



Human Rights in the Digital Age

III lecture: Freedom of Expression in the digital age

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Outline

1. Freedom to impart and receive information online
2. Comments online, hate speech
3. Content moderation online
4. Disinformation, propaganda online
5. Right to Internet access
6. Freedom of expression v. right to private life

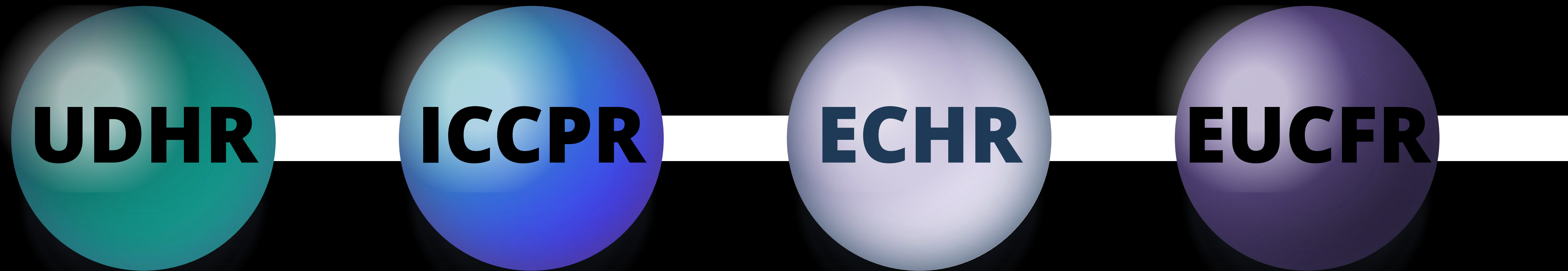




Introduction to the Freedom of Expression



Legal regulation



ECHR Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Freedom of expression

Freedom of opinion and expression are fundamental rights of every human being. Indispensable for individual dignity and fulfilment, they also constitute essential foundations for democracy, rule of law, peace, stability, sustainable inclusive development and participation in public affairs. States have an obligation to respect, protect and promote the rights to freedom of opinion and expression

Freedom of opinion and expression are essential for the fulfilment and enjoyment of a wide range of other human rights, including freedom of association and assembly, freedom of thought, religion or belief, the right to education, the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs. Democracy cannot exist without them

Freedom of opinion and expression are important in and of themselves for the promotion of individuals' self-fulfilment and autonomy. Freedom of expression, including artistic expression, is essential for the development and manifestation of individuals' identities in society.

ECtHR: Axel Springer v. Germany [GC], 2012

Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment."

Freedom of expression

Expression can take various forms: spoken and written words, art works, films, theatre music, other performing arts or happenings, including the destruction of property, when such an act has a “speech” content (real-life examples would include the burning of the national flag, throwing a paint can on a statue). Refraining from expression is also a form of the right to freedom of expression (the right to be silent).

Freedom of expression encompasses a wide spectrum of communications, from political expression, to academic, artistic or commercial communication, each of these being afforded different levels of protection.

Expression can be communicated via various channels: print media, books, letters, posters, broadcasting channels, and – of course, in the past years - mostly via the Internet

Freedom to hold
opinions



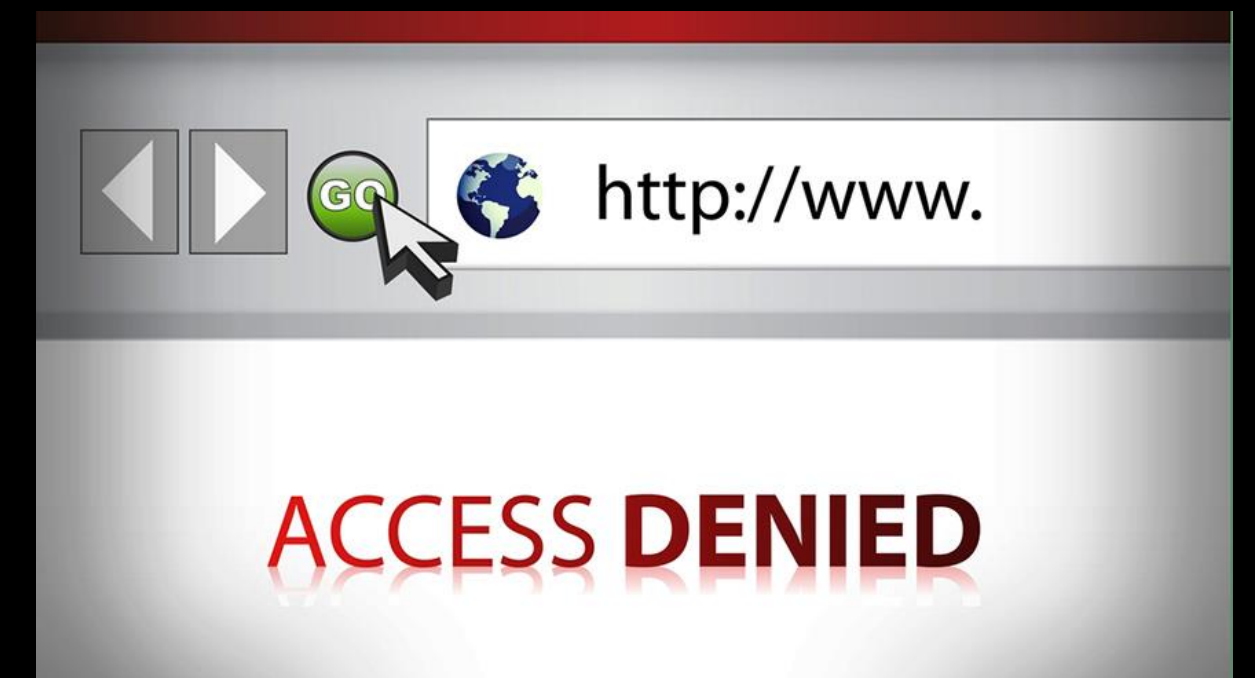
Freedom to impart
information



Freedom of
expression



Freedom to receive
information



Right to internet
access

The right to hold opinions without interference

Everyone has the right to hold opinions without any kind of interference. This right also includes the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights on the basis of his or her actual, perceived or supposed opinions. Any form or effort to coerce someone to hold or not an opinion is prohibited.

All forms of opinion are protected, including opinions of a social, political, scientific, historic, moral and religious nature. States may not impose any exceptions or restrictions to the freedom of opinion nor criminalise the holding of an opinion.

The right to seek and receive information

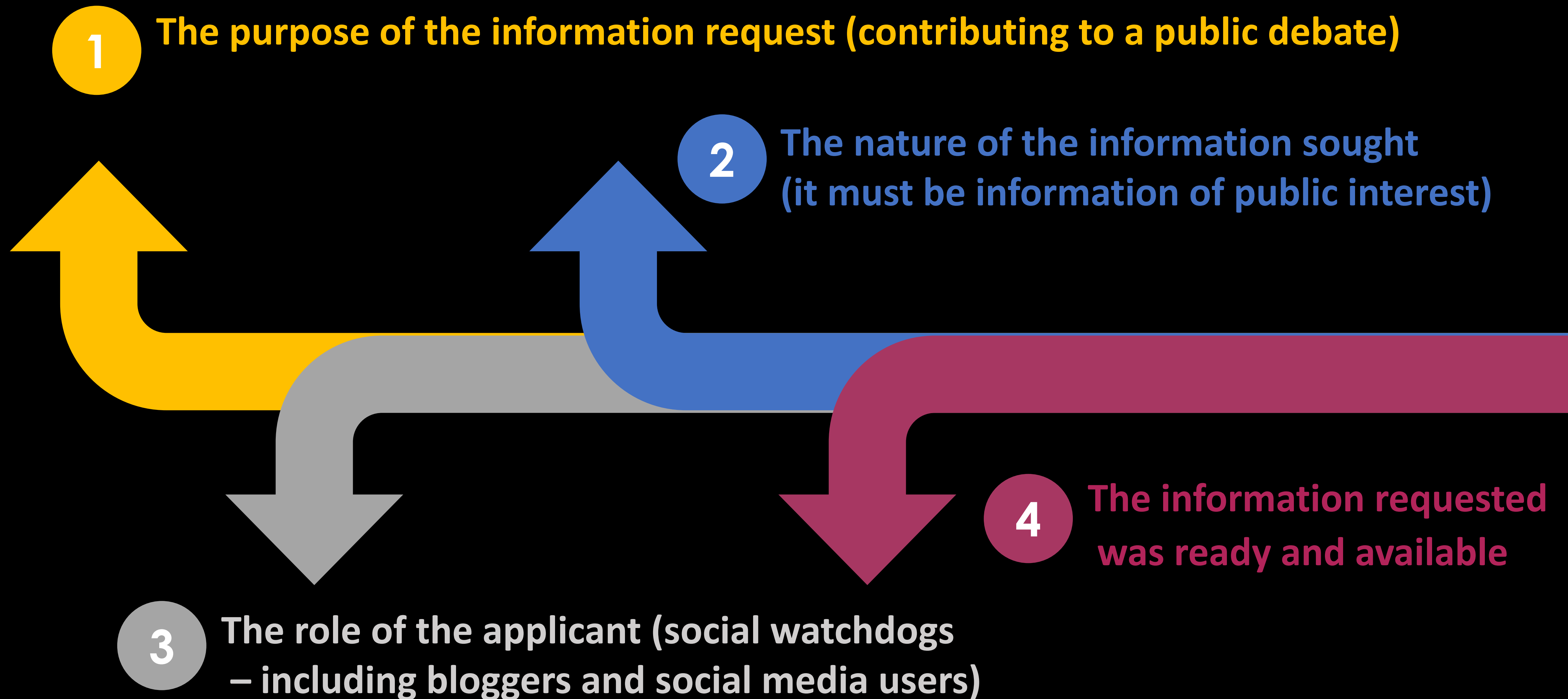
It is a key component of democratic governance as the promotion of participatory decision-making processes is unattainable without adequate access to information. For example, the exposure of human rights violations may, in some circumstances, be assisted by the disclosure of information held by State entities. The UN Human Rights Council has emphasized that the public and individuals are entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government.

