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

REPORT

ON

**FREEDOM OF EXPRESSION, PROHIBITION OF HATE SPEECH AND
PROMOTION OF PLURALISM IN THE CONTEXT OF ELECTORAL
CAMPAIGNS**

**Approved by the Council for Democratic Elections at its 86th meeting
(Venice, 5 March 2026) and adopted by the Venice Commission at its
146th Plenary Session (Venice, 6-7 March 2026)**

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I. Introduction

1. In January 2024, the Parliamentary Assembly of the Council of Europe (PACE) adopted [Resolution 2525 \(2024\)](#), entitled “*The theme of migration and asylum in electoral campaigns and its consequences on the reception of migrants and their rights.*” Building on the draft resolution contained in [Report Doc. 15832](#) of the Committee on Migration, Refugees and Displaced Persons, dated 25 September 2023 and bearing the same title, the Assembly expressed deep concern over the increasing instrumentalisation of migration in electoral contexts.

2. Further to this Resolution, the then-President of the PACE, Mr Theodoros Rousopoulos, by letter of 3 April 2024, invited the Venice Commission and the Council for Democratic Elections of the Council of Europe to consider preparing a preliminary study with a view to drafting a code of conduct for electoral candidates and the media, focusing on combating hate speech from the perspective of non-discrimination, particularly in relation to narratives on migration and asylum. At its 144th meeting, held on 9-10 October 2025, the Venice Commission, on the proposal of the Council for Democratic Elections, decided to prepare a report with a focus on freedom of expression and prohibition of hate speech in a pluralist society in the light of the case law of the European Court of Human Rights (hereinafter, the ECtHR or the Court) and the standards drawn up by Council of Europe bodies, notably Committee of Ministers recommendations.

3. Mr Giovagnoli, Mr Kask, Ms Pabel and Ms Silva Gallinato acted as rapporteurs for this report.

4. This report was drafted on the basis of comments by the rapporteurs. The report was approved by the Council for Democratic Elections at its 86th meeting (Venice, 5 March 2026). Following discussion in the Joint meeting of the Sub-Commissions on Democratic Institutions and Fundamental Rights, it was adopted by the Venice Commission at its 146th Plenary Session (Venice, 6-7 March 2026).

II. Background and scope of the report

A. Background

5. The issue of migration is one of the main political challenges for contemporary democracies and has thus become one of the central and most controversial topics of election campaigns in Europe and beyond. Election campaigns are at the core of democratic processes, aimed at the formation of representative bodies in conformity with the principles of universal, equal and free suffrage. It is thus essential to democratic elections and democracy itself that political debates during electoral campaigns are conducted in conformity with international standards, especially with regards to hate speech and disinformation. Pursuant to this requirement, considerations of this report concerning freedom of expression focus on political debates on migration and asylum but are equally applicable *mutatis mutandis* to any other groups within the population.

6. In the contemporary political landscape, migrants, asylum seekers and refugees are often represented and instrumentalised in a way that distorts, stigmatises and dehumanises them, reducing them to instruments of political struggle, in particular during electoral campaigns. As defined by the Committee of Ministers of the Council of Europe, “hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation”.¹ As the definition of hate speech may differ from one jurisdiction to another and be at times more restrictive, designating only the kind of speech that leads to violent behaviour, the report will refer to “hate speech or other discriminatory expressions” in order to cover the concept as defined by the Committee of Ministers. As recent data show, in various national contexts, waves of hostile

¹ [Recommendation \(2022\)16](#) of the Committee of Ministers to member States on combating hate speech, para. 2.

discourse against migrants, asylum seekers and refugees have preceded aggression and other serious violations, confirming the empirical link between discriminatory rhetoric and prejudice translated into concrete acts.²

7. This phenomenon has become increasingly important internationally and is the subject of particular attention by PACE, which has expressed great concern about its intensification and related instances of hate speech in the political context with direct reference to migration.³ Several reports and other documents drawn up by the PACE⁴ have increasingly addressed the issue of the instrumentalisation of migration and the right to asylum in election campaigns, highlighting the resulting risks to democratic cohesion and the protection of fundamental rights. These documents raise awareness that there is a widespread tendency to present migrants and refugees exclusively as threats to security, economic stability or cultural identity, through stigmatising and dehumanising language which is likely to reinforce discrimination against people belonging to these groups. Furthermore, the work of the PACE stresses that the issue of migration should not be limited to security and emergency alone, but rather be treated in an objective and pluralistic manner, in order to allow for its comprehensive understanding.⁵ Particular concern was expressed with regard to the spread of “hate speech” in the political sphere.⁶ PACE notes that this phenomenon has a twofold corrosive effect: on the one hand, it undermines social cohesion and legitimises systemic forms of intolerance; on the other hand, it makes political debate less inclusive and pluralistic, limiting the public space of those who publicly defend migrants and making civil society actors more vulnerable.⁷

B. Scope of the present report

8. The main issues to be addressed are freedom of expression and its possible limitations, freedom of voters to form an opinion, and the prohibition of hate speech. The present report aims at addressing ways of reconciling rather than opposing them.

9. Election campaigns represent an essential forum for the exercise of fundamental rights – such as freedom of expression (Article 10 of the European Convention on Human Rights (ECHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR)) and freedom of association (Article 11 ECHR, Article 22 ICCPR). The latter are preconditions for ensuring the

² Council of Europe Commissioner for Human Rights, 16 June 2025, <https://www.coe.int/en/web/commissioner/-/attacks-on-the-hr-of-migrants-put-all-our-rights-at-risk>; Mixed Migration Centre, Mixed Migration Review (MMR) 2024, e.g. p. 7.

³ “The theme of migration and asylum has come to the fore in recent years as one of the key issues shaping public debate in numerous election campaigns. Its often partial and partisan treatment by the media and political parties paves the way for hate speech as the political offer has shrunk across the party spectrum, frequently undermining the rights of the individuals concerned and those who defend them. Yet there is no evidence that this trend is indicative of public support for restrictive policies on migration and asylum. This phenomenon intensifies and is accompanied by an escalation of racist and xenophobic statements that are damaging not only to migrants’ rights but also to social cohesion and democratic security in Europe. While criticism or opposition to migration and asylum policies can be expressed in a democracy, hate speech and discriminatory measures cannot constitute a political programme complying with the Council of Europe’s principles and standards” - [PACE Doc. 15832](#) - Summary.

⁴ Report [Doc. 15832 \(2023\)](#), [Doc. 16195 \(2024\)](#) “Saving the lives of migrants at sea and protecting their human rights” and Resolutions [2502 \(2023\)](#) “Integration of migrants and refugees: benefits for all parties involved”, [2525 \(2024\)](#), *op. cit.*, and [2569 \(2024\)](#) “Missing migrants, refugees and asylum seekers – A call to clarify their fate”.

⁵ “The Assembly recalls that the theme of migration and asylum cannot be limited to security matters and urgently calls politicians and the media to weigh up the consequences that such restricted views may bring to social cohesion and public order” - [PACE Doc. 15832](#), para. 4.

⁶ “It firmly underlines however that hate speech and discriminatory measures cannot be part of a political programme which meets the Council of Europe’s principles and standards and calls on governments of member States as well as key actors in the shaping and dissemination of electoral propaganda to implement Recommendation CM/Rec(2022)16 of the Committee of Ministers on combating hate speech” - [PACE Doc. 15832](#), para. 3.

⁷ “The consequence of vehement election campaigning on the theme of asylum may also take the form of restricted space for civil society and even the criminalisation of organisations and individuals promoting the reception and the rights of migrants, including asylum seekers and refugees.” PACE [Doc. 15832](#), para. 48.

right to political participation (Article 3 Protocol 1 ECHR, Article 25 ICCPR).⁸ The first part of the analysis will examine the extent to which freedom of expression rights are engaged or may be restricted in relation to expression which may be characterised as hostile to migrants, asylum seekers and refugees having regard, in particular, to Article 10, Article 8 and Article 17 of the ECHR.

10. Consideration will also be given to positive obligations. States have a fundamental obligation to protect and promote the exercise of the right to freedom of expression and may only apply limitations when they meet the strict conditions of legality, necessity and legitimacy. At the same time, States have obligations to prohibit hate speech that constitutes incitement to discrimination, hostility or violence under international treaties: see the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (Article 4) and the ICCPR (Article 20(2)), both of which stipulate that any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence must be prohibited by law.

11. The report also addresses international standards applicable to elections. These are primarily laid down in Article 3 Protocol 1 ECHR and in Article 25 ICCPR.

12. As underlined by the Court, free elections and freedom of expression, including freedom of political debate, are the foundations of any democratic system. Article 3 Protocol 1 ECHR implies subjective rights, including the right to vote and to stand for election and, once elected, to exercise one's mandate. The rights guaranteed by Article 3 of Protocol No. 1 to the Convention are not absolute. According to the Court, there is scope for "implicit limitations", and the Contracting States have a wide margin of appreciation in this regard. However, the Court must ensure that the restrictions imposed on the exercise of the rights arising from this article do not reduce them to the point of affecting their very substance and depriving them of their effectiveness, that they pursue a legitimate aim and that the means employed are not disproportionate. The concept of "implicit limitation" means that the traditional criteria of "necessity" or "compelling social need" which the Court uses when examining the application of Articles 8 to 11 of the Convention are not applied in cases relating to Article 3 of Protocol No. 1. Instead, the Court first examines whether there has been arbitrary treatment or a lack of proportionality. It then examines whether the restriction constituted an unjustified interference with the free expression of the opinion of the people.⁹

13. While Article 25 ICCPR has been developed in General Comment No. 25 of the UN Human Rights Committee, the Venice Commission has drafted the Code of good practice in electoral matters,¹⁰ which is the reference document of the Council of Europe in the electoral field. This Code details the underlying principles of Europe's electoral heritage (universal, free, equal, secret and direct suffrage) as well as the conditions for implementing these principles (respect for fundamental rights, stability of electoral law and adequate procedural guarantees). These principles, which are also proclaimed by the OSCE Copenhagen document,¹¹ apply to the whole electoral process, in particular to the pre-election stage including electoral campaigns. This is in particular the case of free suffrage, including freedom of voters to form an opinion,¹² which can be infringed not only by the state, but also by individuals; while equal suffrage includes equality of opportunity for candidates.¹³ Both principles aim to ensure a level-playing field for all electoral competitors, including the requirement of informational neutrality by the State.

⁸ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, II.1.

⁹ *Sanchez i Picanyol and others v. Spain*, §§ 213 et seq., nos. 25608/20 and 2 others, 5 November 2025, and references.

¹⁰ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#).

¹¹ Document of the Copenhagen meeting of the Conference on the human dimension of the Conference on Security and Co-operation in Europe (CSCE), 29 June 1990, <https://odhr.osce.org/sites/default/files/f/documents/9/c/14304.pdf>.

¹² [CDL-AD\(2002\)023rev2-cor](#), I.3.1.

¹³ *Ibid.*, I.2.3.

