” pornography as a standalone category.

⁹⁴ See ECtHR, *K.A. et A.D. c. Belgique*, 17.02.2005, nos. 42758/98, 45558/99, §§ 84 and 85.

⁹⁵ ECtHR, *Pryanishnikov v. Russia*, 10.09.2015, no. 25047/05.

⁹⁶ Concurring opinion of Judge Pinto de Albuquerque, ECtHR, *Pryanishnikov v. Russia*, 10.09.2015, no. 25047/05, §§ 41-44.

B. Considerations derived from related case-law

72. The following section examines selected strands of related national case-law which engage balancing questions when concerned with regulation of pornography, CSAM or other related issues. Courts address these issues mainly through three jurisprudential lenses: (i) criminal prohibitions (production, dissemination, possession); (ii) administrative/youth-protection regimes (in particular classification, age-rating, licensing, seizure/confiscation, indexing, content bans); and (iii) online enforcement (in particular notice-and-takedown, age-verification, blocking/delisting, due-diligence duties).

73. Relevant norms are dispersed across different types of instruments, including criminal codes,⁹⁷ media/broadcast and youth-protection laws,⁹⁸ free-standing specialised “pornography codes”,⁹⁹ and frameworks regulating the rights and obligations of online service providers and platforms.

1. Administrative and youth-protection regimes

74. Administrative measures such as licensing, classification, seizure, age limits are regularly upheld where grounded in protection of minors, public morals, or dignity and subject to proportionality review.

75. The *Lithuanian* legal framework likewise establishes administrative safeguards designed to protect minors from harmful information in the media environment. Law on the Provision of Information to the Public prohibits the dissemination of information “by which pornography is disseminated, promoted or advertised, as well as information promoting or advertising sexual services or sexual perversions”.¹⁰⁰ In addition, the same law prohibits advertising and commercial audiovisual communications in the media that have a negative impact on the mental health or the physical, intellectual or moral development of minors¹⁰¹. Furthermore, public information producers and disseminators must ensure, in accordance with the procedure established by law, that minors are protected from public information having a negative effect on their physical, intellectual or moral development, particularly information of a pornographic or violent nature or information encouraging harmful habits¹⁰². Pornographic information is defined as information where a real or simulated sexual act, sexual organs, defecation, masturbation or sexual perversions (including paedophilia, sadism, masochism, zoophilia or necrophilia) are openly and explicitly depicted and constitute the principal purpose of the information¹⁰³. Additional safeguards are provided by the Law on the Protection of Minors against the Detrimental Effect of Public Information, which prohibits the dissemination of information that is prohibited by law in the public information sphere, particularly

⁹⁷ See e.g. *Czechia*: Criminal Code (Act No. 40/2009 Coll.) §191(1) (Pornographic work depicting violence or disrespect for human beings); *Finland*: Criminal Code, Chapter 17, Section 18 (Distribution of a sexually obscene image-violence/bestiality); *Germany*: Criminal Code §184a (Dissemination of violent or animal pornography); §131 (Depiction of violence); *Lithuania*: Criminal Code, arts. 147 (Human trafficking incl. for pornography); *Sweden*: Penal Code, Chapter 16, Section 10b (Unlawful depiction of sexual violence or coercion).

⁹⁸ See e.g. *France*: Law of June 21, 2004 on confidence in the digital economy, Art. 10-1 (ARCOM injunctions to ISPs/DNS/search providers to block or delist online services allowing minors to access pornography); *Germany*: Youth Protection Act; State Treaty on the Protection of Minors in the Media; *Lithuania*: Law on the Provision of Information to the Public.

⁹⁹ See e.g. *Austria*, Federal Act of March 31, 1950, on Combating Obscene Publications and Protecting Young People from Moral Harm (Pornography Act).

¹⁰⁰ See Article 19(1)(4) Law on the Provision of Information to the Public.

¹⁰¹ See Article 39(2)(9).

¹⁰² See Article 17(1).

¹⁰³ See Article 2(37).

pornographic content, as well as information promoting the sexual abuse or exploitation of minors or presenting gratuitous violence.¹⁰⁴

76. *German* trade-law restrictions on commercial sexual displays have been upheld where objectification violates human dignity.¹⁰⁵ The Federal Administrative Court treated human dignity as overriding even self-determination if conduct amounts to objectification or degradation. Freedom of profession and artistic freedom are subject to proportional limits grounded in dignity and youth protection.