The Internet and digital technologies have expanded the possibilities of individuals and media to exercise the right to freedom of expression and freely access online information. Any restriction that prevents the flow of information offline or online must be in line with permissible limitations as set out in international human rights law.

ECtHR: TASZ v. Hungary, 2009

Definition of the freedom to receive information “(...) the right to receive and impart information explicitly forms part of the right to freedom of expression under Article 10. That right basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him.”

Threshold criteria for assessing if the freedom of expression is breached by the state not providing the public information requested



The right to impart information and ideas

Information or ideas that may be regarded as critical or controversial by the authorities or by a majority of the population, including ideas or views that may “shock, offend or disturb”, are also covered by this. Commentary on one’s own or on public affairs, canvassing, discussion on human rights, journalism, scientific research, expression of ethnic, cultural, linguistic and religious identity and artistic expression, advertising, teaching are all examples of expressions that are covered by the freedom of expression. It also includes political discourse and advertising during election campaigns.

ECtHR: *Axel Springer v. Germany* [GC], ECtHR, 2012

Freedom of expression “is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.

Limitation clause

1

Legality

In accordance with the law

- Prescribed by national law
- Law must be adequately accessible
- Law must be clear and definite

2

Legitimacy

Legitime aims

- national security
- Territorial integrity or public safety
- prevention of disorder or crime
- protection of health or morals
- protection of the reputation or rights of others
- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of the judiciary

3

Proportionality

Necessary in a democratic society

- correspond to a pressing social need
- proportional to the legitimate aim pursued
- justified by relevant and sufficient reasons

Freedom of expression

Freedom of expression allows expression that might 'offend, shock or disturb' but prohibits 'insults', 'abusive attacks' and 'hate speech'

The "expression" is not limited to words, written or spoken, but extends to pictures, images, actions and even cultural heritage intended to express an idea or to present information.

Freedom of expression

“Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European Convention on Human Rights], it is **applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.** Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.”

Handyside v. the United Kingdom, judgment of 7 December 1976, § 49.



Freedom of expression

Freedom of
Speech is **Not**
a Licence to
abuse. It is a
responsibility.



ECtHR: Erbakan v. Turkey, judgment of 6 July 2006

“... [T]olerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance ..., provided that any ‘formalities’, ‘conditions’, ‘restrictions’ or ‘penalties’ imposed are proportionate to the legitimate aim pursued.”

When dealing with cases concerning incitement to hatred and freedom of expression, the European Court of Human Rights uses two approaches

the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights), where the comments in question amount to hate speech and negate the fundamental values of the Convention



the approach of setting restrictions on protection, provided for by Article 10, paragraph 2, of the Convention (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention)

Article 17

ECHR

Prohibition of abuse of rights

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.

As a rule, the Court will declare inadmissible, on grounds of incompatibility with the values of the Convention, applications which are inspired by totalitarian doctrine or which express ideas that represent a threat to the democratic order and are liable to lead to the restoration of a totalitarian regime.

ECtHR: Belkacem v. Belgium, 27 June 2017

This case concerned the conviction of the applicant, the leader and spokesperson of the organisation “Sharia4Belgium”, which was dissolved in 2012, for incitement to discrimination, hatred and violence on account of remarks he made in YouTube videos concerning non-Muslim groups and Sharia. The applicant argued that he had never intended to incite others to hatred, violence or discrimination but had simply sought to propagate his ideas and opinions. He maintained that his remarks had merely been a manifestation of his freedom of expression and religion and had not been apt to constitute a threat to public order

ECtHR: **Belkacem v. Belgium**, 27 June 2017

The Court declared the application inadmissible (incompatible *ratione materiae*). It noted in particular that in his remarks the applicant had called on viewers to overpower non-Muslims, teach them a lesson and fight them. The Court considered that the remarks in question had a markedly hateful content and that the applicant, through his recordings, had sought to stir up hatred, discrimination and violence towards all non-Muslims. In the Court's view, such a general and vehement attack was incompatible with the values of tolerance, social peace and non-discrimination underlying the European Convention on Human Rights. The Court considered that the applicant had attempted to deflect Article 10 (freedom of expression) of the Convention from its real purpose by using his right to freedom of expression for ends which were manifestly contrary to the spirit of the Convention.

Under Article 10, paragraph 2, of the Convention, the Court will examine successively if an interference in the freedom of expression exists, if this interference is prescribed by law and pursues one or more legitimate aims, and, finally, if it is “necessary in a democratic society” to achieve these aims.

ECtHR: Üçdag v. Turkey

This case concerned the applicant's criminal conviction for disseminating propaganda in favour of a terrorist organisation on account of two posts published on his Facebook account, as well as the rejection of his individual application to the Constitutional Court as being out of time. At the relevant time, the applicant was a public official working as an imam at a local mosque. The impugned posts had included two photographs (of individuals in uniform similar to that of PKK members and of a crowd demonstrating in a public street in front of a fire), originally shared by two other Facebook users.

ECtHR: Üçdag v. Turkey

The Court held that there had been a violation of Article 10 (freedom of expression) of the Convention, finding that by convicting the applicant on a charge of disseminating propaganda in favour of a terrorist organisation by posting the impugned contents on his Facebook account, the domestic authorities had failed to conduct an appropriate balancing exercise, in keeping with the criteria set out in its case-law, between the applicant's right to freedom of expression and the legitimate aims pursued (protecting national security and territorial integrity and preventing disorder and crime). In particular the assessment carried out by the domestic courts had not explained whether the sharing of the posts in question could have been considered, in view of their content, context and capacity to lead to harmful consequences having regard to their potential impact on the social networks under the circumstances of the case, as comprising incitement to the use of violence, armed resistance or uprising, or as amounting to hate speech. In the present case, the Turkish Government had not demonstrated that the grounds relied on by the domestic authorities to justify the impugned measure had been relevant and sufficient and had been necessary in a democratic society.

ECtHR: Beizaras and Levickas v. Lithuania

The applicants, two young men who were in a relationship, alleged that they had been discriminated against on the grounds of sexual orientation because of the authorities' refusal to launch a pre-trial investigation into the hate comments on the Facebook page of one of them. The latter had posted a photograph of them kissing on his Facebook page, which led to hundreds of online hate comments. Some were about LGBT people in general, while others personally threatened the applicants. The applicants submitted that they had been discriminated against on the grounds of sexual orientation. They also argued that the refusal had left them with no possibility of legal redress.

ECtHR: Beizaras and Levickas v. Lithuania

Applicants had suffered discrimination on the grounds of their sexual orientation and that the Lithuanian Government had not provided any justification showing that the difference in treatment had been compatible with the standards of the Convention. It noted in particular that the applicants' sexual orientation had played a role in the way they had been treated by the authorities, which had quite clearly expressed disapproval of them so publicly demonstrating their homosexuality when refusing to launch a pre-trial investigation. Such a discriminatory attitude had meant that the applicants had not been protected, as was their right under the criminal law, from undisguised calls for an attack on their physical and mental integrity.

Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private life)

Case-law

Einarsson v. Iceland: Court upheld a well-known commentator's right to respect for his private life under Article 8, over an individual's right to exercise freedom of expression under Article 10 in the context of an Instagram post accusing him of rape.