14. The level-playing field is particularly threatened by “information disorder”:¹⁴ disinformation,¹⁵ misinformation,¹⁶ and mal-information.¹⁷ These are not new issues, but the developments of social media, digital technologies and artificial intelligence have dramatically increased their impact, in particular during electoral campaigns.

15. While the first part of the analysis will focus on the restrictions to freedom of expression and means to combat hate speech and other discriminatory expression, the second part of the analysis will examine appropriate means to counter information disorder undermining the freedom of voters to form an opinion and equality of opportunity.

16. The Venice Commission also emphasises the time sensitivity of responding to issues of this kind during election campaigns and its exacerbation due to the enhanced speed and outreach of the new media and related technologies. In this context, however, the need to ensure a fast and effective response should not override important procedural guarantees: according to the Code of good practice in electoral matters, an impartial body must be in charge of applying electoral law - including the rules on campaigns – and, where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.¹⁸ Moreover, an appeal should be possible to a body which must have authority in particular over such matters as proper observance of election campaign rules – including respect for the freedom of speech and free campaigning.¹⁹ These institutional mechanisms protect against the abuse of measures aimed at combating hate speech and guarantee a non-biased application of these norms. Such an institutional framework has to guarantee that individual politicians or their parties cannot silence their opponents merely by making allegations that they have engaged in hate speech.

III. Analysis

A. Freedom of expression in electoral campaigns: exclusion, protection and restrictions

1. Exclusion from protection: prohibition of abuse of rights (Article 17 ECHR)

17. Article 17 ECHR on the prohibition of abuse of rights provides: “Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.

18. Article 17 is only applicable on an exceptional basis and in extreme cases. In cases concerning Article 10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this article from its real purpose by employing the right

¹⁴ Venice Commission, [CDL-AD\(2025\)027](#), Republic of Moldova - Opinion on the legislative reforms on mass media regulation: the draft law on mass media, the draft law amending the audiovisual media services code, and the draft law amending the law on advertising, para. 65, and references.

¹⁵ “Disinformation” refers to verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public, as defined in Recommendation [CM/Rec\(2022\)12](#) on electoral communication and media coverage of election campaigns, and Recommendation [CM/Rec\(2022\)11](#) on principles for media and communication governance.

¹⁶ “Misinformation” refers to verifiably false, inaccurate or misleading information disseminated without an intention to mislead, cause harm, or pursue economic or political gain; users who share misinformation generally believe it to be true. See [Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions](#).

¹⁷ “Mal-information is when genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere.” The report on [“Information Disorder: Toward an interdisciplinary framework for research and policy making”](#).

¹⁸ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), II.3.1.a-b.

¹⁹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), II.3.3.d.

to freedom of expression for ends clearly contrary to the values of the Convention.²⁰ That is, to incite hatred towards individuals or groups of individuals, and not to take a position on issues that are the subject of social and political debate. The case law of the Strasbourg Court proves that it is not sufficient for the application of Article 17 that the relevant state is considering an act or activity to be a threat to the constitutional order. In a democratic society it must remain possible to promote a constitutional change, even a radical one, if the promoter is not acting by means of violence. This is especially important when it comes to political parties and candidates competing in an electoral campaign. As the Court held in *Bradshaw and Others v. the United Kingdom*, “Every time a State intends to rely on the principle of ‘a democracy capable of defending itself’ in order to justify interference with individual rights, it must carefully evaluate the scope and consequences of the measure under consideration, to ensure that a balance is achieved between the requirements of defending democratic society and protecting individual rights.”²¹ This is without prejudice of the application of Article 10(2) of the Convention.

19. In the context of election campaigns, disinformation in respect of migration and asylum can in fact have the effect of encouraging more or less explicit forms of incitement to hatred, especially when political communication is based on ethnic, cultural or religious generalisation attributing negative characteristics to the entire group of migrants or refugees. This can raise issues under Article 17 ECHR.

20. Article 17 of the Convention is sometimes associated with the idea that a democratic system may need to safeguard itself against conduct that seeks to undermine the rights and freedoms it protects.²² The concept means that the exercise of individual freedoms can be limited if it is used to undermine or even destroy the democratic process, the rule of law and the respective institutions, as well as the equal exercise of human rights by others. Therefore, the state may limit the exercise of human rights, including the freedom of speech, the freedom of assembly, the freedom of association and other freedoms, in order to protect democratic institutions and the democratic process, the rule of law and the proper exercise of human rights. In the Strasbourg case law, the concept of “democracy capable of defending itself” has been relied upon in particular when dealing with the banning of political parties²³ but also in cases where a member state to the Convention restricted the exercise of freedom of expression by an individual.²⁴

21. According to the Court’s case law, Article 17 of the Convention may apply to the State itself, a group or an individual.²⁵ With respect to individuals, Article 17 of the Convention is to make it impossible for them to derive from the Convention a right to engage in any act aimed at destroying any of the rights and freedoms set forth in the Convention.²⁶

22. Article 17 of the Convention prevents applicants from relying on the Convention in order, for example, to publicise or promote Nazi racist propaganda, anti-Semitism, advocacy of genocide, or vehement attacks on a religious or ethnic group by associating it with criminality or terrorism, promoting and/or justifying acts amounting to or characterised by hatred, violence, xenophobia and racial discrimination, Islamophobia, terrorism and war crimes, promoting a war and/or a totalitarian regime, totalitarian ideology and other political ideas incompatible with democracy, as

²⁰ *Perinçek v. Switzerland* [GC], § 114, no. 27510/08, 15 October 2015; *Zemmour v. France*, § 26, no. 63539/19, 20 December 2023.

²¹ *Bradshaw and Others v. the United Kingdom*, § 115, no. 15653/22, 22 July 2025; *Ždanoka v. Latvia*, § 110, no. 58278/00, 16 March 2006.

²² *Ždanoka v. Latvia*, §§ 99-100, no. 58278/00, 16 March 2006; *Ayoub and Others v. France*, § 138, nos. 77400/14, and 2 others, 8 October 2020; *Perinçek v. Switzerland* [GC], § 242, no. 27510/08, 15 October 2015. For the same concept under Article 10, see *Vogt v. Germany*, §§ 51, 59, no. 17851/91, 19 October 1992; *Erdel v. Germany* (dec.), no. 30067/04, 13 February 2007.

²³ European Commission of Human Rights, *Glimmerveen and Hagenbeek v. the Netherlands* (dec.), nos. 8348/78 and 8406/78, 11 October 1979, DR 18, § 187. Or under Article 10, see *Refah Partisi (The Welfare Party and Others) v. Turkey*, § 99, nos. 41340/98 and 3 others, 13 February 2003.

²⁴ *Molnar v. Romania* (dec.), § 23, no. 16637/06, 23 October 2012.

²⁵ *Birsan v. Romania* (dec.), § 68, no. 79917/13, 2 February 2016.

²⁶ ECtHR Guide on Article 17 of the Convention (31.8.2025), para. 18.

well as negation and revision of clearly established historical facts, such as the Holocaust, or contempt of victims of the Holocaust.²⁷ An illustrative example is *Norwood v. the United Kingdom*: the applicant, a member of a far-right party, displayed in the window of his house a poster showing the Twin Towers in flames alongside the slogan “Islam out of Britain. Protect the British people,” shortly after the terrorist attacks on the United States of 11 September 2001. The Court characterised the message as a sweeping and vehement attack against all Muslims, associating them collectively with a terrorist act, something which was “incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and non-discrimination.” Consequently, the Court applied Article 17 and concluded that such act “did not, therefore, enjoy the protection of Articles 10 or 14”.²⁸ The Court has followed this line of jurisprudence in numerous cases of historical “negationism”²⁹ as well as in serious cases of direct incitement to racist, religious, or gender-based violence.³⁰ In this respect, the Venice Commission considered that “[h]ate speech is in contradiction with the Convention’s underlying values, notably tolerance, social peace and non-discrimination and, by virtue of Article 17 ECHR, may not benefit from the protection afforded by Article 10 ECHR”.³¹

23. In the assessment of whether an individual has pursued any of the aims mentioned above and prohibited by Article 17, the content of the speech is of utmost relevance. Nevertheless, the “main context”, “general tone” or “general tenor” of his or her acts has to be recognised, too. Location and timing of the impugned conduct play an important role in this respect.³² When applying Article 17, the Court does not necessarily weigh necessity or proportionality; rather, it holds that the expression in question is simply not a legitimate exercise of freedom of expression, but an abuse of rights excluded from protection from the outset.

2. Protection of free expression under Article 10(1) ECHR

24. Article 10 ECHR which is a binding instrument for all member States of the Council of Europe, provides: “*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.*”³³ These provisions correspond to the essential content of paragraphs 1 and 2 of Article 19 ICCPR, under which: “1. *Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice*”.

25. According to the Court, freedom of expression constitutes one of the essential foundations of a pluralistic democratic society and a primary condition for the development of both society and the individual.³⁴ Freedom of expression and free elections, particularly freedom of political debate, together form the bedrock of any democratic system.³⁵ Freedom of expression thus

²⁷ *Ibid.*, para. 29 with references to the case law.

²⁸ *Norwood v. the United Kingdom* (dec.), no. 1/03, 16 November 2004.

²⁹ E.g., *Garaudy v. France* (dec.), no. 65831/01, 24 June 2003; *Williamson v. Germany* (dec.); no. 64496/17, 8 January 2019; *Pastörs v. Germany* (dec.), no. 55225/14, 3 October 2019, on Holocaust denial.

³⁰ For example, *M'Bala v. France*, no. 25239/13, 20 October 2015 (public insults directed at persons of Jewish origin); *Pavel Ivanov v. Russia* (dec.), no. 35222/040, 20 February 2007 (incitement to hatred against Jews through a social medium); *W.P. and Others v. Poland* (dec.), no. 42264/98, 2 September 2004 (creation of an anti-Semitic association); *Belkacem v. Belgium*, no. 34367/14, 27 June 2017 (incitement to discrimination and hatred through videos targeting non-Muslim groups); *ROJ TV A/S v. Denmark* (dec.), no. 24683/14, 17 April 2018 (promotion of a terrorist organisation); *Lenis v. Greece* (dec.), no. 47833/20, 27 June 2023 (incitement to homophobic hatred via a blog).

³¹ Venice Commission, [CDL-AD\(2013\)024](#), Opinion on the Legislation pertaining to the protection against defamation of the Republic of Azerbaijan, para. 42, and reference.

³² See Guide on Article 17 of the Convention (31.8.2025) paras 37 et seq. with references to the case law.

³³ See also Article 11 of the Charter of Fundamental Rights of the European Union.

³⁴ *Sanchez v. France* [GC], § 145, no. 45581/15, 15 May 2023.

