

COMPARATIVE NOTE ON THE APPLICATION OF INTERNATIONAL FREEDOM OF EXPRESSION STANDARDS IN RELATION TO BREACHES OF CODES OF CONDUCT BY STATE OFFICIALS

ARMENIA

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EXECUTIVE SUMMARY

This Comparative Note focuses on the topic of freedom of expression of public officials and the situations in which the exercise of this freedom can prompt potential violations of their duties that apply to expressions and statements as generally regulated in codes of conduct for public officials.

The rights to freedom of expression under Article 10 ECHR of public officials and civil servants, is generally subject to duties of impartiality, discretion, and political neutrality potentially stemming from their codes of conduct or relevant legislation. Certain type of expressions, such as hate speech may be also subject to restriction in accordance to international standards, especially where speech results in defamation, disinformation, and conduct that may undermine institutional integrity or public trust.

Codes of conduct should uphold ethical standards without stifling democratic debate or fostering conformity. They must allow for independent thought, creativity, and legitimate criticism of government policy. Such codes should avoid overly broad interpretations that could suppress legitimate expression of one's views or of dissent.

Limitations must be case-specific and consider factors such as the official's position, context, medium (e.g., social media), tone, and timing. At the same time, whistleblowers acting in good faith on matters of public interest must be protected.

Policy frameworks must balance rights and responsibilities and apply restrictions only when lawful, necessary, proportionate, and pursuing a legitimate aim. Broadly formulated restrictions or "zero tolerance" approaches should be avoided in favor of nuanced, proportional measures, especially given the complexities introduced by social media, which blur personal and professional boundaries.

While public officials retain their rights as private citizens, those rights must be exercised in a way that does not undermine the trust placed in public institutions without valid reasons and proper justification for doing so. Social media amplify the voices of public officials and blur the line between personal and professional identity. As such, codes of conduct must evolve to reflect this reality, ensuring that their guidance is clear, fair, and aligned with international human rights law and applicable standards.

The existence of a code of conduct or other regulatory frameworks applicable to the professional conduct of public officials should not preclude them from contributing to public debate in an honest and meaningful way.

Public bodies must develop policies that respect the fundamental right to freedom of expression while ensuring that public officials uphold the integrity, impartiality, and trust expected of their office. The overarching goal is to protect freedom of expression while ensuring public confidence in state institutions through clear, fair, and human-rights-compliant standards.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 10 June 2025, the Acting Chairperson Corruption Prevention Commission sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a Comparative Note on the Application of International Freedom of Expression Standards in Relation to Breaches of Codes of Conduct by State Officials. In light of the subject-matter, ODIHR invited the Office of the OSCE Representative on Freedom of the Media to peer review this legal review.
2. On 13 June 2025, ODIHR responded to this request, confirming the Office’s readiness to prepare the Note providing an overview of relevant international human rights standards and OSCE human dimension commitments and practices in the OSCE region.
3. This Note was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE.

II. SCOPE OF THE NOTE

4. This Note examines the scope of state officials’ freedom of expression (hereinafter referred to as public officials and civil servants) and delineates the conditions under which such expressions may be subject to scrutiny for compliance with the applicable code of conduct provisions. The Note raises key issues and provides indications of areas of concern. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Note also highlights, as appropriate, good practices from other OSCE participating States in this field. Its main objective is to provide an overview of relevant international human rights standards and recommendations, OSCE commitments and comparative practices within the OSCE region related to this issue.
5. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.
6. The Note aims to answer a question *in abstracto* and thus does not offer a comprehensive analysis of the broader legal and institutional frameworks nor of the regulations pertaining to public officials or civil servants in Armenia. However, where needed and as applicable, the Note may also refer to the Armenian legal framework with a view to tailor the present legal analysis to the country context and the situation of public officials in the country. This Note raises key issues and seeks to provide general guiding principles to inform potential legislative or policy guidance.

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*¹ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*² and commitments to mainstream gender into OSCE activities, programmes and projects, the Note integrates, as appropriate, a gender and diversity perspective.
8. Should the Note be translated in another language, the English version shall prevail. In view of the above, ODIHR would like to stress that this Note does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Armenia in the future.

III. LEGAL ANALYSIS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The right to freedom of expression, including the right to seek, receive and impart information, is a human right crucial to the functioning of a democracy and is central to achieving other human rights and fundamental freedoms. The full enjoyment of this right is one of the foundations of a free, democratic, tolerant and pluralist society in which individuals and groups with different backgrounds and beliefs can voice their opinions, while bringing visibility to marginalized or underrepresented groups.
10. The right to freedom of expression and to receive and impart information is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR).³ Article 19 of the International Covenant on Civil and Political Rights (ICCPR)⁴ provides that “*everyone shall have the right to hold opinions without interference*” and that “*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.*” Article 19 of the ICCPR establishes the principle of medium neutrality by noting that these rights can be exercised regardless of the medium used. In General Comment No. 34 on Article 19 of the ICCPR, the UN Human Rights Committee further underlines the essential role of a free, uncensored and unhindered press or other media as a cornerstone of a democratic society, also elaborating recommendations pertaining to legislative and administrative frameworks for the regulation of the mass media.⁵
11. The right to freedom of expression is not absolute and can be limited under specific circumstances. Restrictions on the right to freedom of expression must, however, be compatible with the strict requirements set out in Article 19 (3) of the ICCPR. Notably, they must be provided by law (requirement of legality), pursue one of the legitimate aims

1 UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Ukraine deposited its instrument of ratification of this Convention on 12 March 1981.

2 See OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

3 See the Universal Declaration of Human Rights (UDHR), United Nations, General Assembly resolution 217 A, adopted 10 December 1948, Article 19.

4 See International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Armenia acceded to the Covenant on 23 June 1993.

5 UN Human Rights Committee, General Comment No. 34 “on Article 19 Freedoms of Opinion and Expression of the ICCPR”, CCPR/C/GC/34, 12 September 2011, in particular paras. 13-18 and 39-42.

- listed exhaustively in the text of Article 19 (3)⁶ (requirement of legitimacy), be necessary and proportionate, and constitute the least intrusive measure among those effective enough to reach the designated objective (requirement of necessity and proportionality). The requirement that restrictions to freedom of expression need to be provided by law means not only that restrictions need to be based on a law, but such law must also be precise, clear and foreseeable. Laws need to be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.⁷ Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific aim(s) they are pursuing. In addition, pursuant to Article 26 of the ICCPR, restrictions shall not be discriminatory. Further, Article 20 (2) of the ICCPR states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.
12. Of further relevance is the United Nations Convention against Corruption (UNCAC)⁸ which plays a vital role in promoting integrity, transparency, and accountability in public administration. Article 8 of the UNCAC calls on its States Parties to implement measures that promote integrity and prevent corruption among public officials, including through the adoption of codes of conduct, rules on conflicts of interest, and asset disclosure. While UNCAC emphasizes ethical behaviour and transparency, it does not mandate restrictions on freedom of expression. Rather, it requires that any of such standards or restrictions be clear, proportionate, and consistent with other international obligations, most notably, the right to freedom of expression under Article 19 of the ICCPR. As such, codes of conduct developed in line with UNCAC should be carefully designed to support public integrity without undermining public officials’ rights to freedom of expression, especially on matters of public interest or wrongdoing. In this context, whistleblower protections and safeguards against retaliatory sanctions are essential to ensuring that integrity systems remain compatible with fundamental rights.
13. Article 10 of the European Convention on Human Rights and Fundamental Freedoms (ECHR),⁹ the case law of the European Court of Human Rights (ECtHR) in the field of freedom of expression and freedom of the media, and other Council of Europe (CoE) instruments, as well as related documents such as opinions of the European Commission for Democracy through Law of the CoE (Venice Commission) are also relevant, and useful from a comparative perspective.¹⁰
14. Recommendation No. R (2000) 10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials provides a framework for the development and implementation of codes of conduct for public officials in Council of Europe member

6 i.e., (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals.