77. On CSAM, the ECtHR's approach is anchored less in protecting expression and more in the State's positive obligations to protect children. In *K.U. v. Finland*¹⁰⁶, the Court held that Finland violated Article 8 because its legal framework did not secure the practical ability to identify and prosecute an unknown person who placed a sexual advertisement about a child online, underscoring that States must have effective measures against online child sexual exploitation.

78. In "*The Last Temptation of Christ*", the IACtHR struck down the banning of a film considered offensive by Chilean authorities. The Court held that prior censorship was impermissible in this context and that restrictions must comply with Article 13(2)'s strict requirements, i.e. legality, legitimate aim, necessity, proportionality, and that moral considerations cannot be invoked to suppress expression in a manner incompatible with democratic pluralism.¹⁰⁷ In this context, reference is also made to the judgment of the South African Constitutional Court in *Print Media South Africa and Another v Minister of Home Affairs and Another*¹⁰⁸ in which the Constitutional Court held that the requirement that there must be administrative prior classification before publication limited the right to freedom of expression, vital to a democracy. The Court also held that the limitation was not justifiable in that the system of administrative prior classification, as created by the Act, did not achieve its purposes in a proportional manner and that there were less restrictive alternatives for achieving the Act's purpose of controlling publications of this kind. Prior restraint through the courts could achieve the purpose by placing less severe restrictions on the right to freedom of expression.

2. Criminal prohibitions

a. Production and participation

79. In *Switzerland*, the Federal Court of Justice considered Article 197(5) Criminal Code and the exemption of pornographic depictions or performances from criminal liability if they have a cultural or scientific value worthy of protection. The Court held that the application of the exemption could not be defined in general terms but the cultural value issue would need to be assessed on a case-by-case basis: "*Since the law only excludes criminal liability for works of cultural value worthy of protection, the judge is further required to decide, on the basis of a weighing of interests, whether the respective impairment of the legal interest protected by Art. 197 Criminal Code is acceptable in favor of freedom of cultural creation. The basic principle here is that the requirements of Art. 197(5) Criminal Code are met if the artistic value outweighs the pornographic element in the overall impression*".¹⁰⁹

¹⁰⁴ See Article 4(4) Law on the Protection of Minors against the Detrimental Effect of Public Information.

¹⁰⁵ Federal Administrative Court, Judgment of 15 December 1981, Case No. 1 C 232.79 (*Peepshow*).

¹⁰⁶ ECtHR, *K.U. v. Finland*, App. No. 2872/02, Judgment, 2 December 2008.

¹⁰⁷ IACtHR, *Olmedo Bustos et al. v. Chile*, Merits, Reparations and Costs, 05.02.2001, § 72.

¹⁰⁸ [2012] 9 WLUK 527.

¹⁰⁹ Federal Court of Justice, BGE 131 IV 64, p. 69.

80. In the *UK*, in *R v Brown*¹¹⁰, the Court ruled that consent is not a defence to charges of actual bodily harm or more serious injuries inflicted during consensual sadomasochistic acts among adults. The reasoning was grounded in public policy and the need to protect individuals even against self-inflicted harm, rejecting the notion that consent should legitimise acts of violence within private sexual conduct. Consequently, the judgment established that the criminal law could intervene even where all parties consented, marking the limits of personal autonomy in cases involving violence. A challenge to the domestic Court's decision before the ECtHR was rejected in *Laskey, Jaggard and Brown v. The United Kingdom*.¹¹¹

81. *Finnish* case-law is somewhat more nuanced in that it recognises the theoretical relevance of consent for BDSM scenarios during the production phase - but only up to a certain threshold.¹¹²

82. In *Canada*, the Supreme Court recognises pornography as "expression," but Criminal Code restrictions targeting the "undue exploitation of sex" aggravated by violence, cruelty or degradation are justified under the Charter to prevent harm, especially to women (*R. v. Butler*¹¹³). In the *United States*, production and distribution may be criminalised if the Miller test is met, i.e. prurience, patent offensiveness of defined sexual conduct, lack of serious value; child pornography is categorically excluded from First Amendment protection.