X published an altered version of the applicant's front-page picture with the caption "Fuck you rapist bastard" on his account on Instagram, an online picture-sharing application. X had altered the picture by drawing an upside down cross on the applicant's forehead and writing "loser" across his face"

'Article 8 [...] must be interpreted to mean that persons, even disputed public persons that have instigated a heated debate due to their behaviour and public comments, do not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts. The Court therefore finds that the statement was of a serious nature and capable of damaging the applicant's reputation.'

violation of Article 8

Christchurch mosque shootings in New Zealand (2019 March)

On 8chan (the now infamous image-board website allowing and promoting hateful comments, memes and images), the shooter posted about his plans and wrote that it was "time to stop shitposting and time to make a real life effort", suggesting that the attack was an extension of his online activity, an attempt to turn online hate into real-world violence. After he put his plans into execution, he was praised by many other 8chan members.

Responsibility for comments on the Internet



ECtHR: Delfi AS v. Estonia [GC]

- In 2006 Delfi published an article stating that a ferry company had changed its routes thereby causing the break-up of ice at potential locations of ice roads.
- A number of comments containing personal threats and offensive language directed against the ferry-company owner were posted below the article.
- Delfi removed them six weeks later at the insistence of the ferry company.
- The owner of the ferry company instituted defamation proceedings against the applicant company, which was ultimately ordered to pay 320 EUR in damages.

ECtHR: Delfi AS v. Estonia [GC]: no violation of Article 10

- Delfi was liable for having made accessible for some time the grossly insulting comments on its website.
- “where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, as understood in the Court’s case-law (...), the Court considers (...) that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties” (§ 159)*
- Delfi case does not concern “other fora on the Internet” where third-party comments can be disseminated

ECtHR: Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary

- MTE published an opinion on its webpage criticizing the business practice of two real estate websites for misleading their clients into using a 30-day advertising service free of charge, which on expiry became subject to a fee without prior notification. The opinion attracted offensive and vulgar comments both on the websites of MTE and Index.
- company operating the real estate websites brought a civil action against the applicants, complaining that the opinion and subsequent comments had damaged its reputation. On learning of the court action, the applicants immediately removed the comments in question.
- The national courts subsequently found that the comments had been offensive, insulting and humiliating and went beyond the acceptable limits of freedom of expression, stressing that the applicants, by enabling readers to make comments on their websites, had assumed liability for readers' injurious or unlawful comments.

ECtHR: *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*: violation of Article 10

- Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation.
- although offensive and even outright vulgar, was not a defamatory statement of fact but a value judgment or opinion (protected under Article 10 of the Convention) and the expressions used were common in communication on many Internet portals; comments concerned a matter of public interest;

ECtHR: *Pihl v. Sweden*: inadmissible

- The applicant had been the subject of a defamatory online comment, which had been published anonymously on a blog. He made a civil claim against the small non-profit association which ran the blog, claiming that it should be held liable for the third-party comment.
- balance must be struck between an individual's right to respect for his private life, and the right to freedom of expression enjoyed by an individual or group running an internet portal.
- although the comment had been offensive, it had not amounted to hate speech or an incitement to violence; it had been posted on a small blog run by a non-profit association; it had been taken down the day after the applicant had made a complaint; and it had only been on the blog for around nine days.

The criteria that needs to be considered to distinguish the responsibilities for online intermediaries as regards freedom of expression

- the context of the comments
- the measures applied by the applicant company in order to prevent or remove defamatory comments
- the liability of the actual authors of the comments as an alternative to the intermediary's liability; anonymity needs to be respected
- the consequences of the domestic proceedings for the applicant company

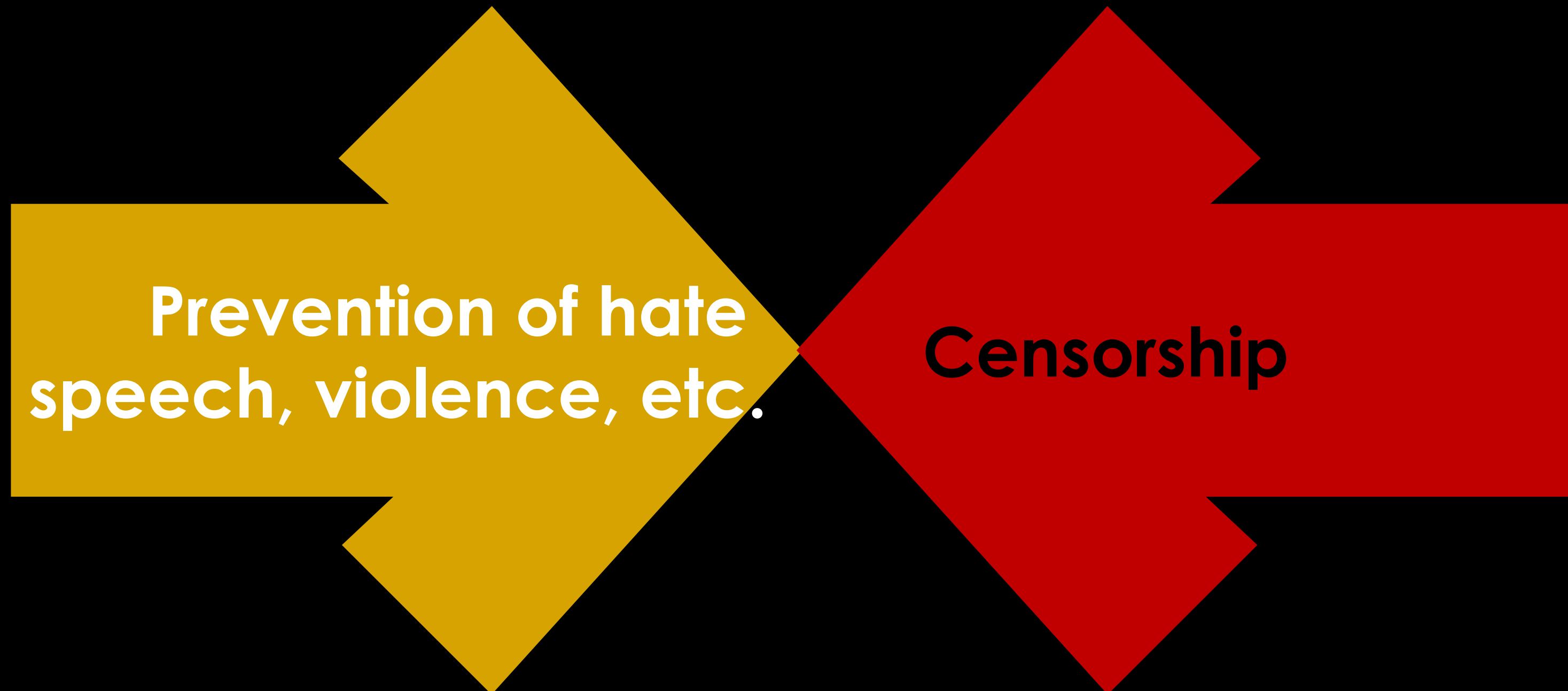
Content moderation

Content moderation refers to the screening of inappropriate content that users post on a platform. The process entails the application of pre-set rules for monitoring content. If it doesn't satisfy the guidelines, the content gets flagged and removed.

The reasons can be different, including violence, offensiveness, extremism, nudity, hate speech, copyright infringements, and similar. Content moderation is widely used by social media, dating websites and apps, marketplaces, forums, and similar platforms.

Moderation practices can include depublication, delisting, downranking and can lead to some forms of censorship of information and/or user accounts from social media and other online platforms.

Content moderation



Censorship

Censorship represents the system of control over the publishing of books, movies, letters, etc. It could include even user comments on the Internet. There can be state censorship (enforced through its agencies, based on its laws and regulations), but it can also take the form of private censorship, where a private actor decides not to allow certain speech reach into the public arena.

Content moderation is a tool used to address a wide variety of different problems. It is an element in the fight against serious crime online, against other online offences, against content that may be prejudicial to some audiences and against content that may be problematic for the business model of online companies (off-topic content on a specialised platform, for example). Regardless of the problem being addressed by content moderation, removal of an online post is a limitation of a user's freedom of expression, so this also needs to be done in a way which is predictable, legitimate, necessary and proportionate.

When considering responsibility for such restrictions, we need to consider the fact that no content moderation is perfect and that they can be imposed as private decisions of internet intermediaries, decisions directly attributable to state regulation or a mix of the two. Content moderation will always involve error, and so the pertinent question is what error rates are reasonable and which kinds of errors should be preferred

Content moderation

Companies often face critical human rights dilemmas: aggressively combating what is viewed as harmful content risks silencing 'protected speech': speech that, under international law, should be permitted. Intervening with or removing content affects the rights to freedom of expression and privacy, and can easily lead to censorship.