7 See UN Human Rights Committee, General Comment No. 34 “on Article 19 Freedoms of Opinion and Expression of the ICCPR”, CCPR/C/GC/34, 12 September 2011, para. 25, which states: “a norm, to be characterized as a ‘law’, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.” See also, e.g., ODIHR, Guidelines on Democratic Lawmaking for Better Laws, ODIHR, 16 January 2024, para. 12 and Principle 16; and Venice Commission, Rule of Law Checklist, CDL-AD(2016)007, 18 March 2016, para. 58. In addition, see, for the purpose of comparison and example of good regional practice, European Court of Human Rights (ECtHR), *The Sunday Times v. the United Kingdom* (No. 1), no. 6538/74, 26 April 1979, where the Court ruled that “the law must be formulated with sufficient precision to enable the citizen to regulate his conduct, by being able to foresee what is reasonable and what type of consequences an action may cause.”

8 Armenia ratified the Convention on 8 March 2007.

9 See European Convention on Human Rights (ECHR), Council of Europe, entered into force on 3 September 1953, Article 10.

10 See documents available at <<https://www.coe.int/en/web/freedom-expression/media>>.

- states. It emphasizes the importance of promoting integrity, transparency, accountability, and high ethical standards within the public administration and focuses on measures against corruption. More importantly, the Recommendation does not introduce or mandate specific restrictions on freedom of expression of public officials, though, it provides a model of the code of conduct to be adopted on a national level. Having said that, it means that in regard to this, general restrictions should be taken into account and code of conduct should be designed with broader human rights and obligations in mind, including all above mentioned standards under the general provisions of freedom of expression.
15. The Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech, in section 3 outlines recommendations for public officials, elected bodies, and political parties and clearly states that serious forms of hate speech are not protected speech and fall outside of the protection of freedom of expression under international human rights law. This Recommendation emphasizes the responsibility of public officials and political representatives to clearly and publicly condemn hate speech, and to refrain from engaging in or legitimizing such expression themselves. This kind of recommendation is aligned with the standards mentioned above that permit restrictions on speech that incites hate, discrimination and/or violence. As such, these restrictions are not only legitimate but necessary in a democratic society, and the Recommendation appropriately calls for a strong stance against hate speech without undermining freedom of expression.
 16. At the OSCE level, there are a number of commitments in the area of freedom of expression, access to information and freedom of the media. In particular, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE in 1990 (1990 Copenhagen Document) proclaims the right of everyone to freedom of expression, including the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Restrictions to the exercise of this right are only possible if they are prescribed by law and consistent with international standards.¹¹ OSCE participating States also reaffirmed “*the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinion*” in paragraph 26 of the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (1991 Moscow Document).¹² Moreover, in 1994, in Budapest, OSCE participating States reiterated that “*freedom of expression is a fundamental human right and a basic component of a democratic society*” committing to “*take as their guiding principle that they will safeguard this right*” and emphasizing in this respect, that “*independent and pluralistic media are essential to a free and open society and accountable systems of government*”.¹³
 17. Numerous OSCE commitments also concern OSCE participating States’ fight against discrimination and “hate crimes”,¹⁴ notably Ministerial Council Decision No. 9/09 on

11 See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen Document), CSCE/OSCE, 29 June 1990), para. 9.1.

12 See Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, (Moscow Document), CSCE/OSCE, 3 October, 1991, para. 26.

13 See CSCE Budapest Document 1994, Towards a Genuine Partnership in a New Era (Budapest Document), CSCE/OSCE, 21 December 1994, Chapter VIII, para. 36.

14 See e.g., *OSCE Ministerial Council Decision No. 4/03* of 2 December 2003, para. 8; *OSCE Permanent Council Decision No. 621 on Tolerance and the Fight against Discrimination, Xenophobia and Discrimination* of 29 July 2004, para. 1; and *Annex to Decision No. 3/03 on the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, MC.DEC/3/03 of 2 December 2003,

Combating Hate Crimes which calls upon OSCE participating States to “[e]nact, where appropriate, specific, tailored legislation to combat hate crimes, providing for effective penalties that take into account the gravity of such crimes”.¹⁵

18. In its Decision 3/18, adopted on 7 December 2018, the OSCE Ministerial Council called upon the OSCE participating States to fully implement all OSCE commitments and international obligations related to freedom of expression and media freedom and to make their laws, policies and practices pertaining to media freedom fully compliant with their international obligations. In particular, the Decision noted that, where necessary, States should review, repeal or amend such laws, policies or practices “so that they do not limit the ability of journalists to perform their work independently and without undue interference (...)”.¹⁶
19. In a 2021 Joint Declaration on politicians and public officials and freedom of expression by international mandate-holders, it was provided that states should adopt certain standards in relation to disinformation and false news, including to “[a]dopt policies which provide for disciplinary measures to be imposed on public officials who, when acting or perceived to be acting in an official capacity, make, sponsor, encourage or further disseminate statements which they know or should reasonably know to be false.; and to “... [e]nsure that public authorities make every effort to disseminate accurate and reliable information, including about their activities and matters of public interest.”¹⁷ The Joint Declaration also provides recommendations to tackle so-called hate speech by political parties, politicians and public officials, which includes adoption of codes of conduct.¹⁸
20. The ensuing sections will also make reference, as appropriate, to other documents of a non-binding nature, which have been elaborated in various international and regional fora

para.9, available at <<http://www.osce.org/odihr/17554?download=true>>, which recommends the “[i]mposition of heavier sentences for racially motivated crimes by both private individuals and public officials”.

15 See *OSCE Ministerial Council Decision No. 9/09 on Combating Hate Crimes*, 2 December 2009, para. 9.

16 See OSCE Ministerial Council Decision No. 3/18, “Safety of Journalists”, 12 December 2018, p. 3.

17 Joint Declaration on politicians and public officials and freedom of expression by the United Nations (UN) Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE), Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights, (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2021. Available at: [501697.pdf](#)

18 The Joint Declaration provides: c. “Hate Speech”

[...]

3. Recommendations for Political Parties, Politicians and Senior Public Officials

i. Political parties should adopt and enforce measures, such as codes of conduct, which set minimum standards of behaviour for their officials and candidates for elected office, including to address speech that promotes intolerance, discrimination or hatred, or constitutes disinformation which is designed to limit freedom of expression or other human rights

ii. Political parties should consider introducing or participating in cross-party initiatives aimed at countering intolerance, discrimination and dis/misinformation, and promoting intercultural understanding, social inclusion and respect for diversity.

iii. Politicians and public officials should not make statements that are likely to promote intolerance, discrimination or dis/misinformation and should, instead, take advantage of their leadership positions to counter these social harms and to promote intercultural understanding and respect for diversity.

iv. When conducting press conferences, politicians and public officials should treat participants with respect and ensure that they have an equitable opportunity to pose questions.

v. Politicians and public officials should not intentionally make false statements attacking the integrity of journalists, media workers or human rights defenders.

and may prove useful as they contain a higher level of details as to how international standards should be interpreted and examples of good practices.¹⁹

2. RELEVANT DOMESTIC LAW - CODE OF CONDUCT OF CERTAIN STATE OFFICIALS

21. The Armenian Code of Conduct for persons holding state positions (except for members of parliament, judges, members of the Supreme Judicial Council, prosecutors, and investigators), as well as for heads of communities and their deputies, and heads of administrative districts of Yerevan community was adopted by the Corruption Prevention Commission, and entered into force on 1 April 2024 and is legally binding. Its legal basis lies in Article 28 of the Law “On Public Service”, which explicitly mandates that the rules of conduct for public officials shall be defined by a Code of Conduct adopted by the Corruption Prevention Commission. The Code of Conduct has several provisions that concern freedom of expression. These include, in particular, Articles 36-37 on the principle of courtesy and respect and Articles 46–51 on the use of social media (Section 4, Chapter 1). The issues raised in these provisions will be analyzed in the broader context of public officials’ rights and obligations, with particular attention to whether the restrictions imposed are consistent with international human rights law and relevant standards on freedom of expression.

3. THE SCOPE OF FREE SPEECH FOR PUBLIC OFFICIALS

3.1. Public Officials and Limitations to their Right to Free Speech

22. At the outset it must be noted that Article 10 ECHR also applies to professional environments, which includes those employed by the state and state authorities. Thus, public officials have the right to freedom of expression, which may be restricted only under certain conditions and in line with the requirements of the aforementioned tripartite test. In the particular context of free speech of public officials or civil servants, a certain complexity presents itself as they are both citizens and representatives of the state. Like all citizens, they should enjoy the right to freedom of expression, as democracy requires active participation. At the same time, their proximity to government operations makes them vital sources of information, and their ability to discuss public issues or expose irregularities is essential for maintaining checks and balances. Yet, due to the very nature of their work public officials have certain duties and responsibilities with respect to their freedom of expression. Therefore, the factors that need to be balanced are on the one hand the tenets of democracy, which include free speech, and on the other hand the need to ensure the integrity of the public service and a public administration that is politically neutral.