83. In the *Republic of Korea*, the Supreme Court has held that criminal law should not easily intervene in matters of morality or ethics and that intrusion into intimate areas of personal sexual life should be confined to the minimum extent necessary, to avoid undue infringement on individual sexual self-determination or the right to pursue happiness. The Court has held that the justification for regulating obscene material should focus less on the abstract protection of sexual morality and more on concrete interests such as the protection of minors and the right of adults not to be exposed to unwanted obscene material.¹¹⁴

84. The ECtHR has recognised that the right to choose how to exercise one's sexuality touches on an essential aspect of an individual's identity, which arguably calls for a narrow margin of appreciation. However, it depends on the context how the sexuality is exercised. Recently the Court was not convinced that the principle of personal autonomy would call for a narrow margin of appreciation when persons wished to engage in prostitution as a professional economic activity,¹¹⁵ an area where there is no European consensus.

85. Conversely, criminal law should not, in principle, interfere with consensual sexual practices freely undertaken, absent "particularly serious reasons", such as the absence or overstepping of consent.¹¹⁶

86. In *Laskey and Others v. The United Kingdom*, the Court accepted that the criminalisation of consensual sadomasochistic acts pursued the legitimate aim of protecting health under Article 8(2), emphasising that the assessment of the level of harm tolerable notwithstanding consent falls, in the first instance, within the State's margin of appreciation, given the competing considerations of public health, deterrence and personal autonomy.¹¹⁷

¹¹⁰ *R v. Brown*, [1994] 1 A.C. 212 (H.L.).

¹¹¹ ECtHR, *Laskey and Others v. The United Kingdom*, 19.02.1997, nos. 21627/93; 21628/93; 21974/93.

¹¹² Vaasa Court of Appeal, 4 April 2025.

¹¹³ Supreme Court, [1992] 1 S.C.R. 452

¹¹⁴ Supreme Court Decision, 2006Do3558.

¹¹⁵ ECtHR, *M.A. and Others v. France*, 25.07.2024, nos. 63664/19, 64450/19, 24387/20, § 157.

¹¹⁶ See ECtHR, *K.A. et A.D. c. Belgique*, 17.02.2005, nos. 42758/98, 45558/99, §§ 84 and 85. See also discussion above.

¹¹⁷ ECtHR, *Laskey and Others v. The United Kingdom*, 19.02.1997, nos. 21627/93; 21628/93; 21974/93. See also discussion above.

87. In cases concerning sexual violence, including allegations of rape, inflicted by private parties, the Court, as a rule, examines complaints simultaneously under both provisions, Articles 3 and 8, even if the sexual violence clearly reaches the threshold of Article 3.¹¹⁸ Overall, there is a difference between those two provisions in terms of positive obligations: Article 3 always requires states to provide for criminal responsibility for individuals whose actions reach threshold of Article 3 while less serious actions between individuals falling within the scope of Article 8 could be dealt with by providing civil law remedies.¹¹⁹ However, the Court has considered that acts of a sexual nature which do not exceed the scope of Article 8 are serious enough to trigger obligation to provide for criminal responsibility, like covert filming of a nude child,¹²⁰ covert filming and distribution of a sexual intercourse,¹²¹ maliciously exposing a child on internet,¹²² or online harassment.¹²³

88. The ECtHR has acknowledged a positive obligation for the states under Articles 3 and 8 ECHR to penalise and effectively prosecute any non-consensual sexual act, including in the absence of physical resistance by the victim.¹²⁴ Thus, the Court focuses on the notion of consent not only in relation to rape, but also to other punishable actions related to sexual violence.¹²⁵

b. Possession

89. Approaches diverge more clearly at the level of private possession of pornographic material.

90. *Canada's* Supreme Court, in *R v. Sharpe*,¹²⁶ recognised that the Charter (protecting life, liberty, and security of the person) can shield very limited forms of private expressive sexual material, but this protection unequivocally excludes violent or non-consensual content and, as in *Butler*,¹²⁷ does not shield material involving “undue exploitation of sex with violence or degradation”.