³⁵ *Bowman v. the United Kingdom*, § 42, *Reports of Judgments and Decisions* 1998-I.

constitutes at the same time an individual right and a precondition for a functioning democracy. The key importance of freedom of expression as one of the preconditions for a functioning democracy is such that the genuine, effective exercise of this freedom is not dependent merely on the State's duty not to interfere, but may call for positive measures of protection, even in the sphere of relations between individuals.³⁶ In particular, the positive obligations under Article 10 of the Convention require States to create a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear.³⁷

26. Reiterating that free discussion of political issues is fundamental to democracy, the Court has developed doctrines such as the "privileged position" of political speech, holding that there is "little scope" for restricting political expression on matters of public interest under Article 10 ECHR.³⁸ This protection extends to electoral campaigns: in principle, during electoral periods the free circulation of information and ideas on issues of public concern must be ensured, even if they are controversial or partly inaccurate. For instance, in the *Handyside* judgment, the Court stated that freedom of expression applies not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population".³⁹ Likewise, in *Castells v. Spain* the Court upheld the right of an opposition senator to sharply criticise the government's inaction against terrorism, emphasising that public authorities must tolerate especially rigorous scrutiny and vehement criticism in the political-electoral context, since politicians – and particularly governments – voluntarily expose themselves to broader public examination.⁴⁰

27. In pluralist democracies, political parties and their members are fully entitled to freely convey their ideas and proposals to citizens, notably on sensitive and important issues such as migration and the right to asylum, in order to allow the formation of an opinion on this issue for the free and informed exercise of their vote. Similarly, in compliance with national and international rules, it is entirely legitimate for political parties to propose to citizens the solutions they deem appropriate to effectively regulate these complex phenomena.

28. Freedom of expression also protects the freedom to receive information and ideas and the freedom to communicate them. This freedom implies that the protection referred to in Article 10 of the ECHR is extended to all means of expression and transmission of ideas and information, all physical or electronic media, internet sites and portals, radio and television media.

29. Election campaigns constitute a moment of maximum expression of democratic pluralism and political participation, in which the various institutional and party actors express proposals, values and priorities for action. By their very nature, election campaigns represent the privileged context of political communication and the formation of public opinion. It is in this forum that policy proposals are made, and the priorities of the competing political forces are defined. As reminded by the Code of good practice in electoral matters, "[d]emocratic elections are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of circulation inside the country, freedom of assembly and freedom of association for political purposes, including the creation of political parties".⁴¹ The 1990 OSCE Copenhagen Document also proclaims the necessity for full respect of fundamental freedoms.

³⁶ *Palomo Sánchez and Others v. Spain* [GC], § 59, nos. 28955/06 and 3 others, 12 September 2011, with further references.

³⁷ *Dink v. Turkey*, § 137, nos. 2668/07 and 4 others, 14 September 2010.

³⁸ *Lingens v. Austria*, §§ 38 and 41, Series A no. 103, 8 July 1986 and *Sürek v. Turkey (no. 1)* [GC], § 61, no. 26682/95, ECHR 1999-IV.

³⁹ *Handyside v. the United Kingdom*, § 49, no. 5493/72, 7 December 1976.

⁴⁰ *Castells v. Spain*, § 46, no. 11798/85, 23 April 1992. See also *Lehideux and Isorni v. France*, no. 24662/94, 23 September 1988; *Haes and Gijssels v. Belgium*, no. 19983/92 24 February 1997; *Sürek (No. 1) v. Turkey*, no. 26682/95, 8 July 1999; *Öztürk v. Turkey*, no. 22479/93, 29 September 1999.

⁴¹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, II.1.a.

30. In the light of the above, freedom of expression enjoys wide recognition in the European system, particularly in the context of political and electoral debate. However, this recognition, although vital for the democratic process, cannot be considered absolute. When electoral discourse includes expressions, contributions or narratives which, by their content and context, may assume a discriminatory, stigmatising or dehumanising character toward a person or a group of persons – such as migrants, asylum seekers or refugees – it may interfere with the rights and freedoms of others or negatively affect the democratic function of public debate itself. In such circumstances, a fair balance must be struck in order to safeguard human rights and the proper functioning and integrity of the democratic process. In electoral discourse, migrants, asylum seekers and refugees are especially vulnerable, as they often do not possess electoral rights and do not participate in the campaigning on equal terms.

3. Restrictions to freedom of expression under Article 10(2) ECHR

31. Article 10(2) of the ECHR provides that freedom of expression may be subject to restrictions or penalties, provided they are “prescribed by law” and “necessary in a democratic society” for the pursuit of certain legitimate aims, including the protection of public order, national security, morals, or the reputation and rights of others.⁴²

32. The Court has consistently held there is little scope under Article 10(2) of the Convention for restrictions on political speech or on the debate of questions of public interest.⁴³ However, while legitimate criticism of migration and asylum policies remains fully protected, the stigmatisation and public denigration of migrants, refugees and asylum seekers as individuals or as a group can be legitimately restricted by the state.⁴⁴ In addition, such statements inciting hatred⁴⁵ can also affect fundamental rights, namely those of the targeted persons or group(s), which the state may have the positive obligation to protect under Article 8 ECHR.⁴⁶ Therefore, they raise an issue of compatibility and balancing with other fundamental rights. Moreover, the Venice Commission reminds that electoral campaigns are submitted by national legislation to specific rules which impact freedom of expression and that the Council of Europe has adopted recommendations focusing on such campaigns.⁴⁷

33. The first requirement of Article 10(2) ECHR, namely the existence of a legal basis, has traditionally been broadly understood, in the sense that State interference relevant to the Court’s review could derive from any form of law, written or unwritten, and from any act of public authorities based on it, including established case law.⁴⁸

34. The second stage of the Court’s review consists of the so-called legitimacy test; the interference must pursue one of the legitimate objectives set out in Article 10(2) of the ECHR. The list of legitimate objectives justifying a limitation of freedom of expression is exhaustive, and while the scope of the rights protected by the Convention must be interpreted broadly, the

⁴² III.A.2. See ECtHR Guide on Article 10 of the Convention (31.8.2025), paras 63 et seq., with references to the case-law.

⁴³ *Castells v. Spain*, § 43, no. 11798/85, 23 April 1992; *Wingrove v. the United Kingdom*, § 58, no. 17419/90, 25 November 1996.

⁴⁴ *Zemmour v. France*, § 54, no. 63539/19, 20 December 2023; *Atamanchuk v. Russia*, § 52, no. 4493/11, 11 February 2020; *Le Pen v. France (dec. no. 2)*, §§ 32-35, no. 45416/16, 28 February 2017.

⁴⁵ “*Inciting hatred does not necessarily involve an explicit call for an act of violence, or other criminal acts. Attacks on persons committed by insulting, holding up to ridicule or slandering specific groups of the population can be sufficient for the authorities to favour combating xenophobic or otherwise discriminatory speech in the face of freedom of expression exercised in an irresponsible manner*”, *Atamanchuk v. Russia*, § 52, *ibid.*

⁴⁶ For individuals, see *Atamanchuk v. Russia*, § 70, *ibid.*; for groups, see *Király and Dömötör v. Hungary*, §§ 73-76, no. 10851/13, 17 January 2017.

⁴⁷ See the recommendations of the Committee of Ministers No. [R \(99\)15](#) and [CM/Rec\(2007\)15](#) on measures concerning media coverage of election campaigns, as well as [CM/Rec\(2022\)16](#) on combating hate speech, para. 29. See also Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters.

⁴⁸ *Perinçek v. Switzerland [GC]*, § 131, no. 27510/08, 15 October 2015; *Sanchez v. France [GC]*, §§ 125-126, no. 45581/15, 15 May 2023. Also online, *RFE/RL Inc. and Others v. Azerbaijan*, 2024, § 108; *Google LLC and Others v. Russia*, 2025, §§ 75-80.

limitations must be interpreted restrictively. Article 10(2) ECHR expressly mentions as possible legitimate aims for restrictions e.g. the prevention of disorder and crime, as well as the protection of the reputation and rights of others. Moreover, the Court has stated that human dignity – the equal dignity of all human beings –⁴⁹ constitutes one of the foundations of a democratic and pluralistic society.⁵⁰ The use of dehumanising rhetoric towards migrants, asylum seekers or refugees, including by journalists or politicians, necessarily raises significant issues in terms of compatibility with the above-mentioned principle.⁵¹

35. Measures may therefore be taken to pursue the aim of preventing the dissemination of discourse that, although potentially engaging the right to freedom of expression, stigmatises or dehumanises migrants, asylum seekers or refugees, and unduly fuels hatred or discrimination, including through representations that significantly distort their situation in a manner that may harm their dignity or rights.⁵² This does not affect legitimate political debate on the social or cultural impact of migration and asylum policies, and, more generally, the protection afforded to divergent or controversial political views on migration and asylum, which remain fully protected under Article 10 ECHR, subject to Article 10(2).

36. The Court's most thorough review concerns the third requirement, that is proportionality of the restrictions on freedom of expression in relation to the legitimate objectives pursued. In this regard, the *Handyside* case⁵³ is of particular note. In that case the Court developed the criterion of the "double margin of appreciation", according to which the individual State is granted a certain margin of appreciation in assessing the necessity of measures restricting freedoms that the Convention does not protect unconditionally (such as freedom of expression), while the Court is responsible for a further assessment as to the proportionality of the restrictive measures in relation to the objective pursued.

37. When examining whether restrictions to freedom of expression are in conformity with the principle of proportionality, the Court undertakes a case-by-case balancing exercise, assessing the content, context, author's intent, scope of the message, and severity of the sanction, among other factors. States enjoy a margin of appreciation in assessing the need to limit freedom of expression, though the Court exercises European supervision to ensure that restrictions genuinely respond to a "pressing social need" and are proportionate.⁵⁴ In order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the freedom of expression. This approach has led, in several instances, the Court to consider deprivation of liberty for defamation⁵⁵ or other forms of expression going against the law⁵⁶ as disproportionate.

38. However, and in addition to the safeguard provided by Article 17 ECHR addressed above, while freedom of expression is the starting point, and its legitimate restriction must be

⁴⁹ Universal Declaration of Human Rights (UDHR), Article 1: "*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*" Charter of Fundamental Rights of the European Union, Article 1: "*Human dignity is inviolable. It must be respected and protected.*" International Covenant on Civil and Political Rights (ICCPR), Preamble: "*Recognizing that these rights derive from the inherent dignity of the human person.*" See also ECtHR – "[r]espect for human dignity forms part of the very essence of the Convention" - *Svinarenko and Slyadnev v. Russia* [GC], § 118, nos. 32541/08 and 43441/08, 17 July 2014. See also *Tyrer v. the United Kingdom*, § 33, no. 5856/72, 25 April 1978.

⁵⁰ *Erbakan v. Turkey*, § 57, no. 59405/00, 6 July 2006.

⁵¹ *Budinova and Chaprazov v. Bulgaria*, § 90, no. 12567/13, 16 February 2021; *Zemmour v. France*, § 60, no. 63539/19, 20 December 2023.