¹⁹ These include, e.g., the General Comment no. 34 of the UN Human Rights Committee on the freedoms of opinion and expression (2011); the reports of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (hereafter “UN Special Rapporteur on Freedom of Opinion and Expression”) and of other human rights mandate-holders (available at: <<https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>>); the documents and guidelines published by the OSCE Representative on Freedom of the Media (available at: <[https://www.osce.org/resources/documents/?filters=+im_taxonomy_vid_1:\(27\)&solrsort=score%20desc&rows=10](https://www.osce.org/resources/documents/?filters=+im_taxonomy_vid_1:(27)&solrsort=score%20desc&rows=10)>) and by the OSCE High Commissioner on National Minorities (available at: <<https://www.osce.org/hcnm/thematic-recommendations-and-guidelines>>); and the digital inclusion resolutions of the UN International Telecommunication Union (ITU; the Republic of Uzbekistan joined the ITU, the United Nations specialized agency for information and communication technologies, on 10 July 1992).

23. In general, political speech is regarded as receiving especially high protection. The Human Rights Committee in its 2011 General Comment 34 on freedom of expression underscored that particularly strong protection is given in international human rights law to expressions on matters of public interest, including criticism of Governments and political leaders and speech by politicians and other public figures.²⁰ Generally, these speech protections are regarded as expansive, not limited to expressions “*favourably received or regarded as inoffensive*” but also covering expressions “*that offend, shock or disturb the State or any sector of the population*”.²¹ The right to freedom of expression is not absolute and it can be limited under specific circumstances.
24. At the same time, politicians and public officials bear a high level of responsibility for their expressive conduct since due to their public position and outreach, their speech can have broader and more intense impact on their audiences, thus, potentially resulting in harmful and/or illegal consequences.

3.1.1. Incitement to Discrimination, Hostility or Violence

25. International human rights law recognizes a limited number of types of content or expression which States must prohibit or render punishable (by law), providing that the legal provisions are clearly defined and strictly interpreted in accordance with international freedom of expression standards, especially when dealing with “incitement” to acts of violence. In this regard, Article 20 (1) provides that propaganda for war is to be prohibited by law; this extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations.²² Incitement to discrimination, hostility or violence (or serious forms of “hate speech”) is prohibited by Article 20 (2) of the ICCPR which states that “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Moreover, pursuant to Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination²³ (ICERD), “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin” shall be considered offences punishable by law. The prohibitions provided by Articles 20 (2) of the ICCPR and 4 (a) of the ICERD are also subject to the strict requirements of Article 19 (3) of the ICCPR on restrictions to freedom of expression²⁴ as underlined above.
26. In particular, the prosecution of direct and immediate incitement to violence is permissible²⁵ provided the material and mental elements of the offence are clearly defined

²⁰ Human Rights Committee, General Comment No. 34 (Article 19: Freedoms of opinion and expression), CCPR/C/GC/34, 12 September 2011, para. 38.

²¹ ECtHR, *Handyside v. the United Kingdom* (ECtHR 1976) application no 5493/71, para 49.

²² UN Human Rights Committee, General Comment No. 11: Article 20 Prohibition of propaganda for war and inciting national, racial or religious hatred, 29 July 1983

²³ Armenia acceded to this Convention on 23 June 1993.

²⁴ See UN Human Rights Committee, General Comment No. 34 on Article 19 of the ICCPR, CCPR/C/GC/34, 12 September 2011, para. 11; and Committee on the Elimination of Racial Discrimination (CERD), General recommendation No. 35 on combating racist hate speech (2013), paras. 19-20.

²⁵ See e.g., ECtHR, *Incal v. Turkey* [GC], no. 22678/93, 9 June 1998, para. 54, which states that “it remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal-law nature, intended to react appropriately and without excess to such remarks”; ECtHR, *Sürek and Özdemir v. Turkey* (No. 2), nos. 23927/94 24277/94, 8 July 1999, para. 34, indicating that States enjoy a wider margin of appreciation for curtailing freedom of expression when remarks incite to violence; *Fatullayev v. Azerbaijan*, no. 40984/07, 22 April 2010, para. 116, finding that unless a publication incites violence on ethnic hatred, the government should not bring criminal law proceedings against the media; *Müdür Duman v. Turkey*, no.

and limited in law, and any interference is necessary and proportionate. Such incitement would only be prohibited and punishable by law if they constitute direct and immediate incitement meaning when: (1) the expression is intended to incite imminent violence; and (2) it is likely to incite such violence; and (3) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence; a number of factors should be taken into account to determine whether the expression is serious enough to warrant restrictive legal measures including the context, speaker (including the individual's or organization's standing), intent, content or form, extent of the speech, and likelihood of harm (including imminence).²⁶

27. Similarly, factors considered by the ECtHR when assessing whether an interference with the exercise of freedom of expression in the form of criminal conviction is necessary in a democratic society include the following: whether the statements were made against a tense political or social background; whether such statements, being fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence; the manner in which the statements were made; their capacity – direct or indirect – to lead to harmful consequences; and the proportionality of sanctions.²⁷
28. Building on the case-law of the ECtHR, the Council of Europe [*Recommendation CM/Rec\(2022\)16 on Combating Hate Speech*](#) distinguishes between (1) “hate speech” that is prohibited under criminal law; (2) “hate speech” that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and (3) offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the ECHR, but nevertheless call for alternative (non-legislative) responses.²⁸ To assess the severity of an expression and which type of liability should be incurred, the Recommendation refers to the following factors: the content of the expression; the political and social context at the time of the expression; the intent of the speaker; the speaker's role and status in society; how the expression is disseminated or amplified; the capacity of the expression to lead to harmful consequences, including the imminence of such consequences; the nature and size of the audience, and the characteristics of the targeted group.²⁹

3.2. When Speech Can Become Misconduct

29. In every employment situation, employees have certain duties and responsibilities towards their employer. In the context of public officials these responsibilities stem from obligations of loyalty, reserve, discretion, courtesy, respect and political neutrality among

15450/03, 6 October 2015, para. 33, finding an invalid interference as the relevant materials which the applicant was convicted for possessing did not advocate violence.

26 See e.g., CERD, General recommendation No. 35 (2013), paras. 13-16; see also the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, in the Report of the United Nations High Commissioner for Human Rights on the prohibition of incitement to national, racial or religious hatred, United Nations General Assembly, 11 January 2013, Appendix, para. 29; and UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur and the African Commission Special Rapporteur on Freedom of Expression and Access to Information (hereinafter “International Mandate-Holders on Freedom of Expression”), Joint Declaration on Freedom of Expression and Countering Violent Extremism (2016), para. 2(d).

27 See ECtHR, *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, 28 August 2018, especially paras. 98-99 and 115-124; and regarding so-called “extremist” statements, ECtHR, *Stomakhin v. Russia*, no. 52273/07, 9 May 2018.

28 CoE Committee of Ministers, Recommendation CM/Rec(2022)16 on Combating Hate Speech, 20 May 2022, CM/Rec(2022)16), para. 3.

29 Ibid. Recommendation CM/Rec(2022)16 on Combating Hate Speech, para. 4; see also paragraph 11, which elaborates the types of expressions of hate speech that are subject to criminal liability.

others. The need to maintain a harmonious workplace, ensure the integrity and credibility of the organisation can require that public officials are subject to different interests that can shape their ability to freely express themselves.