91. The *Costa Rican* Constitutional Chamber explicitly undertakes a proportionality test, concluding that the criminal prohibition of the possession of virtual CSAM, even absent a concrete individualised victim, is justified by the weight of international obligations and the need to protect the dignity and interests of vulnerable groups and its nature as an “abstract danger” offense.¹²⁸ The Court explicitly framed these duties in terms of protection from exploitation and the dignity of minors as a group, citing Inter-American standards that require heightened care for vulnerable populations.¹²⁹

92. In the *United States*, the right to privacy was decisively acknowledged by the Supreme Court in *Stanley v. Georgia*,¹³⁰ which held that private possession of obscene material by an adult in the home is protected and thus immune from criminal proscription under the First and Fourteenth Amendments. However, this protection does not extend to production, distribution,

¹¹⁸ ECtHR, *R.E. and Others v. Iceland*, 13.01.2026, nos. 59809/19 and 3 others, para. 113.

¹¹⁹ ECtHR, *Soderman v. Sweden*, 12.11.2013, no. 5786/08, § 85.

¹²⁰ ECtHR, *Soderman v. Sweden*, 12.11.2013, no. 5786/08.

¹²¹ ECtHR, *Khadija Ismayilova v. Azerbaijan*, 10.01.2019, nos. 65286/13, 57270/14.

¹²² ECtHR, *K.U. v. Finland*, 02.12.2008, no. 2872/02.

¹²³ ECtHR, *M.S.D. v. Romania*, 03.12.2024, no. 28935/21.

¹²⁴ ECtHR, *M.C. v. Bulgaria*, 04.12.2003, no. 39272/98, Judgment, § 166.

¹²⁵ ECtHR, *Z. v. Iceland*, 13.01.2026, no. 3538/21, § 46.

¹²⁶ [2001] 1 SCR 45

¹²⁷ [1992] 1 SCR 452

¹²⁸ Exp: 22-022584-0007-CO, Res. No. 2023-006831.

¹²⁹ See IACtHR, *Angulo Losada v. Bolivia*, Judgment of 18 November 2022, § 98.

¹³⁰ 394 U.S. 557 (1969).

possession with intent to distribute, or to any material depicting minors.¹³¹ Courts have also invalidated overbroad bans on “virtual” depictions lacking actual victimisation.¹³²

c. Public dissemination

93. Courts generally accord States a wider margin to restrict dissemination to the public.

94. In *Germany*, the Federal Court of Justice addressed whether a publisher could rely on the constitutionally guaranteed freedom of art against criminal prosecution for distributing pornographic material. While artistic freedom is broadly protected, the Court clarified that it is not absolute; it must be balanced against other constitutional values, especially the protection of minors. The Court found that criminal laws restricting the dissemination of pornography serve a constitutional purpose, protecting children and young people from harmful influences, and may justifiably limit artistic freedom. The lower court was criticised for failing to properly conduct this balancing, wrongly treating statutory law as automatically overriding the rights protected by the constitution. Ultimately, the Court affirmed that both artistic freedom and the protection of minors are constitutional values requiring careful, case-by-case proportional balancing.¹³³

95. In the *United States*, public dissemination of obscenity is unprotected under the First Amendment where the *Miller* test is satisfied.¹³⁴ Production and distribution may be criminalised, and child pornography is categorically excluded from the scope of protection.¹³⁵

96. In *Hoare v. The United Kingdom*, the European Commission for Human Rights accepted that a conviction for publishing obscene video-cassettes pursued legitimate aims and was proportionate, emphasising (i) the lack of control once the tapes entered circulation and (ii) the applicant’s failure to use official video-certification channels.¹³⁶ In *Laskey and Others v. The United Kingdom*, the ECtHR¹³⁷ questioned whether the sexual activities of the applicants fell entirely within the notion of “private life” in Article 8 in the particular circumstances of the case (relating to a considerable number of people involved in the sadomasochistic activities and the video recordings subsequently distributed among the “members” of the relevant group) but did not examine this point further finding that the criminalisation under challenge was justifiable in any event.

97. In *Müller and Others v. Switzerland*, the Court accepted Switzerland’s assessment that paintings depicting sexuality “in some of its crudest forms” (including bestiality imagery) could “grossly offend” ordinary sensibilities, stressing that the exhibition was open to the general public without age limits.¹³⁸ By contrast, in *Pryanishnikov v. Russia*, the Court required concrete identification of the allegedly harmful content and a proportionate balancing exercise.¹³⁹

3. Online enforcement and platform duties

98. Recent jurisprudence increasingly concerns intermediary obligations, such as notice-and-takedown, age verification, and blocking.