⁵² Cf. Venice Commission, [CDL-AD\(2025\)027](#), Republic of Moldova - Opinion on the legislative reforms on mass media regulation: the draft law on mass media, the draft law amending the audiovisual media services code, and the draft law amending the law on advertising, para. 59; [CDL-AD\(2022\)026](#), Republic of Moldova - Opinion on amendments to the Audiovisual Media Services Code and to some Normative Acts including the ban on symbols associated with and used in military aggression actions, paras 97-100.

⁵³ *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976.

⁵⁴ ECtHR Guide on Article 10 of the Convention (31.8.2025), paras 100 et seq., with references to the case-law.

⁵⁵ *Amorim Giestas and Jesus Costa Bordalo v. Portugal*, § 36, no. 37840/10, 3 April 2014.

⁵⁶ *Mătășaru v. the Republic of Moldova*, § 36, nos. 69714/16 and 71685/16, 15 January 2019.

proportionate, the Court has made clear that there is a threshold beyond which the expression of certain opinions, notably hate speech, must be forbidden and may result in a criminal sanction.⁵⁷

39. An analysis of the case law shows that the Court has given broad and thorough protection to so-called political speech, which protection, however, is gradually reduced as the form of expression departs from political speech or speech of distinctly public interest. It is precisely with respect to political speech, which usually goes hand in hand with the protection of the press and, nowadays, the new media, that restrictions and sanctions are only permitted under specific circumstances.

40. During electoral campaigns, the line between factual assertions and value judgments often becomes blurred. Many statements by candidates, even if debatable or exaggerated, fall within the scope of legitimate political debate. This sets a high threshold against State restrictions on electoral discourse, even where misleading information is involved, unless exceptionally compelling reasons are present.

41. In the context of electoral campaigns, the use of expressions or narratives that unduly target migrants, asylum seekers or refugees, as individuals or as groups - including through stigmatising or discriminatory portrayals — raises the issue not only of balancing, on the one hand, the preservation of pluralism of political opinions and, on the other hand, the fundamental rights of others, but also with respect to the integrity of the democratic and electoral process (Article 3 Protocol 1 ECHR). At the same time, safeguarding electoral integrity requires ensuring a genuinely pluralistic political debate. Political discourse has the ability to shape collective emotions and perceptions and to influence how social groups are viewed, which may, in certain circumstances, generate discriminatory behaviour. Given their substantial influence, political actors therefore bear heightened responsibilities when engaging in public debate. When using new media for the political discourse these responsibilities should take the far-reaching, multiplying and non-reversible effect of the internet⁵⁸ into account. The “Court has found that it is crucial for politicians, when expressing themselves in public, to avoid comments that might foster intolerance [...], and that they should also be particularly careful to defend democracy and its principles, their ultimate aim being to govern [...]”. In particular, to foster the exclusion of foreigners constitutes a fundamental attack on individual rights, and everyone – politicians included – should exercise particular caution in discussing such matters [...]. Consequently, remarks capable of arousing a feeling of rejection and hostility towards a community fall outside the protection guaranteed by Article 10.⁵⁹ The Court has recognised that politicians are subject to special “duties and responsibilities” under Article 10(2) ECHR,⁶⁰ taking into account that messages by politicians can amplify the impact of the message and thus increase the risk of hateful consequences.

42. The exercise of the right to criticise and oppose migration and asylum policies is absolutely legitimate in the electoral context, in the broadest democratic spirit. However, communication dynamics can foster, through discriminatory representations, a potential risk of imbalance between the right of parties and candidates to communicate political agendas and the right of individuals targeted by the speech not to suffer discrimination, vilification or degradation, detrimental to their dignity. At the same time, these dynamics also affect voters and their ability to form an opinion freely on phenomena that are particularly felt but also structurally differentiated and complex, thus also affecting the integrity of the electoral process (Article 3 Protocol 1 ECHR). When it comes to matters of general interest, the state has a certain margin of appreciation to adopt measures that facilitate political debate in all aspects, and the expression of all points of view and exchanges, while ensuring protection of all groups and individuals from discrimination.

⁵⁷ *Erbakan v. Turkey*, *ibid.*, § 56, *Savva Terentyev v. Russia*, § 65, no. 10692/09, 28 August 2018.

⁵⁸ *Ibid.*, §§ 161-162. See also *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018, and *Savcı Çengel v. Turkey* (dec.), no. 30697/19, § 35, 18 May 2021.

⁵⁹ *Sanchez v. France [GC]*, *ibid.*, § 150.

⁶⁰ *Ibid.*, § 187; however, politicians have also rights attached to their statute (§ 188).

Measures taken by the state should always respect the principle of proportionality. For example, broadly criminalising the dissemination of “false information” in electoral campaigns would go against the principle of proportionality, as there is a risk that governments may misuse such tools to silence their opponents or to suppress uncomfortable discussions on migration and asylum.

43. When assessing what measures could be taken to regulate this matter, two key factors should be taken into account in the context of elections. The first concerns the inherent time-constraint of the electoral process: campaigns are limited to a fixed and relatively short duration. The second pertains to the extensive reach of political speech during this period, particularly statements made by politicians and public figures. These factors are further amplified by the pervasive use of new media and the rapid evolution of technologies, including artificial intelligence, which allow messages to circulate instantly and widely. Therefore, it is imperative that measures to safeguard electoral integrity are designed to respond swiftly; delayed interventions may fail to mitigate the potential harms introduced by disinformation or hate speech. The second part of the report will focus on the challenges related to information disorder and other measures which can be taken in this respect.

44. In sum, the assessment of limits to freedom of expression under the Convention calls for a careful and context-sensitive evaluation. Democratic pluralism requires that the electoral debate remains free, open and robust, allowing political actors and the media to advance divergent, critical or even harsh views on migration and asylum related public policies. At the same time, the Convention framework recognises that certain forms of expression may fall outside the scope of protected political debate, for example where they seriously affect the dignity or rights of migrants, asylum seekers or refugees, or undermine the values on which the Convention system is based. In specific situations, the state may be under the positive obligation to take protective measures to ban discriminatory statements, in other circumstances it may enjoy a certain margin of appreciation, in a logic of reasoned balancing of potentially conflicting rights and in conformity with the principle of proportionality. In all circumstances, hate speech must be prohibited, and the next sub-chapter will delve into this matter.

4. Hate speech during electoral campaigns

45. Under the ECHR, as the Court stated in *Erbakan v. Turkey*, “Tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance”.⁶¹ According to the Court, for statements taken as a whole to amount to incitement to violence, account must be taken, first, of the words used and the context in which they were published, as well as their potential impact.⁶² Another key factor in the Court’s assessment is the political or social context in which the statements were made⁶³. Examples of such contexts in the Court’s case law include situations involving a particularly tense political or social climate,⁶⁴ unrest during deadly prison riots,⁶⁵ issues related to the integration of non-European, particularly Muslim, immigrants in France,⁶⁶ or relations with national minorities in Lithuania shortly after its independence in 1990.⁶⁷ Furthermore, the Court examines whether the expressions, interpreted fairly and in their immediate or broader context, could be regarded as a direct or indirect call for

⁶¹ *Erbakan v. Turkey*, § 57, no. 59405/00, 6 July 2006.

⁶² See, for example, *Özgür Gündem v. Turkey*, § 63, no. 23144/93, 16 March 2000; *Gözel and Özer v. Turkey*, § 52, nos. 43453/04 and 31098/05, 6 July 2010.

⁶³ *Perinçek v. Switzerland* [GC], § 205, no. 27510/08, 15 October 2015.

⁶⁴ *Mariya Alekhina and Others v. Russia*, § 218, no. 22519/02, 13 April 2006; *Zana v. Turkey*, §§ 57–60, no. 18954/91, 25 November 1997; *Sürek v. Turkey (no. 3)* [GC], § 40, 8 July 1999; *Erkizia Almandoz v. Spain*, § 45, no. 5869/17, 22 June 2021.

⁶⁵ *Saygılı and Falakaoğlu (no. 2) v. Turkey*, § 28, nos. 22147/02 and 24972/03 23 January 2007.

⁶⁶ *Soulas and Others v. France*, §§ 38–39, no. 15948/03, 10 July 2008; *Le Pen v. France* (dec.), no. 18788/09, 20 April 2010.

⁶⁷ *Balsytė-Lideikienė v. Lithuania*, § 78, no. 72596/01, 24 November 2005.

violence, or as justification of violence, hatred, or intolerance.⁶⁸ The Court has emphasised the importance of analysing the interaction among the above factors, rather than examining each in isolation, when deciding such cases.⁶⁹

46. In the context of electoral campaigns, the main criteria used by the Court to distinguish free expression from unlawful hate speech can be deduced from the case-law mentioned above: a) Content of the message: The Court examines whether the expression gravely insults, demonises or dehumanises a protected group, or calls for its discrimination or harm. Statements portraying a community as inherently inferior, violent, or dangerous are generally deemed incitement to hatred which can be forbidden. By contrast, general – albeit harsh – criticisms of government policies, religions, or ideologies, without inciting hatred against their adherents, may fall within the scope of protected speech; b) Context and scope: It is crucial to assess when and where the speech was delivered, its intended audience, and the likelihood of causing real harm. Thus, a leaflet widely distributed in an electoral campaign exploiting racial prejudice carries a dangerous social impact,⁷⁰ whereas extremist words in a controlled debate may be mitigated by the context. The Court evaluates whether the public could reasonably perceive the statement as a serious incitement or merely as political rhetoric, satire, etc. It also considers the position of the speaker: if authors are influential politicians or candidates to elections, their responsibility is greater to avoid rhetoric that inflames hatred; c) Intention (purpose) of the speech: If the apparent aim is to foster intolerance or mobilise negative feelings against a group (for example, “provoking rejection and antagonism toward the population of Islamic origin” in *Soulas*)⁷¹, the Court leans toward categorising it as hate speech. Conversely, if offensive ideas are expressed as part of a contribution to public debate without intent to incite violence – for instance, a historian discussing a controversial historical event in good faith – the Court tends to grant broader protection, unless it amounts to malicious negationism; d) Severity of interference and State’s margin of appreciation: When reviewing the proportionality of the State’s response, the Court examines the severity of the sanction: Imposing a prison sentence for controversial expressions (a measure the Court views with great suspicion) is very different from applying lighter or administrative sanctions.⁷² Indeed, the Court has stated that custodial penalties for speech, except in cases of incitation to violence or extreme hatred, are almost never acceptable as they are disproportionate.⁷³ States therefore have some margin to determine when speech threatens social coexistence enough to warrant sanction, but that margin is subject to supervision: if a State oversteps its margin of appreciation by punishing opinions that could have been tolerated in the democratic debate, the Court does not hesitate to find a violation of Article 10 ECHR.

47. International treaties impose on States the obligation to combat hate speech⁷⁴ and follow similar criteria.⁷⁵ Article 20(2) ICCPR provides that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. According to Article 4 ICERD, “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination (...) with due regard to the principles embodied in the Universal Declaration of Human Rights”.