30. As was indicated by the ECtHR in *Ahmed and Others v. the United Kingdom* and *De Diego Nafría v. Spain*,³⁰ while civil servants owe their employer a duty of loyalty, reserve and discretion, that duty is not without limits, particularly since civil servants may become aware of or have knowledge of information in the course of their work, including secret information, which carries with it a strong public interest in its publication or divulgation. It was made clear that where an employer fails to address an unlawful practice despite being made aware of it by an employee, the latter may no longer be required to show qualified loyalty, reserve and discretion.³¹ Similarly, in *Langner v. Germany*, consideration was given to expressing opinions on work related issues, particularly criticism of working conditions, supervisors and co-workers. It was noted that in order to shape the labour relationship, these expressions must be allowable but that there are limits such that the employee needs to be circumspect and not to make unfounded allegations during a work-related meeting that can damage the employer's reputation and destroy mutual trust, particularly where there are external parties present.³²
31. With regard to loyalty and discretion, it is important that civil servants do not make statements that could undermine the authority of the public bodies they work for or affect the respect for these public bodies. Another element in this regards is their duty to respect democratic principles, the state's constitutional order and rule of law. Therefore certain moderation may be expected in their expressions. Yet, such obligations cannot lead to disproportionate limitations to freedom of expression of public officials. Another aspect that can restrict a public official's free expression, is the requirement of political neutrality. This essentially means that public officials refrain expressing views of political nature that may undermine the public trust of the public administration. In *Ahmed and Others v. the United Kingdom* the ECtHR noted that "[m]embers of the public also have a right to expect that the members whom they voted into office will discharge their mandate in accordance with the commitments they made during an electoral campaign and that the pursuit of that mandate will not founder on the political opposition of their members' own advisers; it is also to be noted that members of the public are equally entitled to expect that in their own dealings with local government departments they will be advised by politically neutral officers who are detached from the political fray."³³
32. The ECtHR case-law generally holds that by inevitably and knowingly laying themselves open to scrutiny, politicians must display a greater degree of tolerance in case of criticism than private individuals. This approach has been expanded and applied to civil servants as well. For example, in *Janowski v. Poland*,³⁴ the ECtHR noted that civil servants acting in an official capacity are, like politicians, subject to the wider limits of acceptable criticism, although they should not be treated on equal footing. In *Le Pen v. France*, the

30 ECtHR, *Ahmed and Others v. the United Kingdom*, application nos 65/1997/849/1056, 2 September 1998, para 56; ECtHR, *De Diego Nafría v. Spain*, application no. 46833/9, 2002, para 37.

31 ECtHR, *Heinisch v. Germany*, application no. 28274/08, 21 July 2011, para. 73

32 ECtHR, *Langner v. Germany*, application no. 14464/11, 17 September 2015, para. 51; see also ECtHR, *Palomo Sánchez and others v. Spain*, application nos. 28955/06, 28957/06, 28959/06 and 28964/06, 12 September 2011, para. 73; ECtHR, *Raichinov v. Bulgaria*, 47579/99, 20 April 2006, paras. 48–51; ECtHR, *Fuentes Bobo v. Spain*, application no. 39293/98, 29 February 2000, paras. 47–48

33 ECtHR, *Ahmed and Others v. the United Kingdom*, application nos 65/1997/849/1056, 2 September 1998, para 53. See also: ECtHR, *Rekvényi v. Hungary* [GC], application no. 25390/94, para. 41 with respect to police officers.

34 ECtHR, *Janowski v. Poland*, application no. 25716/94, 21 January 1999.

ECtHR also confirmed that individuals engaging in a public debate may resort to a certain amount of exaggeration, or even provocation. In *Mamere v. France*, the Court noted while it cannot be said that civil servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do, in certain cases civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens. Yet, it does not go as far to extend this approach to all persons who are employed by the State, in any capacity whatsoever and noted that the requirements of protecting civil servants have to be weighed against the interests of freedom of the press or of open discussion of matters of public concern.³⁵ At the same time, civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks in the course of their duties. By the same token, civil servants should also be protected against abusive denunciations.³⁶

33. Whilst the freedom of expression would normally be guaranteed in statutory law and Constitutions, the conduct and speech of public officials and civil servants may be regulated through codes of conduct or ethical standards. Whether codes of conduct related principles apply in a certain situation, should be determined by several factors including if the public official was acting as such and has identified themselves as acting in official capacity, and whether they could objectively be perceived to be acting in their capacity of public official (for example, when posting about public body-related matters on social media, or when attending an event to which one has been invited as a public official). Therefore, it is important for public officials to have guidance for their behaviour and speech, though in each situation a balance has to be struck where such behaviour or speech may be egregious enough for it to be classified as misconduct.
34. From the case-law of the ECtHR several aspects can be discerned that are relevant to consider in applying the code of conduct to public official's alleged breaches thereof in the relation to expressions made by those officials. At the outset it is clear that higher protections are afforded to the speech of elected officials due to their role in democratic discourse as can be seen in *Castells v. Spain*³⁷ and *Lingens v. Austria*.³⁸ This protection is also afforded to civil servants, though their specific responsibilities and duties may warrant more limitations in their expressions. The ECtHR, in its examination, takes account of the circumstances and the overall background against which statements were made. It looks at the impugned interference in the light of the case as a whole, attaching particular importance to the office held by the applicants, the form and content of their statements and, in particular, the context in which they were made.

3.2.1. Capacity and Context

35. In general, as the ECtHR reiterated in *Guja v. Moldova* “...Article 10 applies also to the workplace, and that civil servants [...] enjoy the right to freedom of expression [...]. At the same time, the Court is mindful that employees have a duty of loyalty, reserve and discretion to their employer. This is particularly so in the case of civil servants since the very nature of civil service requires that a civil servant is bound by a duty of loyalty and

35 ECtHR, *Mamere v. France*, application no. 12697/03, 7 November 2006, para 27.

36 ECtHR, *Wojczyk v. Poland*, application no. 52969/13, 9 December 2021, para 96.

37 ECtHR, *Castells v. Spain*, application no. 11798/85, 23 April 1992, Series A no. 23. See also ECtHR, *Karácsony and Others v. Hungary* [GC], applications nos. 42461/13 and 44357/13, 17 May 2016, paras 133–137 –which concerned MPs sanctioned for protest in parliament; reinforced special protection for elected representatives.

38 ECtHR, *Lingens v. Austria*, application no 9815/82 (ECtHR 1986) Series A no. 103.

*discretion [...] Since the mission of civil servants in a democratic society is to assist the government in discharging its functions and since the public has a right to expect that they will help and not hinder the democratically elected government, the duty of loyalty and reserve assumes special significance for them [...]. In addition, in view of the very nature of their position, civil servants often have access to information which the government, for various legitimate reasons, may have an interest in keeping confidential or secret. Therefore, the duty of discretion owed by civil servants will also generally be a strong one”.*³⁹

36. Thus, it matters if a statement was made in official or professional capacity or in private capacity, where the latter receives broader protection, unless it clearly undermines official duties. This protection may also vary depending on each function and position and the extent to which those expressions may be reconciled with function of civil servant or public official. In addition, certain civil servants are representatives of the public administration and therefore may interact with external parties more frequently than other civil servants, therefore the former may carry a higher responsibility in exercising their freedom of expression.
37. In the case of *Rekvényi v. Hungary* the ECtHR dealt with the prohibition for the police officers from joining political parties or engaging in political activities. Here, the Court recognized that occupying a position in public service, especially a high-ranking one, comes with certain expectations of a special bond of trust and loyalty between public servants and the State in the performance of their functions and a legitimate requirement of political neutrality.⁴⁰ The Court paid particular attention to the historical context of the country.
38. As noted, the context or background against which the statements and expressions were made matter too. In *Baka v. Hungary* the Court observed that the applicant, a judge who was prematurely removed as the President of the Supreme Court following legal reforms, had expressed his views and criticisms on constitutional and legislative reforms affecting the judiciary, on issues related to the functioning and reform of the judicial system, the independence and irremovability of judges, and the lowering of the retirement age for judges, all of which are questions of public interest and concluded that his statements did not go beyond mere criticism from a strictly professional perspective.⁴¹
39. It is however important that being a public official should not be imposed as the only personality a person can have, and thus as such cannot *de facto* negate their right to free expression. Every person should have a possibility to have life and personality beyond his or her professional position and not only within the borders of one's home or family but also in public. Hence, while public officials could be more limited in terms of what they can say in their official capacity/role, such limitations should not unduly interfere with their ability to have their own opinions and expressions beyond their workplace. Otherwise, it would undermine the mere essence of their right to freedom of expression and potentially undermine their right to private life protected by Article 8 ECHR. In assessing the extent to which an interference in expression of political views outside of the workplace is deemed necessary, should also factor in the rank and position of the civil servant and whether such statements could undermine the integrity of public administration.