¹³¹ *Osborne v. Ohio*, 495 U.S. 103 (1990).

¹³² *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

¹³³ Federal Court of Justice, 14.07.1955, 1 StR 172/55 (Opus pictorum), paras. 19-22.

¹³⁴ *Miller v. California*, 413 U.S. 15 (1973).

¹³⁵ *New York v. Ferber*, 458 U.S. 747 (1982); *Osborne v. Ohio*, 495 U.S. 103 (1990).

¹³⁶ European Commission of Human Rights, *Hoare v. the United Kingdom*, App. No. 31211/96.

¹³⁷ ECtHR, *Laskey and Others v. The United Kingdom*, 19.02.2007, nos. 21627/93; 21628/93; 21974/93.

¹³⁸ ECtHR, *Müller and Others v. Switzerland*, 24.05.1998, no. 10737/84.

¹³⁹ ECtHR, *Pryanishnikov v. Russia*, 10.09.2015, no. 25047/05. See also discussion above.

99. In *France*, courts have upheld robust yet calibrated child-protection measures against online platforms, while at the same time insisting on respect for principles of legality, necessity, proportionality, and effective remedies. The Constitutional Council struck down overbroad “takedown” schemes lacking prior judicial assessment and imposing criminal penalties and short deadlines,¹⁴⁰ but validated targeted age-verification and DNS blocking with rapid court review and periodic reassessment.¹⁴¹ Applying these standards, the Paris Administrative Court of Appeal rejected Cloudflare’s challenge to ARCOM’s blocking order against a site lacking age verification as proportionate to child protection and compatible with Article 16 EU Charter and Article 10 ECHR;¹⁴² the Council of State refused interim suspension in the *Aylo Freesites* case¹⁴³ and has referred questions on the “country-of-origin” principle to the Court of Justice of the European Union.¹⁴⁴

100. The *Lithuanian* Constitutional Court upheld rules requiring internet service and hosting providers to promptly disable access to illegal or prohibited content upon authority notification, holding that such duties do not violate freedom of information provided they are grounded in law, aim at constitutional values (health, morals, public order), and permit judicial review.¹⁴⁵

101. In the *Republic of Korea*, the Constitutional Court has repeatedly affirmed statutory obligations on online service providers to remove child sexual exploitation materials without delay, reasoning that once such content spreads, preventing further harm becomes difficult; the Court found sanctions against platforms proportionate and necessary to protect children.¹⁴⁶ These rulings indicate that platform owners’ speech or business claims- though recognised - yield to narrowly tailored, legally grounded, and reviewable duties to prevent the circulation of violent or exploitative sexual content.

102. In the *United States*, platform rights could be anchored in the First Amendment. Content-based restrictions must be the least restrictive means of achieving a compelling interest (strict scrutiny). The Supreme Court held that the Child Online Protection Act, which imposed criminal sanctions on web publishers of content “harmful to minors,” was likely unconstitutional because less restrictive alternatives (user-side filters) were more effective and less speech-restrictive.¹⁴⁷ By contrast, the Court upheld filtering requirements for public library internet terminals as a condition of federal funding, emphasising program-definition authority and the availability of discretionary “unblocking” by librarians for lawful purposes.¹⁴⁸

103. The “duties and responsibilities” of internet news portals regarding third-party content differ from those of traditional publishers, and the ECtHR distinguishes them from social media platforms or discussion where third party-comments can be disseminated. The ECtHR has endorsed notice-and-take-down systems as viable, if accompanied by effective procedures allowing for rapid response, but in cases of hate speech or direct threats, states may “impose liability on Internet news portals [...] if they failed to take measures to remove clearly unlawful comments without delay, even without notice”.¹⁴⁹

¹⁴⁰ Décision n° 2020-801 DC, 18 juin 2020.

¹⁴¹ Décision n° 2024-866 DC, 17 mai 2024.

¹⁴² 22/07/2025, n° 25PA02012

¹⁴³ CE, Juge des référés, 17/04/2025, n°503570.

¹⁴⁴ CE Press Release, March 2024; Google Ireland, C-376/22

¹⁴⁵ CC, Case No. 19/04, 19/09/2005.