⁶⁸ See, e.g., *Perinçek v. Switzerland* [GC], § 206, no. 27510/08, 15 October 2015.

⁶⁹ *Ibid.*, § 208.

⁷⁰ *Féret v. Belgium*, no. 15615/07, 16 July 2009.

⁷¹ *Soulas and Others v. France*, no. 15948/03, 10 July 2008.

⁷² *Perinçek v. Switzerland* [GC], § 273, no. 27510/08, 15 October 2015; *Tagiyev and Huseynov v. Azerbaijan*, § 49, no. 13274/08, 5 December 2019.

⁷³ ECtHR Guide on Article 10 of the Convention (31.8.2025), para. 671, with references to the case-law.

⁷⁴ This appears explicitly in Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as well as in Article 20(2) ICCPR.

⁷⁵ See the OHCHR, [Rabat Plan of Action](#).

48. The Council of Europe has historically combated racism and xenophobia through a variety of instruments. In particular, the Committee of Ministers has adopted recommendations and guidelines in this field, which together constitute guiding soft law for member States.

49. In 1997, the Committee of Ministers adopted Rec (97)20, defining for the first time “hate speech”⁷⁶ and inviting States to criminalise incitement to racial hatred. In 2022, the Committee of Ministers of the Council of Europe adopted Recommendation 2022(16) to combat hate speech, which provides the revised definition of hate speech reported at the beginning of the report and added *i.a.* that “Parliaments, other elected bodies and political parties should be encouraged to put in place specific policies to address and combat hate speech, in particular in the context of electoral campaigns and in the debates of representative assemblies. To this end, they should adopt a code of conduct which provides for an internal complaint and sanction procedure. They should also avoid any expression that is likely to foster intolerance and should openly condemn hate speech”.⁷⁷ The Steering Committee on anti-discrimination, diversity and inclusion (CDADI) and the Steering Committee on Media and Information Society (CDMSI) have also prepared a [self-assessment tool to prevent and combat hate speech](#) – intended for states. Moreover, Recommendation (2022)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls calls for measures to “protect migrant, refugee and asylum-seeking women and girls from hate speech and sexism”.⁷⁸

50. The [European Commission against Racism and Intolerance \(ECRI\) adopted in 2015 its General Policy Recommendation No. 15 on combating hate speech](#).⁷⁹ According to this text, hate speech is based on the unjustified assumption that a person or a group of persons are superior to others; it incites acts of violence or discrimination, thus undermining respect for minority groups and damaging social cohesion. In this recommendation, ECRI calls for encouraging speedy reactions by public figures to hate speech; promotion of self-regulation of media; raising awareness of the dangerous consequences of hate speech; withdrawing financial and other support from political parties that actively use hate speech; and criminalising its most extreme manifestations, while respecting freedom of expression. Anti-hate speech measures must be well-founded, proportionate, non-discriminatory, and not be misused to curb freedom of expression or assembly nor to suppress criticism of official policies, political opposition and religious beliefs.

51. The Council of Europe Steering Committee on anti-discrimination, diversity and inclusion (CDADI) has published in 2023 a [study on preventing and combating hate speech in times of crisis](#), including hate speech against migrants and refugees. Apart from improving the legal framework and legal enforcement, this document recommends developing training and cooperation among stakeholders, as well as making public awareness and information campaigns a priority and providing support to those targeted by hate speech. Regulatory frameworks should reflect the media’s key social role in promoting equality, diversity, inclusion and non-discrimination, while internet intermediaries and in particular social media platforms should ensure effective and transparent content moderation policies and practice.

52. Recommendation (2022)16 of the Committee of Ministers provides the following guidance: “The media and journalists should, in their efforts to provide accurate and reliable information, avoid derogatory stereotypical depiction of individuals, groups and communities and give voice to diverse groups and communities in society, especially when reporting on matters of particular

⁷⁶ Appendix to Rec (97)20, “hate speech shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”.

⁷⁷ Recommendation [CM/Rec\(2022\)16](#) of the Committee of Ministers to member States on combating hate speech, para. 29.

⁷⁸ Recommendation [CM/Rec\(2022\)17](#) of the Committee of Ministers to member States on protecting the rights of migrant, refugee and asylum-seeking women and girls, para. 32.

⁷⁹ ECRI General Policy Recommendation N°15 on Combating Hate Speech, 8 December 2015

public interest and during election periods. They should avoid provoking prejudice and making any unnecessary references to personal characteristics or status.”⁸⁰

53. Concerning more specifically electoral campaigns, as early as 1999 and 2007, the Committee of Ministers issued Recommendations Rec(99)15⁸¹ and Rec(2007)15⁸² to ensure balanced media coverage during electoral campaigns. These establish, among other points, that the broadcast media, especially public service media, must provide impartial, balanced, and pluralistic information during elections, and refrain from engaging in discrimination. States must prevent the press, radio, or television from being used to openly promote racism or xenophobia in campaigns, without prejudice to legitimate critical scrutiny of migration policies. In line with this, the recent Recommendation CM/Rec(2022)16 on combating hate speech⁸³ reinforces the responsibilities of the media: it urges public broadcasters “not to disseminate hate speech” and calls on all media outlets and journalists to avoid stereotypical or denigrating portrayals of individuals or groups, particularly when reporting on matters of great public interest and during electoral periods. They are encouraged not to fuel prejudice or make unnecessary references to personal characteristics (such as ethnic origin, religion, or migration status) in coverage, so as not to bias public perception against groups like immigrants. Media regulatory authorities are likewise encouraged to monitor these obligations and should play a positive role in addressing hate speech and any discriminatory expression.

54. For its part, the PACE, in its Resolution 1345 (2003) on racist, xenophobic, and intolerant discourse in politics, held that the right to freedom of expression may be “limited by competing public interests, amongst which are the prevention of disorder, the protection of morals and the protection of the rights of others. This allows for limitation of these rights and freedoms when they are exercised in such a way as to cause, incite, promote, advocate, encourage or justify racism, xenophobia or intolerance.” Subsequently, PACE Resolution 1889 on “*The portrayal of migrants and refugees during election campaigns*” addressed the negative image of migrants and refugees in the statements and debates of candidates and political parties during campaigns, underlining factors that contribute to the rise of xenophobia. This recommendation, together with others concerning political debates during election campaigns, opinion polls, and the role of electoral commissions, while not providing a comprehensive framework, nevertheless points out that it is the responsibility of member States to establish legislation that effectively protects the image of migrants, refugees and asylum seekers during elections, and emphasises the importance of ensuring that such legislation is effectively enforced.

55. The Venice Commission, in its Code of good practice in the field of political parties – which is intended at parties and thus encourages self-regulation – states that “[p]olitical parties should not act against the values of the ECHR and the principle of equality. Parties must not discriminate against individuals on the basis of any ground prohibited by the ECHR.”⁸⁴ This applies in particular to hate speech and during electoral campaigns – since elections are at the core of the political parties’ activity,⁸⁵ and does not exclude that states legislate on the issue.

⁸⁰ Recommendation [CM/Rec\(2022\)16](#), *ibid.*, para. 41. The CDADI is also preparing a [study on effectiveness, risks and potentials of using counter and alternative narratives in combating hate speech](#). This study is intended to provide civil society organisations (CSOs) and other stakeholders with new research data, studies, and information, offering insights into the effectiveness, risks, and potentials of using counter and alternative narrative to combat hate speech in line with the CM Recommendation.

⁸¹ Recommendation [No. R \(99\)15](#) of the Committee of Ministers to member States on measures concerning media coverage of election campaigns.

⁸² Recommendation [CM/Rec\(2007\)15](#) of the Committee of Ministers to member states on measures concerning media coverage of election campaigns.

⁸³ Recommendation [CM/Rec\(2022\)16](#) of the Committee of Ministers to member States on combating hate speech, para. 29.

⁸⁴ Venice Commission, [CDL-AD\(2009\)021](#), Code of good practice in the field of political parties, para. 18. See also Venice Commission, [CDL\(2012\)063](#), Information note on the portrayal of migrants and refugees during election campaigns.

⁸⁵ Venice Commission and ODIHR, [CDL-AD\(2020\)032](#), Guidelines on political party regulation – second edition, para. 11.

56. The Venice Commission draws as a conclusion from the above that criticism — even sharp or politically divisive — of migration and asylum policies remains fully protected under Article 10 ECHR and Article 19 ICCPR. However, when political discourse no longer addresses policies but targets migrants, asylum seekers or refugees as a vulnerable group through forms of expression amounting to denigration, dehumanisation, vilification or other hate-driven messages, an adequate response by the State is required under Article 20(2) ICCPR, Article 4 ICERD and the Council of Europe *acquis*.

57. The Venice Commission notes that, alongside legal responses derived from administrative, civil, or criminal law, the latter to be conceived as *ultima ratio* — a number of non-binding and self-regulatory instruments may also play a useful role in preventing hate speech in the electoral context. In line with Council of Europe practice, political parties, media and online platforms may consider adopting voluntary codes of conduct, internal ethical guidelines or training initiatives aimed at promoting responsible communication. Such measures, based on autonomy and self-regulation, do not restrict legitimate political debate but can help foster an environment in which electoral competition develops in accordance with democratic values and respect for human dignity. An example is the Council of Europe's Charter of European political parties for a non-racist and inclusive society.⁸⁶

B. Freedom of voters to form an opinion: the issue of information disorder

1. Information disorder in electoral campaigns

58. Electoral integrity, and more precisely freedom of voters to form an opinion and equality of opportunity, presupposes that voters have access to a plurality of information. If public discourse incites hatred or contains discriminatory statements, the risk is that popular will is formed on a distorted or manipulated basis, thus reducing the democratic quality of the electoral choice and the possibility of forming a full and informed opinion.

59. While media are essential for a free, fair and transparent electoral process, their role remains inherently delicate and may give rise to distortions, opacity or manipulation. As intermediaries between political debate and the electorate, they do not merely convey information but also contribute to shaping both its content and the way in which it is ultimately perceived. Therefore, although the Code of good practice in electoral matters does not explicitly mention "disinformation," it lays the groundwork for combating it — for example, by mandating the impartiality of public media, equal access of candidates to the press, and prohibiting the use of State resources in propaganda.⁸⁷ Such measures prevent undue advantages and help ensure that citizens have access to a plurality of reliable and transparently presented information, in line with the standards of the Council of Europe, in particular in the field of migration and asylum.

60. The importance of the role of media — including social media — in elections is increased by the fact that free and informed voting presupposes not only the possibility for candidates to express their ideas, but also the possibility for voters to receive a plurality of unbiased information, free from disinformation, manipulation and unlawful interference.

61. Moreover, transparency of electoral funding is an essential element of the conformity of elections with international standards.⁸⁸ Pluralism of information risks being distorted when the origin, extent or destination of the funding supporting certain messages or information channels are not transparent. In this perspective, attention to the sources of media funding, including public

⁸⁶ PACE, Committee on Equality and Non-Discrimination, Charter of Political Parties for a non-racist and inclusive society, AS/Ega/Inf (2022) 28.