³⁹ ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, paras 70-71.

⁴⁰ ECtHR, *Rekvényi v. Hungary*, application no 25390/94, 20 May 1999, paras 44, 47-48

⁴¹ ECtHR, *Baka v. Hungary* [GC], application no. 20261/12, 23 June 2016, paras. 170-173.

3.2.2. Form and Content of Speech

40. Interference to free expression may be justified to protect the rights of others, including their reputation. From the ECtHR case-law it can be discerned that a lesser level of protection is granted towards insult or defamation of high-ranking officials, politicians and civil servants compared to other people. The Court has been explicit that there is no uniform conception of morals within the European arena such that States are in a better place to judge on morality boundaries,⁴² the protection of morals has limits.⁴³ Moreover, while professional codes of conduct may well contain elements intended to nudge and otherwise promote societal norms, the imposition of any enforceable obligation is doubtful and concern should be noted about the potential chilling effect that could stem from phrasing of moral boundaries and regulating of speech of public officials and the potential for interference with individual autonomy.
41. Importantly, the ECtHR considers reputational protection to carry more weight for individuals rather than ‘legal entities’ since only the former carries the requisite dignity and such protection has particular consideration in relation to public authorities.⁴⁴ It is likely that such strength of protection arises because of the particular importance attached to contributions to debates of public interest and strong protection for political speech.⁴⁵
42. In *Mamere v France*⁴⁶ the ECtHR noted that while individuals taking part in public debates on matters of general concern must not overstep certain limits, particularly with regard to respect of the reputation and rights of others, a degree of exaggeration or even provocation is permitted. The requirement to protect civil servants had to be weighed against the interests of freedom of the press or of open discussion on matters of public concern. The Court noted in this case that the statements made by the applicant were of general interest and made by him as an elected representative and therefore a higher protection was applied. It further noted that those taking part in a public debate on a matter of general concern were entitled to make somewhat immoderate statements and that in this situation the comments had been sarcastic but had remained within the limits of acceptable exaggeration or provocation. Therefore, the Court did not regard them as manifestly insulting, especially as the offending statements had to be placed in the context of an exchange of views during a television programme that was concerned more with entertainment than with news. Lastly, the Court also considered the fact that the person criticized was a public official, even though the person was no longer employed. The Court stressed that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may prove necessary to protect them from offensive verbal attacks when on duty; this also applies to defamatory allegations concerning acts performed in the exercise of their duties. Yet, that does not mean that the punishment of all criticism of civil servants related to the performance of their duties is compatible with Article 10 ECHR. Referring to *Janowski*,

42 ECtHR, *Handyside v. the United Kingdom* (ECtHR 1976) application no 5493/71, para 48; ECtHR, *Otto-Preminger-Institut v. Austria*, application no. 13470/87, 20 September 1994, para 56.

43 ECtHR, *Handyside v. the United Kingdom* (ECtHR 1976) application no 5493/71, para 48; ECtHR, *Norris v Ireland*, application no. 10581/83, 26 October 1988, para 45; ECtHR, *Open Door and Dublin Well Woman v. Ireland*, para 70.

44 ECtHR, *Freitas Rangel v. Portugal*, application no. 78873/13, 11 January 2022, para 53.

45 ECtHR, *Castells v. Spain*, application no. 11798/85, 23 April 1992, Series A no. 23, para 43; *Wingrove v. the United Kingdom*, application no. 17419/90, 25 November 1996, para 58.

46 ECtHR, *Mamere v France*, application no. 12697/03, 7 November 2006, para 39.

- it noted that in certain cases civil servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens.
43. Generally, the Court distinguishes types of speech with greater protection given to political speech, following *Ceylan v. Turkey*, which concerned a labour union president.⁴⁷ In a political context, a degree of the immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemical, colourful, emotive, non-rational and aggressive speech, which would not be acceptable outside that context, is tolerated. The ECtHR noted that Article 10 ECHR protects all modes of expression but that the means of disseminating information can be of significance in determining whether measures taken by a competent authority to restrict freedom of expression were proportionate to the legitimate aim being pursued. However, even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.⁴⁸ Politeness, courtesy, tact and restraint might be coverable by the concept of 'public morals', if the wide margin of appreciation is followed as in the case of *Mouvement raëlien suisse v. Switzerland*.⁴⁹ In *Busuioc v. Moldova*, where it concerned publication of information about persons working for the state or state-owned companies by a member of the press, the ECtHR noted that even if comments are made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake.⁵⁰
 44. Where it concerns defamation, there is normally an interaction and certain tension between Article 10 and Article 8 ECHR. For instance, in the case of *Axel Springer AG v. Germany*,⁵¹ the 'threshold of seriousness' has been exceeded and in a manner that prejudices the allegedly defamed person's enjoyment of their right to respect for private life. Most other cases would then be approached on a case-by-case approach through the 'balancing of rights' between Articles 8 and 10 ECHR,⁵² and ECtHR consideration would depend on whether the national court had undertaken a balancing exercise or not.⁵³ The ECtHR will only undertake its own assessment where there are serious grounds for doing so.⁵⁴
 45. In order to balance the right to freedom of expression against the right to private life, the Court uses six criteria established in the case of *Axel Springer*; the contribution to a debate of public interest ; the degree of notoriety of the person affected ; the subject of the news report ; the prior conduct of the person concerned ; the content, form and consequences of the publication ; and, where appropriate, the circumstances in which the photographs were taken. The Court considers in each case whether the criteria thus defined may be transposed to the case in question, although certain criteria may have more or less relevance given the particular circumstances of the case.

3.2.3. Facts and Opinions

47 ECtHR, *Ceylan v. Turkey* [GC], application no. 23556/94, 8 July 1999, para 34.

48 4.7; ECtHR, *Busuioc v. Moldova*, application no. 61513/00, 21 September 2004, para 42.

49 ECtHR, *Mouvement raëlien suisse v. Switzerland* [GC], application no. 16354/06, 13 July 2012, para 76.

50 ECtHR, ECtHR, *Busuioc v. Moldova*, application no. 61513/00, 21 September 2004, para 69.

51 ECtHR, *Springer AG v. Germany* [GC], application no. 39954/08, 7 February 2012, para 83.

52 ECtHR, *Perinçek v. Switzerland* [GC], application no. 27510/08, 15 October 2015, para 198.

53 ECtHR, *MGN Limited v. the United Kingdom*, application no. 39401/04, 18 January 2011, para 150.

54 ECtHR, *Perinçek v. Switzerland* [GC], application no. 27510/08, 15 October 2015, paras 274-279.

46. One of the most important aspects that should be assessed in defamation cases is the distinction between information (facts) and opinions (value judgments). Opinions, criticism, and speculation are also protected under Article 10 ECHR, even if they cannot themselves be proven true. In particular, value judgments, especially in the realm of political discourse, receive special protection as they are essential to ensuring a diversity of opinions, which is fundamental in a democratic society. The distinction between facts and opinions, and the prohibition of requiring proof of truth for the latter, has become increasingly significant in legal systems where proving the truth is still required in cases of "insult"—a charge that typically relates to the expression of personal views and opinions.⁵⁵ Considering the ECtHR's distinction between opinion and facts, proof should not be requested where the expression concerns the former.
47. In *Jerusalem v. Austria*, the ECtHR distinguished these two by noting that the "...existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof."⁵⁶ The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 ECHR. In *Lombardo v Malta*⁵⁷ the ECtHR stated that a very narrow margin of appreciation must be afforded to competent national authorities to restrict discussions on matters of public interest. Comments in the political context, which amount to value judgements, are tolerated even if untrue, as long as they have some or any factual basis. Even a statement of fact will be would be considered permissible if what was expressed was said in good faith and there is some reasonable (even if incorrect) factual basis for saying it. It noticeably reasoned that the distinction between statement of fact and value judgment was less important where the statements had been made in the course of a lively political debate.⁵⁸

3.2.4. Matters of Public Interest

48. As noted above, the case-law of the ECtHR shows an underlying consensus that the limit of freedom of expression of public servants will be determined based on different factors, though one of the most prominent ones is whether the issue at hand is of great importance to the public interest. Robust or highly charged language can still fall under the umbrella of protected expression; how far that protection reaches depends on both the setting and the purpose behind the remarks. When debate centers on matters of public concern—especially in the heat of political discussion, election campaigns, or criticism aimed at governments, politicians, or public bodies—speakers are afforded more leeway to use forceful or biting words.
49. In relation to civil servants' ability to contribute to public understanding and accountability, unduly broad limitations on their expression would undermine the very essence of the right to freedom of expression. The ECtHR has regarded that civil servants can have a valuable contribution to public understanding and debates as they possess knowledge and expertise that can inform and enrich public discussions. Civil servants' statements, if they relate to matters of public interest, can benefit from a high level of protection.⁵⁹

⁵⁵ Council of Europe, Protecting the right to freedom of expression, pp. 78-79.