¹⁴⁶ CC, 2016Hun-Ga15, 28/06/2018; see also 2019Hun-Ba305 for categories of “pornography whose illegality and harmfulness are manifest”.

¹⁴⁷ *Ashcroft v. ACLU*, 542 U.S. 656 (2004)

¹⁴⁸ *U.S. v. American Library Ass’n*, 539 U.S. 194.

¹⁴⁹ ECtHR, *Delfi AS v. Estonia [GC]*, 16.06.2015, no. 64569/09. However, when liability exemptions exceptionally do not apply in the specific circumstances examined by the Court in the case *Delfi AS v. Estonia*, the type and size of the provider may be decisive factors in limiting such liability and avoid

104. On the other hand, authorities intending to block internet sites to prevent unlawful speech, should take into consideration that this can substantially restrict the rights of internet users and have a significant collateral effect. Access to other platforms or social media is not necessarily a valid alternative and it “cannot alleviate” the impact on users even if bypassed.¹⁵⁰ Furthermore, and in different contexts, the ECtHR has confirmed that platforms undoubtedly enjoy freedom of expression rights and that these are engaged by measures seeking to impose penalties for failing to remove content even if that content is unlawful under domestic law.¹⁵¹

4. Other case-law

105. In a recent case against Iceland the Court has confirmed that violence against women, including domestic violence (and including sexual violence), constitutes a form of discrimination which may arise not only from explicit policies of different treatment but also from disproportionately prejudicial effect on women, irrespective of discriminatory intent.¹⁵²

106. In *Velásquez Paiz v. Guatemala*¹⁵³, the IACtHR reaffirmed that States have a due diligence obligation to address gender-based violence and that structural impunity may amount to discrimination. These judgments consolidate the principle that systemic inaction in the face of violence against women engages international responsibility.

107. The Inter-American practice further underscores comprehensive victim-centred reparation and guarantees of non-repetition.

C. Convergence, divergence and balancing methodologies

108. The available jurisprudence reviewed permits only cautious generalisation. Nonetheless, across the jurisdictions reviewed, there is a significant degree of convergence on fundamental rights and freedoms considerations relevant to violent pornography.

1. Convergent and divergent points discussed in the reviewed jurisprudence

109. Some national courts have emphasised that there is no general rule on the relationship between pornography and art: a context-sensitive balancing framework is characteristic. Judicial outcomes turn on artistic or scientific merit, authorial intent, the level of realism, indicators of harm or exploitation, audience characteristics and distribution modality. The threshold for recognising artistic, scientific or cultural value varies.

110. National courts widely recognise that freedom of expression, artistic freedom and private life may legitimately be restricted to protect overriding interests including human dignity, the rights and safety of others, public morals and the particular vulnerability of minors. The interests of minors in being shielded from violent or sexually explicit material routinely justify

placing disproportionate requirements on them (ECtHR, *Pihl v. Sweden* (dec.), 07 February 2017, no. 74742/14, § 31).

¹⁵⁰ Cf. Venice Commission, [CDL-AD\(2026\)008](#), Report on freedom of expression, prohibition of hate speech and promotion of pluralism in the context of electoral campaigns, paras. 66 et subseq.

¹⁵¹ See e.g. ECtHR, *Google LLC and Others v. Russia*, 08.07.2025, no. 37027/22; ECtHR, *Gritsevich and Others v. Russia* (Committee), 22 January 2026, Applications nos. 11146/16 and 23 others, including the applications by *Twitter Inc.* (no. 57131/21, lodged on 18 November 2021) and *Meta Platforms Inc.* (no. 9177/22, lodged on 28 January 2022).

¹⁵² ECtHR, *B.A. v. Iceland*, no. 17006/20, § 84 and subsequent paragraphs concerning the general principles and their application.

¹⁵³ IACtHR, *Velásquez Paiz et al. v. Guatemala*, Judgment of 19 November 2015, Series C No. 307, §§ 169-174.

robust intervention, overriding competing claims of expression or economic freedoms and supporting stringent criminal, administrative and online enforcement measures.

111. This is supported by the case-law of the ECtHR that has weighted the freedom of expression argument against the legitimate interests protected from a perspective of negative obligations and in various contexts considerable weight has been accorded to the protection of morals and rights of other persons. However, judging from the ECtHR case-law discussed, it might seem that individuals could claim stronger protection of their (legitimate) sex-related activities under Article 8 than under the Article 10.