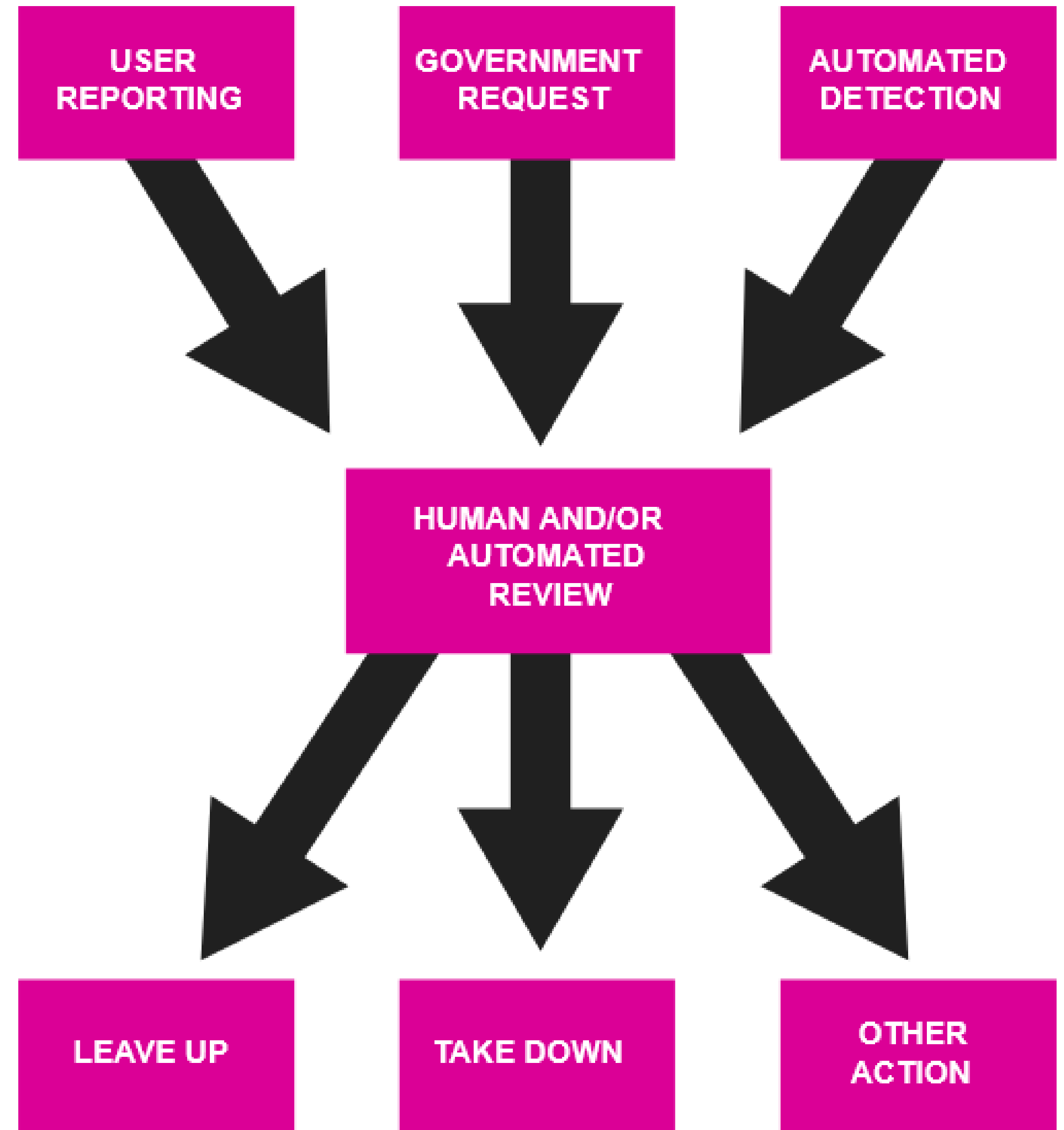
Faced with the need to do more to ensure accountability, many governments have started to regulate online content. Some 40 new social media laws have been adopted worldwide in the last two years. Another 30 are under consideration.

Content moderation

During the recent upsurge in violence in Israel and the Occupied Palestinian Territory in May, Palestinian voices were disproportionately undermined by social media company content moderation practices, and there were limited avenues for challenging take-down decisions. Instagram acknowledged problems with its automated curation systems.

Nigerian government announced the indefinite suspension of Twitter after the platform deleted a post from President Buhari's account saying it violated company policies. Within hours, Nigeria's major telecommunications companies had blocked millions from accessing Twitter, and Nigerian authorities threatened to prosecute anyone who bypassed the ban.

Content moderation process



Types of content moderation



Pre-
moderation

Automated
moderation

Post-
moderation

Distributed
moderation

Reactive
moderation

To address the dilemmas of regulation and moderation of online content, UN Human Rights has proposed five actions for States and companies to consider

01

Focus of regulation should be on improving content moderation processes, rather than adding content-specific restrictions. Ex., when faced with complex issues, people should be making the decisions, not algorithms.

02

Restrictions imposed by States should be based on laws, they should be clear, and they should be necessary, proportionate and non-discriminatory

03

Companies need to be transparent about how they curate and moderate content and how they share information, and States need to be transparent about their requests to restrict content or access users' data.

04

Users should have effective opportunities to appeal against decisions they consider to be unfair, and independent courts should have the final say over lawfulness of content

05

Civil society and experts should be involved in the design and evaluation of regulations

Case study: Removed pages / shadow bans

In the UK, the public Facebook forums (“pages”) of eight independent civil society organisations were removed by Facebook on 4 November 2019 (during a general election campaign). The common features of all of the groups are that they started as pro-EU organisations, are all local, volunteer-based groups, based in individual towns or cities and that their local, pro-EU focus is clear from their names (“Banbury for Europe,” for example). Some of these groups were also the subject of repeated “shadow bans” (which leave the content/accounts of the groups online but render them significantly more difficult to find) in November and December of that year. The impact of these measures was a reduction in “daily reach” of the pages of over 90%. Facebook’s actions had an unknowable impact on the actions and success of the groups in relation to their influence on the election in the constituencies in which they were active.

No accusation of illegal activity was made, nor did Facebook make any specific allegation of breaches of its terms of service. Facebook suggested that the groups alter their behaviour, such as by reducing the number of posts on the pages. However, Facebook did not say if this would, in fact, stop the same problem recurring. The company explained that this restriction on the groups’ freedom of expression “are taken automatically by our [artificial intelligence] AI as a result of activity undertaken by the page”

CJEU: *Eva Glawischnig-Piesczek v. Facebook*

The case started in the spring of 2016, when a Facebook user posted an article featuring a photo of Ewa Glawischnig-Pieszcze, then a member of the Austrian Green Party. The post was accompanied by comments calling her “a corrupt oaf”, “lousy traitor”, and “member of a fascist party”. Glawischnig-Piesczek quickly demanded that Facebook remove the post because she claimed that the comments were defamatory and unlawful under the Austrian national law. Facebook eventually removed the post but only after the Commercial Court of Vienna issued the interim injunction that ordered the platform to disable access to the post in Austria. The Court agreed with Glawischnig-Piesczek that the comments were “obviously unlawful” and ordered Facebook to actively monitor and block not only identical, but also equivalent, comments shared on the platform. The Higher Regional Court of Vienna confirmed that Facebook should remove any future posts including the identical defamatory comments alongside the picture of Ms. Glawashnig-Piesczek. However, it disagreed with the second part of the original interim injunction that forced Facebook to remove equivalent content. The Court underlined that the active monitoring of equivalent content — that is, comments that convey the same message but in different words — would amount to a general monitoring obligation, which is forbidden by the E-Commerce Directive, the main legal instrument regulating intermediary liability for user-generated content in the EU and its member states.

CJEU: *Eva Glawischnig-Piesczek v. Facebook*

the Court of Justice answers the Oberster Gerichtshof that the Directive on electronic commerce, which seeks to strike a balance between the different interests at stake, does not preclude a court of a Member State from ordering a host provider:

- to remove information which it stores, the content of which is identical to the content of information which was previously declared to be unlawful, or to block access to that information, irrespective of who requested the storage of that information;
- to remove information which it stores, the content of which is equivalent to the content of information which was previously declared to be unlawful, or to block access to that information, provided that the monitoring of and search for the information concerned by such an injunction are limited to information conveying a message the content of which remains essentially unchanged compared with the content which gave rise to the finding of illegality and containing the elements specified in the injunction, and provided that the differences in the wording of that equivalent content, compared with the wording characterising the information which was previously declared to be illegal, are not such as to require the host provider to carry out an independent assessment of that content (thus, the host provider may have recourse to automated search tools and technologies);
- to remove information covered by the injunction or to block access to that information worldwide within the framework of the relevant international law, and it is up to Member States to take that law into account.