⁵⁶ ECtHR, *Jerusalem v. Austria*, application no. 26958/95, 27 February 2001, para 42.

⁵⁷ ECtHR, *Lombardo and others v Malta*, application no. 7333/06, 24 April 2007, para s 55-58.

⁵⁸ ECtHR, *Lombardo and others v Malta*, application no. 7333/06, 24 April 2007, para 60.

⁵⁹ ECtHR, *Nilsen and Johnsen v. Norway*, application no. 23118/93, 25 November 1999, para. 47

50. In the case of *Kudeshkina v. Russia* the ECtHR stated that the dismissal of the judge from her position because of her public criticism was a violation of her freedom of expression. The Court determined that “*she raised a very important matter of public interest, which should be open to free debate in a democratic society.*”⁶⁰ Similar reasoning was given in the case of *Heinisch v. Germany*, where there was established that the dismissal of a geriatric nurse because of her public criticism on the provision of institutional care for the elderly in a state-owned company amounted to violation of her right to freedom of expression. It was found “*that the public interest in being informed about shortcomings in the provision of institutional care for the elderly by a State-owned company was so important in a democratic society that it outweighed the interest in protecting the latter’s business reputation and interests.*”⁶¹ Even in the case of *Bucur and Toma v. Romania*, it was determined that revealing top secret information regarding Romanian Intelligence Service and its illegal activities “[*was*] *so important in a democratic society that it outweighs the interest in maintaining public confidence in that institution.*”⁶²
51. In this regard, it matters if the issue raised concerns an important question of public interest and goes beyond the confinements of an issue of private nature. This could relate to “*... matters which affect the public to such an extent that it may legitimately take an interest in them, which attract its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about...*”⁶³ It is also important to factor in the reasons for the disclosure or expression whether it was purely intended as harsh criticism⁶⁴ or gratuitous personal attacks.⁶⁵
52. While any assessment of expression by a public official with respect to their responsibilities can solely be determined on the basis of the circumstances of each case, it is important that the application of those responsibilities does not result in that any critique of the public sector is qualified as a breach of duty. Public servants may be privy to certain information that can be of great importance to the public but being tied by the duty to protect the reputation of the public sector. When the situation is dire and the need to act is prompt, public servants need to be able to provide the relevant information as quickly as possible.

4. SOCIAL MEDIA AND MODERN COMMUNICATION CHALLENGES

53. With the current technological developments, social media platforms could amplify the content of the message in a manner that is more impactful than when this speech is disseminated using more traditional media. The use of social media represents an especially complex intersection of free expression and the responsibilities of public officials. While public officials retain their right to freedom of expression, their online

60 ECtHR, *Kudeshkina v. Russia*, application no. 29492/05, 26 February 2009, para 94.

61 ECtHR, *Heinisch v. Germany*, application no. 28274/08, 21 July 2011, para. 90.

62 ECtHR, *Bucur and Toma v. Romania*, application no.40238/02), 8 January 2013, para 115.

63 ECtHR, *Balaskas v. Greece*, application no. 73087/17, 5 November 2020 , para 44.

64 In ECtHR, *Predota v. Austria*, application no. 28962/95 the Court considered the question whether the breach of loyalty leading to the applicant’s dismissal unduly interfered with the applicant’s freedom expression and noted that the statements made by the applicant, an employee of the national railway of Austria, harshly and publicly criticised the services and performance of his employer in terms which were likely to harm the latter’s reputation in the eyes of its customers.

65 EtHR, *Palomo Sánchez and others v. Spain*, application nos. 28955/06, 28957/06, 28959/06 and 28964/06, 12 September 2011, para. 73

- activities, especially when related to their official duties, can be subject to different legal considerations than those of ordinary persons. Online space is an information and communication tool particularly distinct from printed media, especially as regards the capacity to store and transmit information.
54. In 2022, the Council of Ministers of the Council of Europe offered recommendations on combating hate speech which contained sections relevant to the speech of public officials. Notably, these recommendations apply not only to professional public officials, but also to politicians in legislatures, the government, the judiciary and other public authorities. Paragraphs 28 and 29 indicate that these officials should “*avoid engaging in, endorsing or disseminating hate speech... [and] should publicly promote a culture of human rights and should condemn hate speech firmly and promptly, while respecting freedom of expression and information, including criticism and information that may offend, shock or disturb the State or any sector of the population.*”⁶⁶ Paragraph 29 encourages introduction of a code of conduct with an internal complaint and sanction procedure for parliaments, other elected bodies and political parties. The explanatory memorandum draws attention to *Handyside case* in particular,⁶⁷ as well as the importance of refraining from political speeches that foster or encourage intolerance, particularly during election periods.⁶⁸
55. Similarly, the case-law of the ECtHR, while acknowledging the benefits of the Internet, recognises that these are accompanied by a number of challenges in a sense that clearly unlawful speech, including defamatory remarks, hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain persistently available online.⁶⁹ It has acknowledged that the electronic network, serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control, and that the policies governing reproduction of material from the printed media and the Internet may differ. Therefore, the rules that apply to the latter undeniably have to be adjusted according to this technology’s specific features in order to secure the protection and promotion of fundamental rights and freedoms.⁷⁰ While each situation will require an assessment of various factors as to whether a certain expression is protected or not, whatever the medium used, statements, which incite to racial discrimination and hatred, do not enjoy the protection offered by Article 10 (2) ECHR.
56. One of the major challenges posed by social media to public and political discourse is their use for the spread of disinformation. Disinformation is information that is false and deliberately created to harm a person, social group, organization or country.⁷¹ Emphasis has often been made on the harm related to disinformation during the Covid-19 pandemic, but in more recent years, it also relates to suppression of state officials’ views on topics such as blasphemy and genocide denial.⁷² In her report, the UN Special Rapporteur on

66 Council of Europe, Committee of Ministers, CM/Rec(2022)16 - Recommendation of the Committee of Ministers to member States on combating hate speech, 20 May 2022.

67 Council of Europe, Recommendation of the Committee of Ministers to member States on combating hate speech, CM/Rec(2022)16, para 116.

68 CM/Rec(2022)16, paras 118-119.

69 ECtHR, *Delfi AS v. Estonia* [GC], a application no. 64569/09, 16 June 2015, para 110; ECtHR, *Annen v. Germany*, application no. 2373/07 and 2396/07, 30 March 2010, para 67.

70 ECtHR, *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, application no. 33014/05, 5 May 2011, para 63.

71 See e.g., CoE Council of Europe’s 2017 Report Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making, para 20

72 United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, Global threats to freedom of expression arising from the conflict in Gaza, 2024, A/79/319.

the promotion and protection of the right to freedom of opinion and expression noted that “vague laws that confer excessive discretion can lead to arbitrary decision-making and are incompatible with article 19 (3) of the Covenant”⁷³ and that “[t]he directness of the causal relationship between the speech and the harm, and the severity and immediacy of the harm, are key considerations in assessing whether [a] restriction is necessary” and that “[t]his does not mean that disinformation in the context of political speech can never be restricted, but that any such restriction requires a high threshold of legality, legitimacy, necessity and proportionality”.⁷⁴ However, the UNSR also noted that the prohibition of false information is not in itself a legitimate aim under international human rights law.⁷⁵

57. In another report in 2025, the UNSR refers to the role of political parties with respect to disinformation, and where party officials, candidates or members or workers, engage in electoral disinformation, attacks on the media, seeking to discredit and undermine the free flow of information and engagement in freedom of expression. For example, the Rapporteur urged that “Political parties should adopt and enforce codes of conduct that set minimum standards of behaviour and accountability for their candidates, officials, members and workers, encouraging respect for freedom of expression and prohibiting online or offline violence or incitement to violence, hatred and discrimination against women, vulnerable or marginalized groups, journalists, human rights defenders, electoral officials and election observers. Candidates and parties must be transparent regarding their transactional relationships with social media influencers and refrain from utilizing influencers or other proxies as surrogates for harmful speech and disinformation or from resharing and promoting such content.”⁷⁶
58. Therefore, it could be considered to adopt policies, which provide for disciplinary measures to be imposed on public officials who, when acting or perceived to be acting in an official capacity, make, sponsor, encourage or further disseminate statements which they know or should reasonably know to be false; and ensure that public authorities make every effort to disseminate accurate and reliable information, including about their activities and matters of public interest.