112. While national courts often consider public morals, they differ in the weight accorded to systemic and collective harms violent pornography might present for women. Canadian jurisprudence emphasises the collective risk to women and society from materials that degrade or dehumanise; by contrast, US doctrine traditionally prioritises autonomy and private possession by consenting adults, while excluding CSAM categorically.

113. Jurisdictions diverge regarding whether violent pornography falls within the *scope of protection* afforded to expression, art or private life. Some courts recognise that pornographic material may be “expression” or “art” subject to justification and potentially overridden where harm is demonstrated. Some systems exempt controversial expression where substantial merit is shown. Others apply strict limits, often concluding that violence or degradation outweighs such considerations, particularly where minors may be exposed.

114. With regard to Article 17 ECHR and similar considerations under other international treaties, the ECtHR has assessed so far the cases involving obscene or sexually explicit material under Article 10(2) or Article 8(2);¹⁵⁴ it has so far not relied on Article 17 for such cases.¹⁵⁵ However, in extreme cases, such as where violent pornography is published with an intent to cause harm, whether through deepfakes or otherwise, Article 17 ECHR could provide a further basis for preventing any individual subject to sanction in this regard from invoking the Convention in their defence.

115. Under Article 8 ECHR, the notion of consent limits the freedom to engage in sexual practices for other persons. The Court has acknowledged a positive obligation for the states under Articles 3 and 8 of the Convention to penalise and effectively prosecute any non-consensual sexual act, including in the absence of physical resistance by the victim.¹⁵⁶ For the reviewed national jurisprudence, consent, whether of participants or audiences, does not operate as an absolute defence where depictions cross into serious, real violence or dehumanisation. If national courts prioritise objective harm, the risk of normalising violence or enabling exploitation, and the protection of vulnerable groups, it is often stated that the individual cannot “waive” them.

116. Criminalisation of certain forms of pornographic content is commonly upheld by national courts; legislators retain broad discretion in choice of normative measures provided the legality and proportionality requirements are met. Restrictions are assessed under structured proportionality, notably legality, legitimate aim, necessity in a democratic society and proportionality of the measure, often with a margin of appreciation.

117. The positive obligations in relation to sexual violence and other non-consensual sex-related acts under Articles 3 and 8 ECHR require the establishment of a legislative and

¹⁵⁴ ECtHR, *Handyside v. The United Kingdom*, 07.12.1976, no. 5493/72; ECtHR, *Perrin v. The United Kingdom*, 18 October 2005, no. 5446/03.

¹⁵⁵ ECtHR, *K.U. v. Finland*, 02. 12.2008, no. 2872/02; see also ECtHR, *Delfi AS v. Estonia [GC]*, 16.06.2015, no. 64569/09, § 136.

¹⁵⁶ ECtHR, *M.C. v. Bulgaria*, 04.12 2003, no. 39272/98, § 166.

regulatory framework of protection, the taking of measures to prevent real and immediate risk and conduct of an effective investigation. Acts of sexual nature that reach the threshold of Article 3 or which do not exceed the scope of Article 8 both trigger obligations to provide for criminal responsibility.

118. Regulation of online intermediaries and platforms is heterogeneous. European systems more readily impose pre-emptive duties (age-verification, blocking, delisting, notice-and-action) subject to legality and judicial review; US jurisprudence requires narrow tailoring and less restrictive alternatives, yielding comparatively stronger speech protection for digital distribution.

119. Importantly, the ECtHR has categorised acts of online violence, online harassment and malicious impersonation as forms of violence against women and children,¹⁵⁷ which requires compliance with all the above positive obligations in the situations when the above acts are committed with a sexual connotation online. It would also not be sufficient to limit a state's obligations to the provision of civil law remedies and responsibility of internet platforms like in *Delfi v. Estonia*.¹⁵⁸ Furthermore, the ECtHR has held non-consensual exposure of the most intimate aspects of person's private life to be an "affront to human dignity"¹⁵⁹.