⁸⁷ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), 1.3.1.

⁸⁸ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory memorandum, paras 107 et seq.

or private external contributions, and to the transparency of political advertising, appears to be indispensable to ensure a fair electoral debate. In addition, public disclosure mechanisms should also be promoted to enable people to know who finances political advertising, the amounts spent and the categories of recipients.

62. While “information disorder” is a perennial feature of electoral campaigns, the digital environment has dramatically changed their reach if not their nature. Contrary to traditional media which operate within established legal frameworks, social media and digital platforms have introduced new dynamics, radically transforming the way political communication is spread. The possibility of reaching millions of users in real time,⁸⁹ the extreme customisation of messages through profiling and micro-targeting, the algorithmic intermediation that decides what content is visible and with what priority, have made these platforms strategic players in the electoral process with effects of immediate and widespread impact, even potentially damaging. This has led to a transfer of the power of communication: from traditional editorial offices, subject to editorial responsibilities and ethical rules, to private global operators who, while profoundly affecting the democratic debate, often operate according to commercial logics and within variable transparency rules. The concentration of this influence capacity in the hands of a few private entities, often of a multinational dimension, can give rise to concerns about democratic accountability, as decisions on the removal, reporting or dissemination of certain content can directly affect the equality of political competition and citizens’ access to objective and diverse information.

63. Digital platforms can be fertile ground for the spread of disinformation campaigns, either coordinated or spontaneous, which aim to influence voting through false, manipulated or decontextualised news. The use of profiling techniques can lead to a fragmentation of public debate in echo chambers, in which voters are exposed only to information that confirms their existing views, reducing critical dialogue and polarising debate. The lack of transparency in algorithmic decision-making processes makes it difficult for supervisory authorities, observers and the general public to understand the logic behind content distribution, which risks creating invisible but significant imbalances in access to political information. Content moderation, if managed on the basis of opaque or overly automated processes, can also result in the arbitrary removal of legitimate speech or, conversely, excessive tolerance of content that violates international standards, including those against hate speech.

64. Strategies such as the use of bots (automated accounts) amplify divisive messages, and micro-segmentation (microtargeting) in political advertising makes it possible to direct false ads or content at specific groups of voters likely to accept them. A major challenge is the speed and scale of disinformation: debunking a complex false story may require hours or days of journalistic investigation, while creating and spreading such a hoax takes minutes and can be replicated thousands of times in different languages. This time gap benefits malicious actors. The Court thus accepted that the Internet was a distinct information tool from the printed media and that the risk of harm posed by the content and by communications on the Internet was much higher than that posed by the press. Consequently, the policies governing the reproduction of material from the printed media, and the Internet might be different.⁹⁰

65. There is evidence that foreign powers hostile to the European Union have used migration as a theme for their disinformation and interference campaigns. Recently, in the judgment *Bradshaw and Others v. the United Kingdom*,⁹¹ the Court recognised that Russian interference constituted a credible, significant, and ongoing threat to British and European democracy. In this respect, the

⁸⁹ As highlighted by the ECtHR, through the internet, “[d]efamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online”: *Delfi AS v. Estonia*, § 110, no. 64569/09, 10 October 2013.

⁹⁰ *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, § 63, no.33014/05, 5 May 2011.

⁹¹ No. 15653/22, 22 July 2025.

Court acknowledged that Article 3 of Protocol No. 1 might require a state to adopt positive measures to protect the integrity of its electoral processes in case of credible evidence of interference by a hostile State, such as disinformation campaigns, cyber-attacks, and online manipulation during election campaigns.⁹² The Court observed that the United Kingdom had adopted a set of legal and regulatory reforms which, taken together, were reasonable and adequate within its wide margin of appreciation. Although the Court stressed that such measures must remain under constant review — given the dynamic and evolving nature of disinformation and digital manipulation techniques — it concluded that the essence of the applicants' right to free elections had not been undermined.

2. Measures to combat information disorder

66. Under the ECHR, as highlighted by the Court, through the internet, “[d]efamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated like never before, worldwide, in a matter of seconds, and sometimes remain persistently available online”.⁹³ In light of this, the Court has recognised that imposing liability for defamatory or unlawful speech online is an effective remedy.⁹⁴ Regulation of information and communication online has to be adjusted according to the technology's specific features in order to secure the protection and promotion of the rights and freedoms concerned.⁹⁵ An online publication's influence depends on its actual reach.⁹⁶ Sharing hate speech within an online group (even a relatively small one) of like-minded persons may justify criminal sanctions, as it can have the effect of reinforcing and radicalising their ideas without being exposed to any critical discussion or different views.⁹⁷

67. The “duties and responsibilities” of internet news portals regarding third-party content differ from those of traditional publishers, and the Court distinguishes them from social media platforms or discussions where third-party-comments can be disseminated.⁹⁸ The Court 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”.⁹⁹ Liability may also extend to users, such as a political candidate fined for not deleting hateful third-party comments from his Facebook wall, where courts took into account his status and public profile; such measures were “neither arbitrary nor manifestly unreasonable”.¹⁰⁰ Conversely, effective moderation can preclude liability.¹⁰¹

68. 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.¹⁰² In this respect, access to other platforms or social media is not necessarily a valid alternative and it “cannot alleviate” the impact on users even if bypassed.¹⁰³ Blocking orders or extremely high fines for hosting lawful user-generated political content and refusing to take it down, if not prescribed by law, are not applicable measures.¹⁰⁴

⁹² *Bradshaw and Others v. the United Kingdom*, § 136, no. 15653/22, 22 July 2025.

⁹³ *Delfi AS v. Estonia*, § 110, no. 64569/09, 10 October 2013.

⁹⁴ *Ibid.*, § 110; *Annen v. Germany*, § 67, no. 3690/10, 26 November 2015.

⁹⁵ *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, § 63, no. 33014/05, 5 May 2011.

⁹⁶ *Savva Terentyev v. Russia*, § 79, no. 10692/09, 28 August 2018; *Kozan v. Turkey*, § 51, no. 16695/19, 1 March 2022; *Avagyan v. Russia*, §§ 31, 35, no. 36911/20, 29 April 2025.

⁹⁷ *Kilin v. Russia*, § 91, no. 10271/12, 11 May 2021.

⁹⁸ *Delfi AS*, §§ 113, 115-116, *ibid.*

⁹⁹ *Magyar Tartalomszolgáltatók Egyesülete v. Hungary*, § 91, no. 22947/13, 2 February 2016; *Delfi AS*, § 159, *ibid.*

¹⁰⁰ *Sanchez v. France* [GC], §§ 134-39, *ibid.*

¹⁰¹ *Høiness v. Norway*, no. 43624/14, 19 March 2019.

¹⁰² *Ahmet Yıldırım v. Turkey*, § 66, no. 3111/10, 18 December 2012; *Engels v. Russia*, § 33, no. 61919/16, 23 June 2020.

¹⁰³ *RFE/RL Inc. and Others v. Azerbaijan*, §§ 72-73, nos. 56138/18 and 3 others, 13 June 2024.

¹⁰⁴ *Ibid.*, § 108, 2024; *Google LLC and Others v. Russia*, §§ 75-80, no. 37027/22, 8 July 2025.

69. The soft law instruments developed at Council of Europe level focus on two parallel objectives: on the one hand, preserving as much freedom as possible in the political debate, avoiding disproportionate restrictions; on the other hand, ensuring that the information infrastructure – including algorithmic systems and the way in which content is disseminated – operates according to criteria of transparency, accountability and non-discrimination.

70. The recommendation of the Committee of Ministers on the role and responsibilities of internet intermediaries¹⁰⁵ imposes on the latter responsibilities with respect to human rights and fundamental freedoms, and in particular transparency and accountability. More specifically, acknowledging the risks that social networks and new online propaganda techniques pose to democracy, the Committee of Ministers adopted in 2022 the Recommendation of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns.¹⁰⁶ This Recommendation addresses the challenges to fairness and legitimacy in electoral processes stemming from new forms of political communication, including the risk of “abusive use of personal data and techniques of microtargeting, use of opaque techniques and the inappropriate use of bots and algorithms to distribute information”. Their objective is to safeguard principles of transparency and fairness in electoral competition. For example, they recommend requiring clear identification of online propaganda, transparency in the financing of political advertisements, and the archiving of political ads disseminated on social media. A key point is the call for safeguards against the intentional spread of electoral disinformation, while ensuring that any content restrictions remain transparent, proportionate, and non-discriminatory. This entails that States, in cooperation with digital platforms and civil society (a co-regulatory approach), develop mechanisms to detect and curb coordinated disinformation campaigns, for instance, fabricated or manipulated content intended to unduly influence voters without resorting to arbitrary censorship. The Recommendation also stresses the need for citizens to be informed when they are the target of personalised online political advertising and to be given the option to opt out.

71. In sum, the Committee of Ministers recognises that information manipulation in the digital sphere can undermine free elections and urges the adoption of innovative measures combining platform accountability, independent oversight, and sanctions for violations of the rules, all within a framework respectful of human rights.¹⁰⁷

72. In the same vein, the European Union has fostered and endorsed the adoption of industry standards through the “*Code of Practice on Disinformation*” (2018, reinforced in 2022), and the new Digital Services Act¹⁰⁸ (DSA) requires platforms to mitigate the “systemic risks” of civic discourse and elections (including by disinformation and other forms of information manipulation), and illegal forms of hate speech. In 2025, the Code of Practice became a Code of Conduct under the DSA’s co-regulatory framework. In this context it has become a benchmark to assess whether platforms’ efforts to address disinformation risks comply with the Digital Services Act. The Regulation on the transparency and targeting of political advertising, which entered into full application on 10 October 2025, plays a key role in tackling foreign information manipulation and interference (FIMI) and disinformation. It establishes common EU transparency standards, offline and online, requiring political advertisements to be clearly labelled and to be accompanied by transparency notices with additional information such as who paid for the advertising and how much, and where applicable, targeting parameters and categories of personal data being used. In communication on the European Democracy Shield (12 November 2025), the Commission and the High Representative for Foreign Affairs and Security Policy presented a set of new

¹⁰⁵ [CM/Rec\(2018\)2](#).

¹⁰⁶ Recommendation [CM/Rec\(2022\)12](#) of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns.

¹⁰⁷ See in this sense the document *Resisting Disinformation: 10 Building Blocks to Strengthen Information Integrity*, adopted by the Steering Committee on Media and Information Society on 4 December 2025.