CJEU: *Eva Glawischnig-Piesczek v. Facebook*

This ruling could open the door for exploitative upload filters for all online content. Despite the positive intention to protect an individual from defamatory content, this decision could lead to severed freedom of expression for all internet users, with particular risks for political critics and human rights defenders by paving the road for automated content recognition technologies.

Diego Naranjo, Head of Policy at EDRi



Propaganda, disinformation



Disinformation

Verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public and may cause public harm

The production and promotion of disinformation can be motivated by economic factors, reputational goals or political and ideological agendas. It can be exacerbated by the ways in which different audiences and communities receive, engage and amplify disinformation

The challenge posed by disinformation comes not only from its content, but also how it is distributed and promoted on social media. The intention to harm or profit that characterises disinformation itself entails that disinformation is commonly accompanied by strategies and techniques to maximise its influence

Disinformation v. fake news

There is an emerging consensus among public policy actors against using the term 'fake news' and in favour of using the term 'disinformation' to describe what is generally understood as false or misleading information produced and disseminated to intentionally cause public harm or for profit.

Since the term 'fake news' is commonly used as a weapon to discredit the media, experts have called for this term to be abandoned altogether in favour of more precise terminology

Even though the term 'fake news' emerged around the end of the 19th century, it has become too vague and ambiguous to capture the essence of disinformation. Immediately after the 2016 US election, concepts such as 'alternative facts', 'post-truth' and 'fake news' entered into public discourse

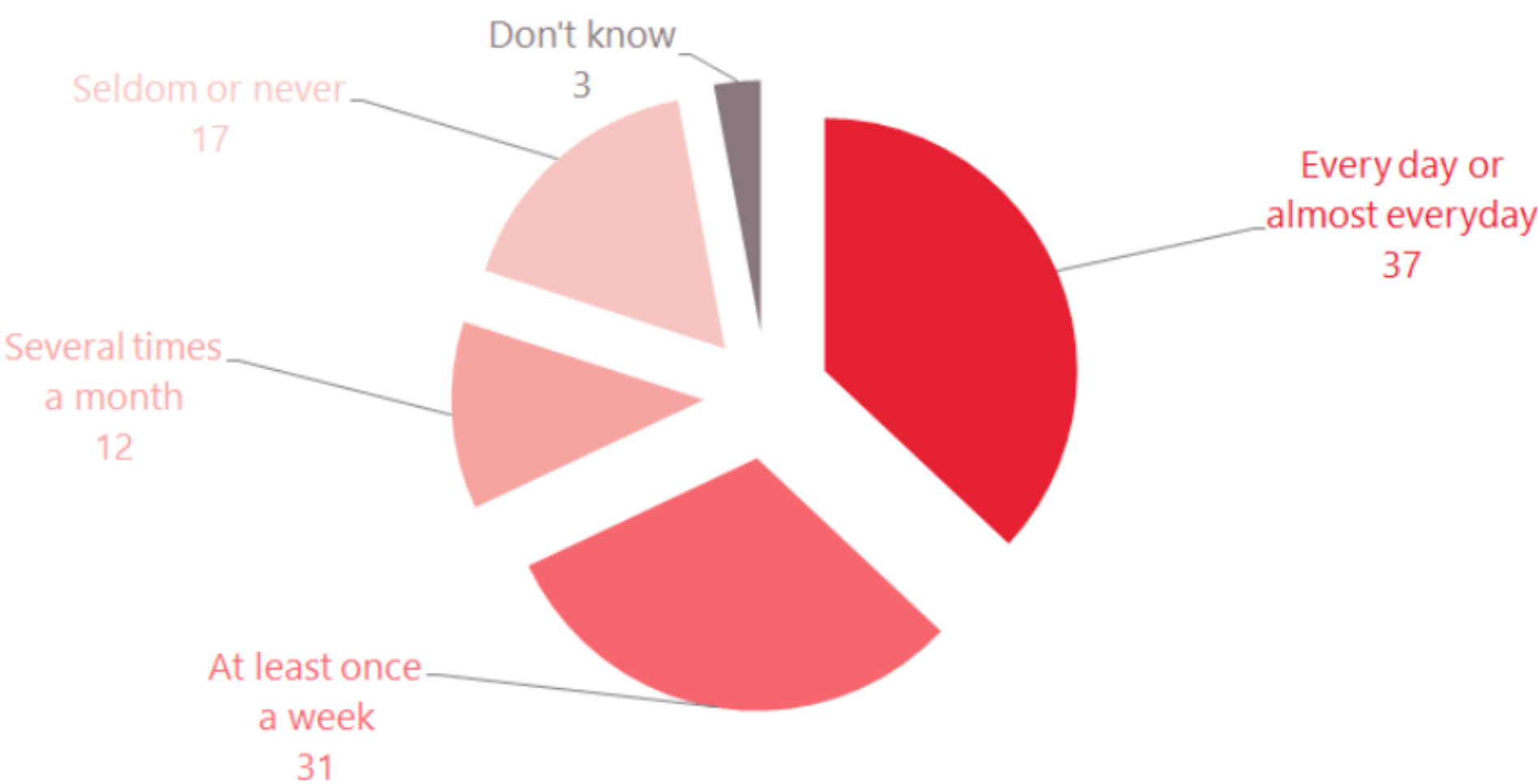
Types of information disorders

	Definition	Example
Misinformation	When false information is shared, but no harm is meant	During the 2016 US presidential elections, a tweet about a 'rigged' voting machine in Philadelphia was shared more than 11 000 times. It was later established that the original tweet was a mistake made by a voter who had failed to follow the instructions exhibited on the voting machine. ⁴⁸
Disinformation	When false information is knowingly shared to cause harm	During the 2017 French presidential elections, a duplicate version of the Belgian newspaper <i>Le Soir</i> was created, with a false article claiming that Emmanuel Macron was being funded by Saudi Arabia. ⁴⁹
Mal-information	When genuine information is shared to cause harm	Examples include intentional leakage of a politician's private emails, as happened during the presidential elections in France. ⁵⁰

Source: Wardle, C. and Derakhshan H. in Information disorder: Toward an interdisciplinary framework (2017).

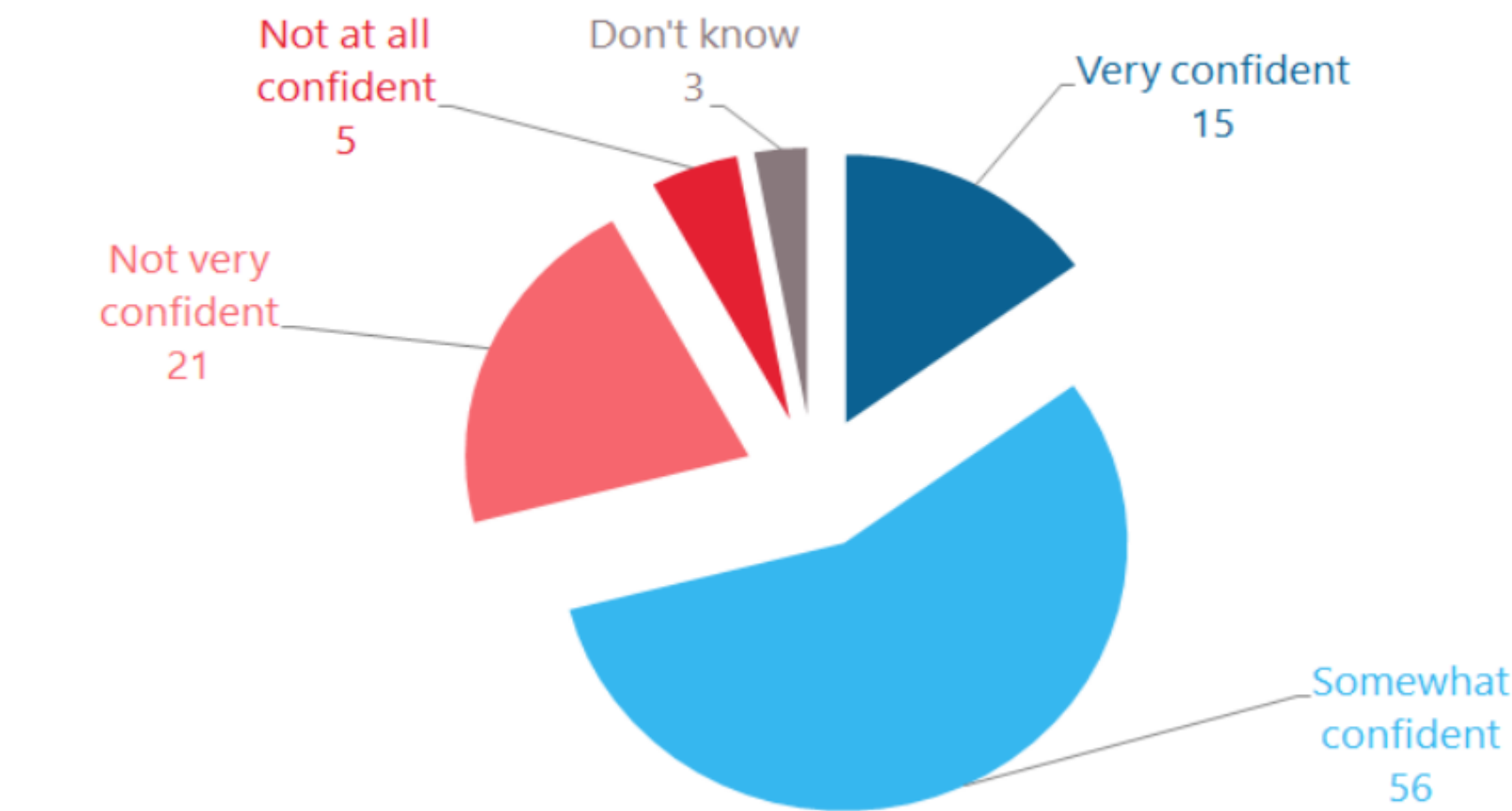
Survey: Fake news and disinformation online (2018)