2. Balancing methodologies observed

120. Three balancing methodologies have been observed. *Dignity-based* legal frameworks treat certain depictions as excluded from protection where they are considered to violate or negate human dignity, rendering further balancing unnecessary. *Harm-based frameworks* justify restriction primarily by evidence or strong inference of concrete social or individual harm, with particular attention to gender equality and degradation. A *structured proportionality model* scrutinises legality, legitimacy, necessity and proportionality, often allowing national authorities a margin of appreciation on legislative choices regarding morally sensitive questions and attention to context and alternatives.

121. Across these approaches, protection for sexual expression narrows sharply where it intersects with serious forms of violence and dehumanisation. By contrast, where consensual adult activity is at issue and demonstrable harm is speculative or remote, courts hesitate to validate intrusive criminal measures, reflecting commitments to private autonomy and caution against overreach.

V. Conclusion

122. Despite the increasing societal and legal attention to the effects of "violent" or "extreme" pornography, there remains a notable scarcity of case-law, at both the national, regional and international levels, addressing the intersection of fundamental human rights and freedoms in this context.

123. The cases reviewed reveal a patchwork of balancing mechanisms, with national courts, regional tribunals, and international bodies employing a variety of reasoning frameworks.

124. However, the case-law reviewed also indicates that there is a consensus to uphold criminalisation and robust regulations concerning pornographic content involving real, non-consensual violence, coercion or dehumanisation. Violent pornography raises substantial concerns for human dignity, equality and the rights of women and girls, and engages States' positive obligations to prevent and address gender-based violence, including if committed

¹⁵⁷ ECtHR, *M.S.D. v. Romania*, 03.12.2024, no. 28935/21, § 118.

¹⁵⁸ ECtHR, *K.U. v. Finland*, 02.12.2008, no. 2872/02.

¹⁵⁹ ECtHR, *Khadija Ismayilova v. Azerbaijan*, 10.01.2019, no. 65286/13, 57270/14, § 116.

online. Even more unequivocally, the jurisprudence reviewed supports strict prohibition and criminalisation of Child Sexual Abuse Material, reflecting the paramount importance of protecting minors from sexual exploitation and abuse.

125. The scope and methods of regulation vary across the jurisdictions reviewed, but a common framework of legality, legitimate aims, necessity and proportionality applies. Consent among adults is relevant but does not shield depictions of serious harm or objective dehumanisation, especially when disseminated broadly or accessible to minors. Violent pornography constitutes a structural, societal problem. Legal and policy responses must be gender-sensitive, evidence-based and preventive, integrating education, co- and/or self-regulation and platform due diligence alongside criminal law for the gravest harms.

126. The Venice Commission has reached the following conclusions:

- Clear and foreseeable statutory definitions of violent pornography should be adopted, providing criminal liability for depictions involving realistic violence, coercion, non-consent or severe, objectively established degrading treatment but avoiding vague moral or subjective criteria.
- Beyond definitional clarity, States should adopt comprehensive and coherent legislative frameworks addressing the phenomenon of violent pornography as a whole. Such frameworks should clearly articulate their protective aims, delineate the scope of criminal and non-criminal measures, and provide foreseeable standards for enforcement.
- A gender-sensitive and harm-based analysis should be integrated into public policy, legislation, and the judicial determination of cases involving women portrayed in violent pornography, in order to adequately reflect the structural discrimination and heightened risks of violence faced by women, complying with obligations under the Istanbul Convention and Convention on the Elimination of All Forms of Discrimination against Women, and ensuring policies are education oriented, trauma-informed and victims' rights-compliant.
- Regulation should be proportionate, observing the principle of ultima ratio by reserving criminal law for the gravest forms while using administrative, technical and educational measures such as age verification, content moderation, media literacy and classification, for harmful but not illegal content.
- Protection of minors should be strengthened through robust risk assessment and risk mitigation measures, rapid removal and blocking of harmful content, and proportionate platform or internet service providers' obligations.
- Procedural safeguards should be guaranteed, including judicial review and effective remedies for blocking or takedown orders and platform sanctions, with due-process rights of affected parties.
- Legal frameworks and enforcement practices should be periodically reviewed to assess technological developments (including AI and deepfakes), empirical impacts and cross-border challenges, encouraging research, education and civil-society engagement.
- International cooperation should be enhanced to align standards with Council of Europe instruments, and to engage in cross-border evidence sharing and coordinated enforcement against online dissemination of violent sexual content.

127. The Venice Commission remains at the disposal of the Parliamentary Assembly for further assistance in this matter.