5. WHISTLE-BLOWERS

59. As freedom of expression can also intersect with exposure of ‘hidden wrongdoing’ where individuals seek to identify maladministration, breaches of legal provisions and other misconduct in public administration, there is an interrelationship between this right and protections for whistleblowers.⁷⁷ International standards have recognised the importance of whistleblower protection laws as part of an effective anti-corruption framework. For instance, whistleblower protection requirements have been introduced in the UNCAC,

73 United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, Disinformation and freedom of opinion and expression, 2021, A/HRC/47/25, para 40.

74 United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, Disinformation and freedom of opinion and expression, 2021, A/HRC/47/25, para 76.

75 United Nations, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report, Disinformation and freedom of opinion and expression, 2021, A/HRC/47/25, para 40.

76 UN Special Rapporteur, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Freedom of expression and elections in the digital age, 2025, A/HRC/59/50, paras 106-107

77 UNGA, Report of the Special Rapporteur on the Promotion and protection of the right to freedom of opinion and expression, 2015, A/70/361, para 26.

- the 2021 OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions⁷⁸ (“Anti-Bribery Recommendation”) and the Council of Europe Civil and Criminal Law Conventions on Corruption⁷⁹ (1999).
60. As noted by the UN Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, state practice in this area is distinctly uneven with individuals being “*subjected to harassment, intimidation, investigation, prosecution and other forms of retaliation. States and organizations implement the protections only in part or fail to hold accountable those who retaliate against whistle-blowers*”.⁸⁰ The UN Special Rapporteur, further noted that, “*laws should favour disclosures of information in the public interest, not least because State actors ‘have most of the power—the power to intimidate, to investigate, to prosecute,’ in short, they have broad access where whistle-blowers and others have only a smaller window.*”⁸¹
61. Whistleblowing generally must be distinguished from the reporting of irregularities of state officials and civil servants.⁸² Whistle-blowers imply a professional work-based relationship, intersecting with loyalty, reserve and the discretion employees owe to their employers. In contrast, reporting irregularities does not require the existence of the same professional relationship but generally protection is only afforded to reporting on officials.⁸³ The relevant justifications for possible state interference with the right to freedom of expression differ between these two categories, with the former generally making reference to preventing disclosure of confidential material and the latter being concerned with protecting the rights of others. The ECtHR recognized this in *Guja v. Moldova*.⁸⁴ The ECtHR therefore offers special protection under Article 10 ECHR to those who are raising alarm at alleged unlawful conduct of his or her employer.⁸⁵
62. In *Guja v Moldova* the Court was clear that the status of the target of defamatory remarks will form part of the analysis, with public individuals facing wider limits to acceptable criticism than private individuals. To assist with that analysis, the Grand Chamber identified six criteria relevant to the proportionality test for whistleblowers’ freedom of expression:⁸⁶

78 OECD Legal Instruments

79 The Criminal Law Convention on Corruption is available at: CETS 173 - Criminal Law Convention on Corruption; the Civil Law Convention on Corruption is available at: CETS 174 - Civil Law Convention on Corruption.

80 UNGA, Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, 2015 A/70/361 para 26.

81 UNGA, Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, 2015 A/70/361, para 58.

82 ECtHR, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], application no 17224/11, 27 June 2017, paras 80-84.

83 ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, para 70.

84 ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, para 72; ECtHR, *Marchenko v. Ukraine*, application no. 4063/04, 2009 para 46; ECtHR, *Heinisch v. Germany*, application no. 28274/08, 21 July 2011, para 63; ECtHR, *Goryaynova v. Ukraine* application no. 41752/09, 8 October 2020, para 50.

85 ECtHR, *Langner v. Germany*, application no. 14464/11, 17 September 2015, para 47; ECtHR, *Heinisch v. Germany*, application no. 28274/08, 21 July 2011, para 43

86 ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, paras 74-78

1. *That disclosure was made in the first place to the person's superior or other competent authority or body, indicating the relevance of other means to remedy wrongdoing such as official procedures.*⁸⁷
 2. *The public interest involved in the disclosed information must be paid particular attention.*⁸⁸
 3. *The disclosed information's authenticity.*⁸⁹
 4. *The need to weigh the potential damage that the public authority would suffer against the interest in disclosing the information.*⁹⁰
 5. *The motive of the reporting employee should be such that they could be regarded as having acted in good faith where the individual has reasonable grounds to believe the information was true and did not pursue any unlawful or unethical objectives.*⁹¹ *Personal grievance or antagonism or expectation of advantage would not receive strong protection.*
 6. *Careful analysis of the imposed penalty on the individual and its consequences.*⁹²
63. Beyond the whistleblowing context of *Guja*, the context of the speech is regarded as important in the assessment of/differentiating between statements of fact and value judgements. Where there is lively political debate, elected officials and journalists are considered to be given wide freedom to criticise public bodies, both local and national, even if there is less clarity with regard as to the factual basis (see sub-Section 3.2.3 above).⁹³

6. ASSESSMENT OF BREACHES OF CODES OF CONDUCT

64. When assessing if certain speech or expressions warrant an analysis from the perspective of the applicable codes of conduct, it is important to determine in what capacity the statement was made. Often statements made in an official or professional capacity would be brought within the scope of codes of conduct, whereas statements made in private capacity will likely fall outside this scope. At the same time, relevant circumstances may lead to the conclusion that certain private conduct could still be brought within the scope of the code of conduct regulating public officials' behaviour. For example, this would

⁸⁷ *Haseldine v. the United Kingdom*, Commission decision, application no. 18957/91; ECtHR, *Bucur and Toma v. Romania*, application no. 40238/02, 8 January 2013; ECtHR, *Matúz v. Hungary* application no. 73571/10, 21 October 2014; and *Soares v. Portugal*, application no., application no.79972/12, 21 June 2016, para 48.

⁸⁸ ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, para 74; concerns over embezzlement of public funds (*Marchenko v. Ukraine*, application no. 4063/04, 19 February 2009, para 10) and high-ranking officials' conduct prejudicial the State's democratic foundations or the Government's attitude towards police brutality (*Bucur and Toma v. Romania*, application no. 40238/02, 8 January 2013, para 103) have received protection.

⁸⁹ Here the need to carefully verify as far as possible that the disclosed information is accurate and reliable (*Bladet Tromsø and Stensaas v. Norway* [GC], application no. 21980/03, 20 May 1999).

⁹⁰ National security is commonly cited here but where the wrongdoing relates to such services or where there is controversy in the armed force's practices the public interest will outweigh the need to maintain public confidence if the prior steps in the test are fulfilled

⁹¹ ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, para 77; drawing on ECtHR, *Heinisch v. German*, application no. 28274/08, 21 July 2011; and in Resolution 1729 (2010) of the Parliamentary Assembly of the Council of Europe.

⁹² ECtHR, *Guja v. Moldova* [GC], application no. 14277/04, 12 February 2008, para 78; *Fuentes Bobo v. Spain*, application no. 39293/98, 29 February 2000, para 49; ECtHR, *Gawlik v. Liechtenstein*, application no. 23922/19, 16 February 2021, para 85; ECtHR, *Heinisch v. Germany*, application no. 28274/08, 21 July 2011, para 91; ECtHR, *Marchenko v. Ukraine*, application no. 4063/04, 2009, paras 52-53.

⁹³ ECtHR, *Lombardo and Others v. Malta*, para 60; ECtHR, *Dyuldin and Kislov v. Russia*, para 49.