How often do you come across news or information that you believe misrepresent reality or is even false?
(% - EU)



Base: All Respondents (N=26,576)

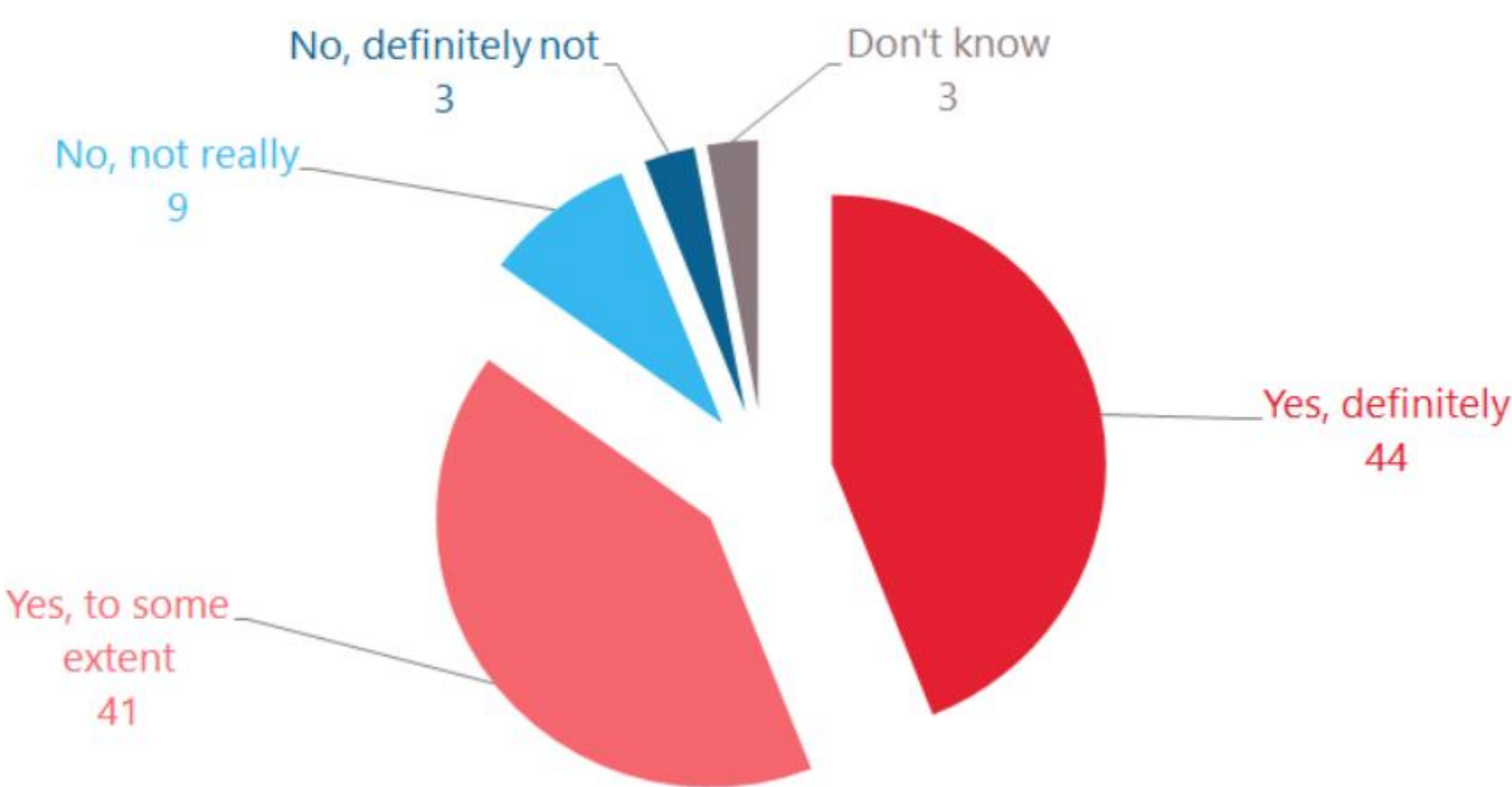
How confident or not are you that you are able to identify news or information that misrepresent reality or is even false?
(% - EU)



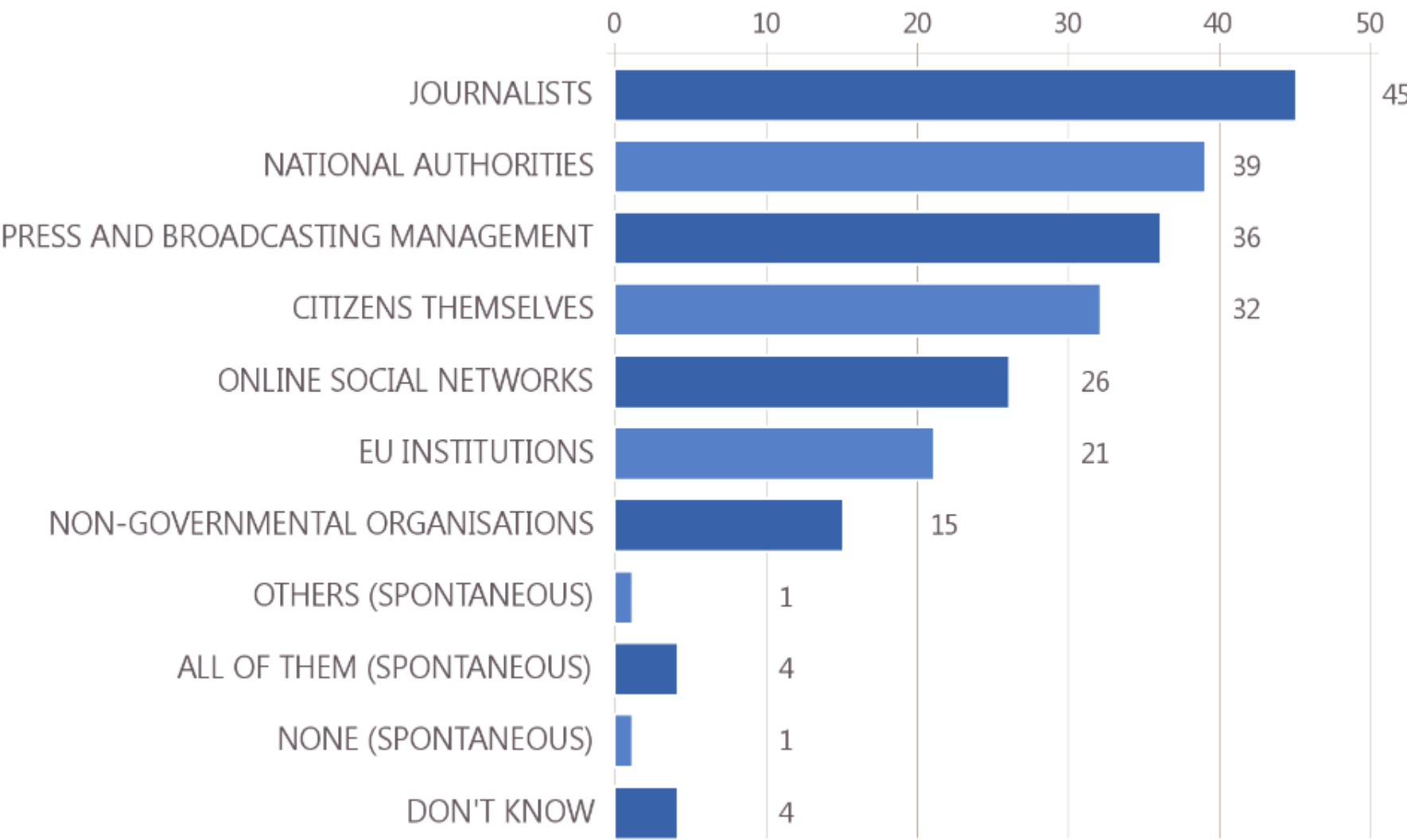
Base: All Respondents (N=26,576)

Respondents are less likely to trust news and information from online sources than from more traditional sources

In your opinion, is the existence of news or information that misrepresent reality or is even false a problem ...
In (OUR COUNTRY) (% - EU)



News or information that misrepresent reality or that are even false are called "fake news". Which of the following institutions and media actors should act to stop the spread of "fake news"? (MAX. 3 ANSWERS)
(% - EU)



Base: All Respondents (N=26,576)

Propaganda

Summing up 26 definitions: Propaganda is the art of influencing, manipulating, controlling, promoting, changing, inducing, or securing the acceptance of opinions, attitudes, action, or behaviour

Joint Declaration by the special rapporteurs on freedom of expression: Propaganda is “designed and implemented so as to mislead a population, as well as to interfere with the public’s right to know and the right of individuals to seek and receive, as well as to impart, information and ideas of all kinds”.