¹⁰⁸ 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.

measures, including the creation of a European Centre for Democratic Resilience, which will facilitate information sharing and support operational cooperation and capacity building to withstand evolving common threats, in particular foreign information manipulation and interference (FIMI) and disinformation.¹⁰⁹

73. For its part, the Venice Commission has addressed the issue of digital technologies, artificial intelligence and elections in three documents: the Report on Digital Technologies and Elections,¹¹⁰ the Principles for a fundamental rights-compliant use of digital technologies in electoral processes¹¹¹ and the Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence.¹¹² Some of the above-mentioned Principles¹¹³ are specifically aimed at ensuring a level-playing field in electoral campaigns:

- Principle 2: During electoral campaigns, a competent impartial Electoral Management Body (EMB) or judicial body should be empowered to require private companies to remove clearly defined third-party content from the internet, based on electoral laws and in line with international standards.
- Principle 5: Electoral integrity must be preserved through periodically reviewed rules and regulations on political advertising and on the responsibility of internet intermediaries.
- Principle 7: The international cooperation framework and public-private cooperation should be strengthened.
- Principle 8: The adoption of self-regulatory mechanisms should be promoted.

74. Concerning Principle 5, the Venice Commission has in particular stated that “[m]easures to address the above-mentioned problems should strive to increase transparency of electoral communication in order to counter manipulative practices, foster transparency of electoral spending, ensure transparency and control of algorithms for the sake of diversity exposure, guarantee the protection of privacy in order to counter microtargeting of voters and ensure accurate and reliable information in order to empower voters in their choices and provide oversight over the electoral processes” (emphasis added).¹¹⁴

75. The development of artificial intelligence still increases the risk of disinformation, in particular through so-called “deep fakes”. The Venice Commission therefore recommends, in its Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence, that “political ‘deep fakes’, namely the distribution of deceptive artificial intelligence-generated content to influence an election or to infringe voters’ freedom to make informed decisions, should be prohibited and sanctioned”.¹¹⁵

76. Concerning self-regulatory mechanisms (principle 8), the Venice Commission recommends the mandatory adoption of ethics and corporate social responsibility codes, among internet service providers, and search-engine and social media companies.¹¹⁶

¹⁰⁹ Joint communication to the European Parliament, the Council, the European Social and Economic Committee and the Committee of Regions – European Democracy Shield: Empowering Strong and Resilient Democracies, JOIN(2025) 791 final, pp. 2-3.

¹¹⁰ Venice Commission and Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2019\)016](#), Joint Report on Digital Technologies and Elections.

¹¹¹ [CDL-AD\(2020\)037](#).

¹¹² [CDL-AD\(2024\)044](#).

¹¹³ [CDL-AD\(2020\)037](#).

¹¹⁴ *Ibid.*, para. 75.

¹¹⁵ [CDL-AD\(2024\)044](#), para. 8.

¹¹⁶ [CDL-AD\(2020\)037](#), para. 97; Venice Commission and Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI), [CDL-AD\(2019\)016](#), Joint Report on Digital Technologies and Elections, para. 149.

77. Public-private co-operation (principle 7) means that operators and platforms should cooperate with electoral authorities, both in order to detect threats and to spread official information.¹¹⁷ It also means that the role of civil society, journalists, and fact-checkers is crucial. At the same time, democratic political leaders have begun to confront disinformation more directly. For example, in electoral debates some dismantle false data from rivals live (citing official sources). However, the Venice Commission considers it “crucial that the response to the challenges posed by digital technologies on democracy and human rights is not left to self-regulatory mechanisms alone”.¹¹⁸ In other words, it recommends that, during electoral campaigns, the states take positive measures to translate human rights and international standards in the electoral field into the digital environment, in particular to ensure a level-playing field and thus freedom of voters to form an opinion as well as equality of opportunity,¹¹⁹ while being neutral and refraining from taking sides in public debate. Any such measures should provide timely and speedy results as during election campaigns, discriminatory statements or hate speech can not only impact the vulnerable minority groups – including migrants, asylum seekers and refugees - but also distort the public debate.

78. With regard to the duties and responsibilities of digital platforms and online service providers, especially in relation to algorithmic moderation, dissemination of divisive content that becomes viral and lack of transparency in the promotion of certain messages, terms of use based on international human rights standards could be envisaged, with gradual responses favouring alternatives to content removal in less serious cases. In this regard, cooperation with independent authorities, transparency systems on content moderation, and effective reporting mechanisms to counter potentially discriminatory content could be useful, even in the absence of generalised obligations, while maintaining technological neutrality and freedom of debate.

79. A number of policies can be conducted both by private and public entities, as will be developed below.

80. With regard to political advertising and micro-targeting,¹²⁰ and, without prejudice to the Regulation on the transparency and targeting of political advertising¹²¹ where applicable, the following could be set up: guidelines on profiling criteria, tools for expressing explicit consent to the processing of personal data for the purpose of being targeted by political advertisements or voluntary exclusion opting out from targeted campaigns, measures, including limits to monetisation, to mitigate the risks posed to public debate by discriminatory content,¹²² and more

¹¹⁷ [CDL-AD\(2020\)037](#), para. 90.

¹¹⁸ [CDL-AD\(2020\)037](#), para. 100.

¹¹⁹ Cf. [CDL-AD\(2019\)016](#), para. 46.

¹²⁰ Recommendation [CM/Rec\(2022\)12](#) of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns. See also, Recommendation [CM/Rec\(2020\)1](#) of the Committee of Ministers to member States on the human rights impacts of algorithmic systems.

¹²¹ Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising.

¹²² Discriminatory statements, hate speech or disinformation can be instrumentalised, for example with the use of algorithms, to maximise views and engagement and, therefore, monetisation. See Recommendation [CM/Rec\(2022\)12](#) of the Committee of Ministers to member States on electoral communication and media coverage of election campaigns, para. 4, in particular 4.2 “*Platforms, under co-regulatory frameworks, should put in place safeguards to guarantee the integrity of services (actions against bots and fake accounts), and act against misrepresentation and the intentional spread of political disinformation, while ensuring full respect for the rule of law and human rights standards as laid down in the Convention and other relevant Council of Europe instruments, notably the right to freedom of expression, as guaranteed by Article 10 of the Convention, anonymity and confidentiality of private communications.*” As well as para. 4.4: “*With regard to paragraph 4.2., States should require online platforms to put in place clear, transparent and foreseeable policies for ensuring the integrity of services and countering misrepresentation and the intentional spread of political disinformation. Furthermore, in line with Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, when restricting access to content in accordance with their own content-restriction policies relating to electoral matters, platforms should do so in a transparent and non-discriminatory manner. Any restriction of access to content should be carried out using the least restrictive technical means possible and should be limited in scope and duration to what is strictly necessary to avoid the collateral unjustified*

generally guarantees of equal access to advertising space and public and real-time archives of online political advertisements for accountability purposes.

81. With a view to prevention and independent assessment, it could be useful - where compatible with the national legal framework – to set up election observatories or monitoring bodies to document the media's treatment of migration and asylum issues. When organised in an impartial and pluralistic manner, such structures may help provide factual information and comparative analyses aimed at enhancing transparency in media practices and supporting an informed public debate, without in any way interfering with editorial freedom or the legitimate diversity of political views.

82. International election observation missions (IEOMs) have regularly observed prevalence of mis- and disinformation as well as manipulative behaviour (e.g. images and videos being altered).¹²³ In addition to citizen observation, international observation can provide an assessment of the media, and the overall political context within which elections take place and against international obligations, standards and commitments and national legislation, and provide recommendations to further improve the process.

83. In terms of communication, the promotion of media literacy so that voters can identify disinformation and verify sources, as well as the promotion of professional journalism, are tools to counter information disorder.¹²⁴ To this end, for example the European Commission has launched information campaigns to counter myths about immigration (disseminating real figures on migrants' economic contributions, clarifying what support refugees receive, etc.).

84. Finally, in the field of education, fact-based information and victim support, promotion of media literacy programmes, the support to initiatives aimed at providing fact-based pluralistic information, and the provision of multidisciplinary assistance services, including confidential and continuous contact channels with the competent authorities, could be envisaged. These initiatives are voluntary in nature and aim solely at empowering individuals and communities to navigate public debate and address hate speech, without directing political opinions or affecting the freedom of expression of any actor.

85. In extreme cases, and with judicial guarantees, the temporary banning of the dissemination of clearly false and discriminatory content until after the election can be authorised, in conformity with Article 10(2) ECHR.

86. The adoption of legislation directly aimed to combat disinformation in elections can be illustrated by France, which, enacted in 2018 a law against information manipulation during electoral periods, allowing a judge to quickly block the massive dissemination of manifestly false news deliberately originating abroad. Germany requires digital platforms to remove illegal content, including hate speech, within short deadlines under the NetzDG (*Netzwerkdurchsetzungsgesetz, Network Enforcement Act*).

87. The Venice Commission thus recommends the public regulation of private networks to ensure that information disorders are addressed, and the digital platforms meet their obligations to allow for the free expression of the opinions of its users subject to the respect of the human rights of

restriction or removal of legal content." And para. 4.5: "States should require online platforms to improve the scrutiny of advertisement placement in order to reduce the revenue of the purveyors of political disinformation."

¹²³ E.g., ODIHR Limited Election Observation Mission Final Report, Romania, Repeat Presidential Election, May 2025, pages: 15-16, 20; Election Observation Mission, Republic of Moldova, Parliamentary Elections, 28 September 2025, pages 1 - 2, 8, 14, 16-18. See also "[The impact of disinformation campaigns about migrants and minority groups in the EU](#)", Judit SZAKÁCS, Éva BOGNÁR, In-depth analysis, European Parliament's Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE), June 2021.

¹²⁴ See for example the [National Media and Information Literacy \(MIL\) Strategies – Practical Steps and Indicators](#), adopted by the Steering Committee on Media and Information Society on 4 December 2025.

the other users. Private regulation can go beyond this public minimum, but remains subject to constitutional public regulation. In this context, the Venice Commission recalls the principles set forth in this respect in the Updated Rule of Law Checklist: “It is essential to guarantee a robust civic space in both the analogue and digital worlds. It is therefore necessary to transfer and adapt the recognised principles of power checks and balances reflected in the Rule of Law to the digital civic space. Given the important public function performed by online platforms in today’s societies, those with significant social impact may be considered private actors whose decisions impact ordinary citizens similarly to those of public authorities [...]. Therefore, it is crucial to establish a responsibility framework for these platforms to ensure compliance with the rule of law. One way to achieve could be to impose legal requirements within the terms of use that these platforms impose on their users. In any case, the social impact of some online platforms justifies a risk assessment and mitigation framework aimed at ensuring respect for human rights, as well as equitable access to private expression and participation in public debate. Similarly, platforms with significant social impact should be legally required to assess and mitigate the risks of discriminatory effects arising from their content moderation mechanisms and other platform features. This framework should be enforced by independent regulators and be subject to subsequent judicial review alongside previous alternative dispute resolution mechanisms, such as mediation.”¹²⁵

88. Hence, if cooperation mechanisms do not help preventing hate speech or voter dis- and misinformation, the Venice Commission recommends that the law provides for swift and effective mechanisms by which independent public authorities can curtail or prevent the spreading of hate speech or disinformation and ensure that voters have access to balanced information in a non-discriminatory manner. Such mechanisms should respect all legal and substantive guarantees, including when providing prompt interim reliefs and precautionary measures foreseen by the law, under the conditions of *fumus boni iuris* (appearance of a good right) and *periculum in mora* (danger in delay), while guaranteeing all necessary procedural safeguards (such as the adoption in accordance with the principle of *audi alteram partem* (listen to the other side), by an independent and impartial body, with the possibility of appeal) and without prejudice to the proceedings before a court.