Propaganda

This definition does not carry any political connotation and can be applied to a variety of settings. For example, commercial advertising and public relations could be forms of propaganda. Political advertising campaigns, especially active during the electoral period, have also been considered a form of propaganda, as well as the attempts of ideological movements to influence and recruit followers or deliberate actions by a third-country government to influence the democratic processes in neighbouring states.

Common elements in definitions of disinformation and propaganda

Manipulative in nature

- Content designed to be false or manipulated or misleading (disinformation), or content using unethical persuasion techniques (propaganda)

Intention

- Intention to mislead by false facts, which were consciously designed to contain falsity and to be presented as facts

Public issue

- Matters of public interest (politics, health, environment); aims at influencing societal processes and gaining geopolitical advantage

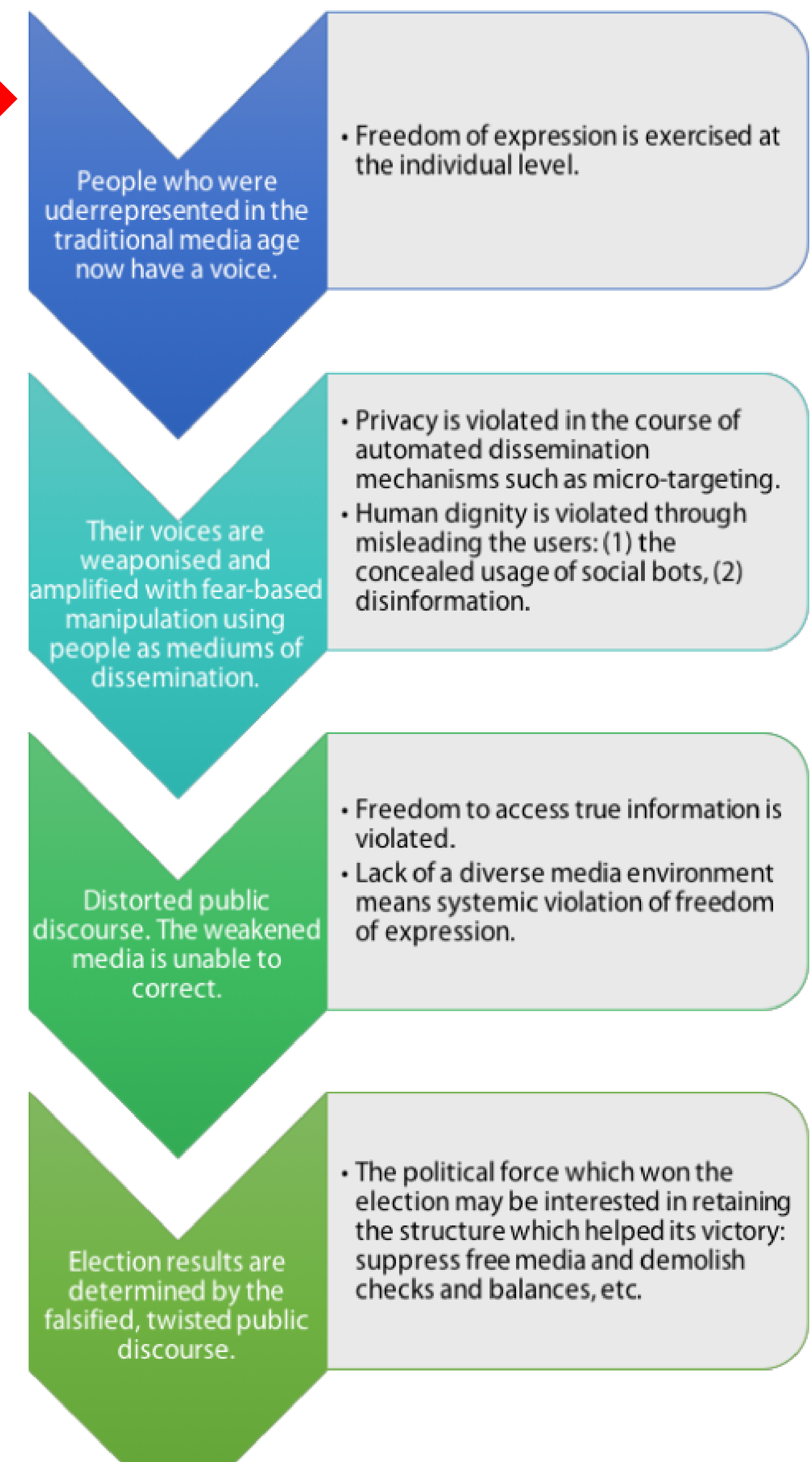
Dissemination

- Strategically disseminated, often assisted by AI (micro-targeting, chatbots), campaign-like manner

How the process of spreading disinformation and propaganda in social media affects human rights

False information in itself (if it does not violate others' reputation, for example) enjoys the protection of freedom of expression, but when the whole environment of public discourse becomes occupied and dominated by falsehood, it frustrates the primary purpose of freedom of expression.

As long as disinformation originates from small media outlets and individuals, a strong professional media system can counteract its negative effect. Yet a crisis-stricken media that lost its reputation cannot effectively counteract the effects of disinformation and propaganda campaigns.



Article 20

ICCPR

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Access to the Internet



Access to the Internet

“[T]he Internet has now become one of the principal means by which individuals exercise their right to freedom to receive and impart information and ideas [...] Moreover,[...], the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general.” (*Cengiz and Others v. Turkey*, judgment of 1 December 2015, §§ 49 and 52).

ECtHR: Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2), 2009

“In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public’s access to news and facilitating the dissemination of information in general.”

ECtHR: Delfi AS v. Estonia 2015 [GC], 2015

User-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression.”

ECtHR: Case Magyar Helsinki Bizottság v. Hungary [GC], 2016

“The function of bloggers and popular users of the social media may be also assimilated to that of “public watchdogs” in so far as the protection afforded by Article 10 is concerned.”

Access to the Internet: Case-Law

Akdeniz v. Turkey (11 March 2014): the blocking of access to two websites (“myspace.com” and “last.fm”) on the grounds that they streamed music without respecting copyright legislation. **Inadmissible** (incompatible *ratione personae*)

Cengiz and Others v. Turkey (1 December 2015): blocking of access to *YouTube*. **Violation of Article 10.** the interference resulting from the application of the impugned provision of the law in question did not satisfy the requirement of lawfulness under the Convention and that the applicants had not enjoyed a sufficient degree of protection.

Kablis v. Russia (30 April 2019): restrictions on his VKontakte account and the blog entries, **violation of Article 10.**

Access to the Internet: Case-Law

Vladimir Kharitonov v. Russia, OOO Flavus and Others v. Russia, Bulgakov v. Russia and Engels v. Russia (23 June 202): These cases concerned the blocking of websites in Russia and, in particular, different types of blocking measures, including “collateral” blocking (where the IP address that was blocked was shared by several sites including the targeted one); “excessive” blocking (where the whole website was blocked because of a single page or file), and “wholesale” blocking (three online media were blocked by the Prosecutor General for their coverage of certain news).

Court highlighted in particular the importance of the Internet as a vital tool in exercising the right to freedom of expression. Among other things, the Court found that the provisions of Russia’s Information Act used to block the websites had produced excessive and arbitrary effects and had not provided proper safeguards against abuse, **violation of Article 10.**

Access to the Internet of prisoners: Case-Law

Kalda v. Estonia (19 January 2016): refusal to grant prisoner access to three Internet websites, containing legal information, run by the State and by the Council of Europe. **violation of Article 10.** Contracting States are not obliged to grant prisoners access to Internet. It found, however, that if a State was willing to allow prisoners access, as was the case in Estonia, it had to give reasons for refusing access to specific sites.