IV. Conclusion

89. Further to [Resolution 2525 \(2024\)](#), entitled “*The theme of migration and asylum in electoral campaigns and its consequences on the reception of migrants and their rights*”, the then-President of the PACE invited the Venice Commission and the Council for Democratic Elections to consider preparing a preliminary study with a view to drafting a code of conduct for electoral candidates and the media, focusing on combating hate speech from the perspective of non-discrimination, particularly in relation to narratives on migration and asylum. On that basis, the Venice Commission, on the proposal of the Council for Democratic Elections, decided to prepare a report with a focus on freedom of expression and prohibition of hate speech in a pluralist society in the light of the case law of the European Court of Human Rights and the standards drawn up by Council of Europe bodies, notably Committee of Ministers recommendations.

90. In the contemporary political landscape, under the guise of legitimate debate on migration, migrants, asylum seekers and refugees are often represented and instrumentalised in a way that stigmatises and dehumanises them, reducing them to instruments of political struggle. This includes explicit or implicit forms of hate speech, especially during election periods.

91. The main themes addressed in the report are freedom of expression and its possible limitations, the prohibition of hate speech, and freedom of voters to form an opinion. The report addresses the ways of reconciling rather than opposing them. Protecting freedom of expression and the electoral process from informational manipulation and hate are not incompatible goals;

¹²⁵ Venice Commission, [CDL-AD\(2025\)002](#), The Updated Rule of Law Checklist.

on the contrary, they complement each other in the defence of a pluralistic democracy, where opinions clash robustly but without resorting to discrimination against individuals or groups.

92. Incitement to hatred, especially when political communication is based on ethnic, cultural or religious generalisation attributing negative characteristics to the entire group of migrants, asylum seekers or refugees as such and not in relation to their place in immigration policy, can lead to the application of Article 17 ECHR prohibiting abuse of rights, thus excluding the protection granted to freedom of expression. Nevertheless, Article 17 is only applicable on an exceptional basis and in extreme cases. In cases concerning freedom of expression, it should only be resorted to if it is immediately clear that the impugned statements sought to employ the right to freedom of expression for ends clearly contrary to the values of the Convention.

93. Freedom of expression as enshrined in Article 10 ECHR, in particular free discussion of political issues during electoral campaigns, constitutes one of the essential foundations of a democratic society. Under Article 10(2) ECHR, restrictions are acceptable provided they are “prescribed by law” and “necessary in a democratic society” for the pursuit of certain legitimate aims, including the protection of public order, national security, morals, or the reputation and rights of others. The existence of a legal basis has traditionally been broadly understood. The list of legitimate aims justifying a limitation of freedom of expression is exhaustive, and the limitations must be interpreted restrictively. Measures restricting freedom of expression are only justified where electoral discourse, assessed in its content and context, goes beyond legitimate criticism of migration and asylum policies and reaches a level of denigration, dehumanisation or stigmatisation of migrants, asylum seekers or refugees as individuals or as a vulnerable group that is sufficiently serious to interfere with their rights and dignity. The Court’s most thorough review concerns the third requirement, that is proportionality of the restrictions on freedom of expression in relation to the legitimate objectives pursued. A balance must be struck between the need to preserve the pluralism of political opinions, on the one hand, and the obligation of States to protect the rights and dignity of vulnerable people, as well as the integrity of the democratic and electoral process, on the other. At the same time, the integrity of the electoral process requires the pluralism of political opinions. Restrictive measures, in particular criminal sanctions, should intervene only when less intrusive ones cannot lead to the legitimate aim pursued.

94. In sum, the assessment of limits to freedom of expression under the Convention calls for a careful and context-sensitive evaluation. Democratic pluralism requires that the electoral debate remains free, open and robust, allowing political actors and the media to advance divergent, critical or even harsh views on migration and asylum related public policies. At the same time, the Convention framework recognises that certain forms of expression, may fall outside the scope of protected political debate, for example where they seriously affect the dignity or rights of migrants, asylum seekers or refugees, as individuals or groups, or undermine the values on which the Convention system is based. In specific situations, the state may be under the positive obligation to take protective measures to ban discriminatory statements, in other circumstances it may enjoy a certain margin of appreciation, in a logic of reasoned balancing of potentially conflicting rights and in conformity with the principle of proportionality. In all circumstances, hate speech must be prohibited. This applies in particular to speech on migration and asylum policies and, of course, to electoral campaigns, which are at the core of the democratic process and of the exercise of freedom of expression, while being submitted to specific rules.

95. International treaties impose on States the obligation to combat hate, and the Council of Europe has developed a set of soft law instruments to implement this obligation, relating to the prevention of hate speech and balanced coverage of electoral campaigns, in particular to prevent media from being used to openly promote racism or xenophobia in electoral campaigns. Criticism — even sharp or politically divisive — of migration and asylum policies remains fully protected under Article 10 ECHR and Article 19 ICCPR. However, when political discourse no longer addresses policies but targets migrants, asylum seekers or refugees as individuals or as a group through forms of expression amounting to denigration, dehumanisation, vilification or other hate-

driven messages, an adequate response by the State is required under Article 20(2) ICCPR, Article 4 ICERD and the Council of Europe *acquis*.

96. The Venice Commission notes that, alongside legal responses derived from administrative, civil and criminal law – the latter to be conceived as *ultima ratio*, a number of non-binding and self-regulatory instruments may also play a useful role in preventing hate speech in the electoral context. In line with Council of Europe practice, political parties, media and online platforms may consider adopting voluntary codes of conduct, internal ethical guidelines or training initiatives aimed at promoting responsible communication. Such measures, based on autonomy and self-regulation, do not restrict legitimate political debate but can help foster an environment in which electoral competition develops in accordance with democratic values and respect for human dignity. For instance, on 8 April 2024, all European political parties signed a Code of Conduct¹²⁶ for the 2024 European Parliament elections, which includes commitments on refraining from disseminating, posting, or promoting content that incites violence or hate speech.

97. Electoral integrity, and more precisely freedom of voters to form an opinion and equality of opportunity, presuppose that voters have access to fair, objective and pluralistic information. Moreover, transparency of electoral funding – and in particular of the funding of electoral campaigns in all types of media – is an essential element of the conformity of elections with international standards. The Venice Commission recalls the recommendations of the Committee of Ministers of the Council of Europe, which provide that the broadcast media, especially public service media, must provide impartial, balanced, and pluralistic information during elections, and refrain from engaging in discrimination.

98. The digital environment – including artificial intelligence – has dramatically changed the reach if not the nature of “information disorder” through the possibility of reaching millions of users in real time, the extreme customisation of messages through profiling and micro-targeting, as well as through algorithmic intermediation. In this environment, disinformation about migrants, refugees and asylum seekers, has found fertile ground, and foreign powers hostile to the European Union have used migration and asylum as a theme for their disinformation and interference campaigns.

99. The soft law instruments developed at Council of Europe level in the field, in particular by the Venice Commission, focus on two parallel objectives: on the one hand, preserving freedom in the political debate, avoiding disproportionate restrictions; on the other hand, ensuring that the information infrastructure – including algorithmic systems and the way in which content is disseminated – operates according to criteria of transparency, accountability and non-discrimination.

100. The Venice Commission not only recommends that states be neutral during electoral campaigns; it also recommends that they take positive measures to translate human rights and international standards in the electoral field into the digital environment, in particular to ensure a level-playing field and thus freedom of voters to form an opinion as well as equality of opportunity. When assessing what measures could be taken to regulate this matter, two key factors should be taken into account in the context of elections. The first concerns the inherent time-constraint of the electoral process: campaigns are limited to a fixed and relatively short duration. The second pertains to the extensive outreach of political speech during this period, particularly statements made by politicians and public figures. These factors are further amplified by the pervasive use of new media and the rapid evolution of technologies, including artificial intelligence, which allow messages to circulate instantly and widely. Therefore, it is imperative that measures to safeguard electoral integrity are designed to respond swiftly; delayed interventions may fail to mitigate the potential harms introduced by disinformation or hate speech. While criminal sanctions remain the

¹²⁶ The Code of conduct was based on [European Commission Recommendation \(EU\) 2023/2829](#) of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament.

ultima ratio, the fight against information disorder may involve, for example, setting up election observatories or monitoring bodies, the promotion of media literacy, the support to initiatives aimed at providing fact-based pluralistic information and victim support. Any such measures should provide timely and speedy results as during election campaigns, misinformation campaigns or hate speech can not only impact the vulnerable minority groups but also distort the public debate. Fact-checkers¹²⁷ in social media play a crucial role in avoiding the fast spread of hate speech and disinformation. Interim relief during court proceedings should be foreseen to counter hate speech in election campaign.

101. The Venice Commission underlines the importance of the involvement not only of the state, but of private actors to ensure a level-playing field. It recommends the public regulation of private networks to ensure that information disorders are addressed, and the digital platforms meet their obligations to allow for the free expression of the opinions of its users subject to the respect of the human rights of the other users, as well as international co-operation. In this context, the Venice Commission recalls the principles set forth in this respect in the Updated Rule of Law Checklist, including establishing a responsibility framework for online platforms to ensure compliance with the rule of law, for example by imposing legal requirements within the terms of use that these platforms impose on their users. The social impact of some online platforms justifies a risk assessment and mitigation framework aimed at ensuring respect for human rights, as well as equitable access to private expression and participation in public debate. Similarly, platforms with significant social impact should be legally required to assess and mitigate the risks of discriminatory effects arising from their content moderation mechanisms and other platform features. This framework should be enforced by independent regulators and be subject to subsequent judicial review alongside previous alternative dispute resolution mechanisms, such as mediation.

102. Hence, if cooperation mechanisms do not help preventing hate speech or voter dis- and misinformation, the Venice Commission recommends that the law provides for swift and effective mechanisms by which independent public authorities can curtail or prevent the spreading of hate speech or disinformation and ensure that voters have access to balanced information in a non-discriminatory manner. Such mechanisms should respect all legal and substantive guarantees, including when providing prompt interim reliefs and precautionary measures foreseen by the law, under the conditions of *fumus boni iuris* (appearance of a good right) and *periculum in mora* (danger in delay), while guaranteeing all necessary procedural safeguards (such as the adoption in accordance with the principle of *audi alteram partem* (listen to the other side), by an independent and impartial body, with the possibility of appeal) and without prejudice to the proceedings before a court.

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

¹²⁷ “Fact-checking” refers to the process and techniques employed to verify the accuracy of information available in the public domain, as well as the identities, strategies and practices of subjects producing or disseminating disinformation; fact-checking can be performed by media organisations, professional journalists, specialised fact-checkers, and non-professional users ([Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions](#)).