Jankovskis v. Lithuania (17 January 2017): prisoner had been refused access to a website run by the Ministry of Education and Science, thus preventing him from receiving education-related information. **violation of Article 10.** Article 10 could not be interpreted as imposing a general obligation to provide access to the Internet, or to specific Internet sites for prisoners. The Lithuanian authorities had however not considered the possibility of granting the applicant limited or controlled Internet access to that particular website administered by a State institution, which could hardly have posed a security risk.

Mehmet Reşit Arslan and Orhan Bingöl v. Turkey (18 June 2019): prisoners serving sentences of life imprisonment, complained in particular of being prevented from using a computer and accessing the Internet. **violation of Article 2 of Protocol No. 1.** Turkish authorities' denial of the requests by the applicants to use audiovisual materials and computers and to have Internet access did not strike a fair balance



Right to private life v. freedom of expression



ECtHR: Editorial Board of Pravoye Delo and Shtekel v. Ukraine, 2011

“The risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press. Therefore, the policies governing reproduction of material from the printed media and the Internet may differ. The latter undeniably have to be adjusted according to the technology’s specific features in order to secure the protection and promotion of the rights and freedoms concerned.”

Political criticism

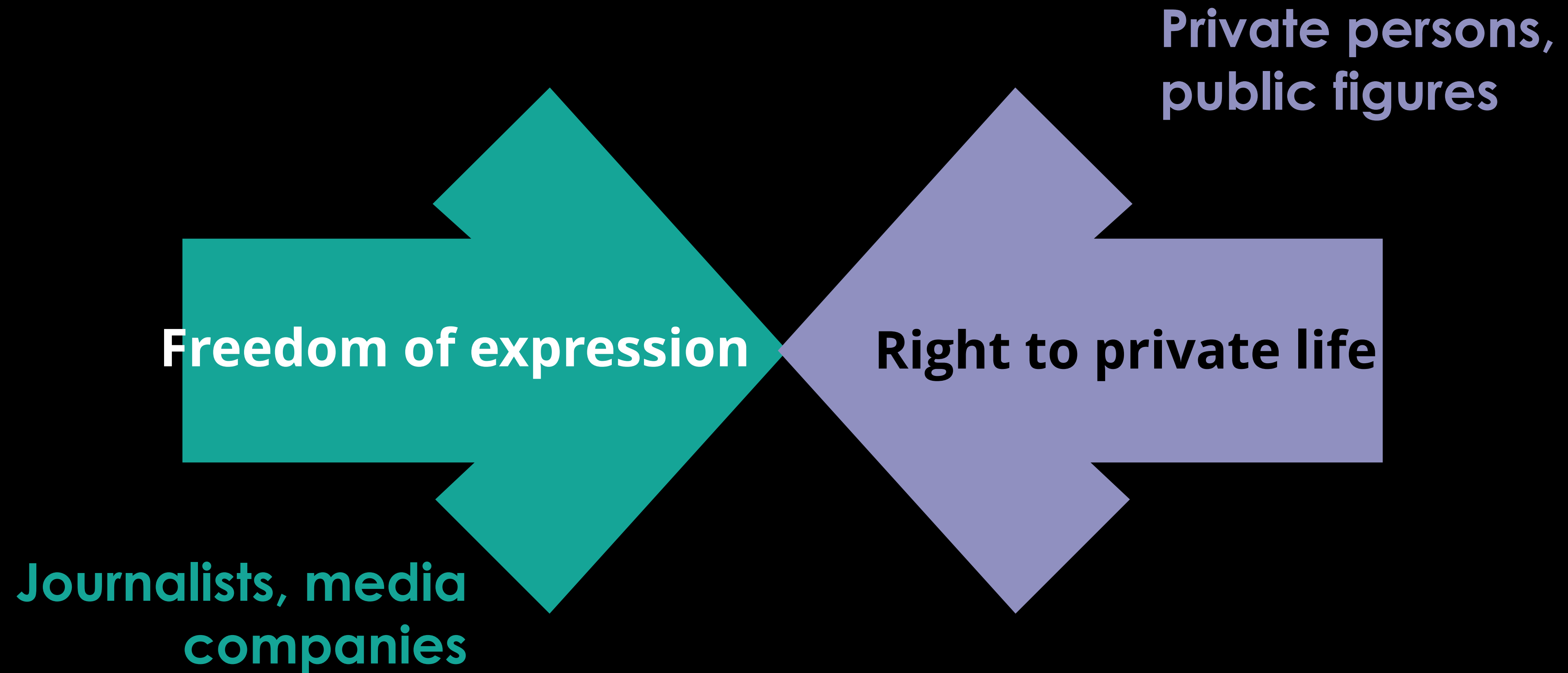


Politicians need to
accept wider criticism

Public figures



Application to the international bodies



Balancing Art. 8 and Art. 10

In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the outcome of the application should not vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher

These rights deserve equal respect (**Couderc and Hachette Filipacchi Associés v. France** [GC])

Accordingly, the margin of appreciation should in theory be the same in both cases.

Balancing Art. 8 and Art. 10

Although freedom of expression includes the publication of photographs, the Court has nonetheless found that the protection of the rights and reputation of others takes on particular importance in this area, as photographs may contain very personal or even intimate information about an individual or his or her family (***Von Hannover v. Germany*** (no. 2) [GC])

Everyone, including people known to the public, has a legitimate expectation that his or her private life will be protected. A distinction has to be made between private individuals and persons acting in a public context, such as political or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures

Recording of a video in the law enforcement context or the release of the applicants' photographs by police authorities to the media constituted an interference with their right to respect for private life

Balancing Art. 8 and Art. 10

Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, which the public has a right to receive, including reporting and commenting on court proceedings (***Axel Springer AG v. Germany*** [GC], § 79).

The Court has also stressed the importance of the proactive role of the press, namely to reveal and bring to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (***Couderc and Hachette Filipacchi Associés v. France*** [GC], § 114).

Relevant criteria for balancing test

the contribution to a debate of general interest

the subject of the report and if it concerned a public figure

the prior conduct of the person concerned

the method of obtaining the information and its veracity

the content, form and consequences of the media content

the severity of the sanction imposed

Balancing Art. 8 and Art. 10: case-law

Reklos and Davourlis v. Greece: photographs of a new-born baby taken in a private clinic without the parents' prior consent, and the retention of the negatives. Effective protection of the right to one's image requires that the consent of the person concerned be obtained when the picture is taken and not just when publication becomes possible.

Violation of Article 8

Einarsson v. Iceland: Court upheld a well-known commentator's right to respect for his private life under Article 8, over an individual's right to exercise freedom of expression under Article 10 in the context of an Instagram post accusing him of rape.

Balancing Art. 8 and Art. 10: case-law

At the end of 2014, when deciding on the admissibility of a case brought by Stalin's grandson, who sued a newspaper and the author of an article for defamation of his grandfather, the ECtHR stated that the heir of a deceased person could not claim a violation of the latter's article 8's rights since they are non-transferable

However, in **Genner v. Austria** Court found no violation of Art. 10. Mr Genner, who worked for an association which offers support to asylum seekers and refugees, published a statement on the association's website on 1 January 2007 about the Minister for Interior Affairs ("L.P"), who had unexpectedly died the previous day. It commented: "The good news for the New Year: L.P., Minister for torture and deportation is dead." The late Minister's widower filed a private prosecution for defamation against Mr Genner, which resulted in his conviction and sentence to a fine of 1,200 euros.



Tasks



The applicants, a well-known musician and actress in Norway, complained about press invasion of their privacy during their wedding in August 2005. The wedding took place outdoors on an islet in the Oslo fjord accessible to the public. Without the couple's consent, the weekly magazine subsequently published a two-page article about the wedding accompanied by six photographs. They showed the bride, her father and bridesmaids arriving at the islet in a small rowing boat, the bride being brought to the groom by her father and the bride and groom returning to the mainland on foot by crossing the lake on stepping stones. The couple brought compensation proceedings against the magazine and won before the first two instances. However, in September 2008 the Supreme Court found against the couple. The applicants complained that their right to respect for private life had been breached by the Supreme Court's judgment.

Does such judgment violate Article 8 of the ECHR?

***LILLO-STENBERG AND SÆTHER v. NORWAY*, 16 January 2014**

The Court held that there had been no violation of Article 8 (right to respect for private life) of the Convention. Having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, it found that the Supreme Court had not failed to comply with its obligations under Article 8 of the Convention. The Supreme Court found against the couple. It considered that they had married in a place which was accessible to the public and that the article was neither offensive nor negative.

No violation of Article 8



THANK YOU
QUESTIONS?

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