- depend on the nature of the expression or information shared publicly, as well as the perception as to whether the expression in question was made in official capacity and whether it was based on information available due official privileges. It is also important to take into account the rank and position of the civil servant and whether such expressions could undermine the integrity of public administration. In case of publicly made defamatory or insulting expression made in a private capacity by a public office holder, this could lead to this expression being reviewed under the code of conduct.
65. A body in charge of reviewing potential breaches of codes of conduct regulating the behaviour of public officials, needs to decide, based on the facts established or accepted, whether the respondent has breached any provision of the relevant code of conduct or not. If the body finds no such breach on this standard of proof, it will issue its decision, explain its reasoning, and close the hearing. If, however, the body concludes that a breach is likely to have occurred, it must then go on to consider the implications of Article 10 ECHR before making a final determination.
 66. As a next step, this body should examine whether its preliminary finding of a breach would limit the official's right to freedom of expression under Article 10. In doing so, it should *inter alia* consider whether the impugned statements or actions occurred in a political context, such as during a debate on matters of public concern. If so, the body should acknowledge that such expression is likely to attract a higher level of protection, even at the local level. Where enhanced protection applies, restrictions must be supported by clear and sufficient justification. The body should assess whether the reasons for interference are legitimate, such as protecting the rights and reputation of others or maintaining public order or national security and whether they are necessary and proportionate. In assessing proportionality, it is important to consider what could be the least restrictive measure to achieve a desired objective. The body should also weigh in whether the restriction could unduly limit the ability of a public official to contribute to political discussion or carry out scrutiny functions transparently. For alleged confidentiality breaches, the body should assess whether the same purpose could have been achieved without public disclosure of this confidential information.
 67. The seriousness of the conduct is also relevant to the assessment: the less offensive or shocking the conduct is, the harder it is to justify interference – particularly, where enhanced protection applies. Overall, in its assessment, the body should evaluate whether any restriction of freedom of expression that flows from its decision could be justified under Article 10 (2) ECHR. This involves following the logic of tripartite test and assessing whether a given restriction meets the following three requirements: whether it is a) prescribed by law, b) pursues legitimate aim and c) is proportionate and necessary in a democratic society.
 68. Overall, the body, which should act independently, impartially and objectively and expeditiously, should conduct the proceedings on the premise that the applicable code of conduct aims to uphold acceptable standards in public life, prevent conduct that leads to a chilling effect and stifle public debate, and protect others from offensive, abusive, or defamatory remarks. While acknowledging that each case is to be determined based on its specific circumstances, it is important that the procedures and interpretations of the applicable rules do not lead to an undue disruption of public officials' work, and maintain mutual trust between officials and the general public, safeguard confidential information, maintain reputation of the entities the public officials work for, and prevent actions that could undermine good governance or public confidence in democracy.

7. COMPARATIVE JURISDICTIONAL ANALYSIS

69. Within the OSCE region participating States have different approaches to regulating the conduct of public officials.
70. Bulgaria's 2020 Code of Conduct of Civil Servants in the State Administration expands the catalogue of principles for the conduct of civil servants in the state administration and gives legal definition to each principle in order to facilitate their interpretation and application.⁹⁴ The code provides that in the performance of their official duties and in their public life, including in the use of information and communication technologies, the employees in the state administration shall follow behavior that does not undermine the prestige of the civil service.
71. Canada has adopted the Values And Ethics Code For The Public Sector⁹⁵, which contain a set of values for persons holding a public position. This code represents something of a mix between general statements, as it provides objectives of the code and values that are to be adhered in a fairly generalized manner, and also provides brief and generalized information about expected behavior of the public servants. However, this code represents a mandatory instrument, as it provides that "[a] breach of these values or behaviours may result in disciplinary measures being taken, up to and including termination of employment."⁹⁶ The code's appendix provides a more elaborate explanations to the duties that public servants need to adhere to, however these are also general in nature. More detailed information about particular obligations of the public servants are provided through accompanying guidelines, such as Guidance for Public Servants on their Personal Use of Social Media.⁹⁷ In it, it is observed that "*a professional, non-partisan, and impartial federal public service is integral to our democracy.*"⁹⁸ Therefore, even though public servants are entitled to their freedom of expression, it is also imperative that they conduct themselves in a non-partisan manner in order to adhere to their duty of loyalty so as not to deteriorate reputation of the public sector. It is stated that duty of loyalty "[...] *justifiably limits public servants' freedom of expression, particularly when their public statements could damage the reputation of the Government of Canada.*"⁹⁹
72. However, apart from setting a clear limit to the freedom of expression of public servants these guidelines also provide that this duty of loyalty must be balanced with public servants' freedom of expression. The guidance identifies three situations in which the balancing of these interests is likely to result in an exception to the duty of loyalty are where, including when the Government is engaged in illegal acts; the Government policies jeopardize life, health or safety; the public servant's criticism has no impact on their ability to perform effectively the duties of a public servant or on the public

94 Bulgaria has adopted new Code of Conduct of Civil Servants in the State Administration, [Lex.bg - Laws, Regulations, Constitution, Codes, State Gazette, Implementing Regulations](#) (available in Bulgarian).

95 Canadian Values and Ethics Code for the Public Sector, 2011, <https://www.tbs-sct.canada.ca/pol-cont/25049-eng.pdf>.

96 Canadian Values and Ethics Code for the Public Sector, 2011, <https://www.tbs-sct.canada.ca/pol-cont/25049-eng.pdf>.

97 Guidance for Public Servants on their Personal Use of Social Media, Treasury Board of Canada Secretariat, <https://www.canada.ca/en/treasury-board-secretariat/topics/values-ethics/guidance-for-public-servants-personal-use-of-social-media.html>

98 Guidance for Public Servants on their Personal Use of Social Media, Treasury Board of Canada Secretariat, April 6, 2025, <https://www.canada.ca/en/treasury-board-secretariat/topics/values-ethics/guidance-for-public-servants-personal-use-of-social-media.html>

99 Guidance for Public Servants on their Personal Use of Social Media, Treasury Board of Canada Secretariat, April 6, 2025, <https://www.canada.ca/en/treasury-board-secretariat/topics/values-ethics/guidance-for-public-servants-personal-use-of-social-media.html>

- perception of that ability. It further notes that social media should not be used for disclosing allegations of wrongdoing in the public service, but that this should be done through mechanisms designed for this purpose.
73. The Croatian Code of Ethics for Civil Servants and Employees provides that when using official means of communication and in all forms of communication on social networks, representing a state body, a civil servant shall be obliged to preserve their personal reputation and public trust in the work and reputation of the state body. With regard to private use of social media the code provides that the civil servant should respect personal data protection laws and to ensure that their private views and related statements are not brought into connection with the performance of official duties.¹⁰⁰
 74. In France, civil servants are regarded as employees of a public service and representatives of the state which entails special rights and duties within and beyond their work responsibilities. Sanctions can include warnings, exclusions, career progression restrictions and compulsory retirement. In common with other CoE and EU member states, French civil servants have their freedom of opinion guaranteed¹⁰¹ but this must be distinguished from freedom of expression of those opinions.
 75. The French General Code of the Civil Service indicates the following areas that apply within the workplace with respect to freedom of expression, which includes obligations of neutrality, professional discretion, professional secrecy, and those related to whistleblowers. Breaches of these obligations can be taken to disciplinary proceedings and relevant sanctions could be applied, but there are a number of procedural protections including the right of access to one's personal files and the assistance of a lawyer of their choice. The obligation of neutrality¹⁰² which is linked to the French principle of equality of all before the public service prevents French public service employees from expressing personal opinions in any way (through words, dress, or behaviour) during the course of their work.¹⁰³
 76. The obligation of professional discretion requires that civil servants exercise professional discretion as determined by Article 121-7 of the Code.¹⁰⁴ It applies to all facts, information and documents which a civil servant becomes aware of during their employment period, limiting primarily the possibility of public disclosure, though subject to whistleblowing protections.¹⁰⁵ This element of the Code works in tandem with the civil servants' obligation of professional secrecy where the information in their possession is indicated as such.¹⁰⁶ The French civil service can infringe upon the rules of professional discretion and secrecy when they reveal crimes, serious breaches of the law, or threats to the public interest (in line with protections for whistleblowers set out in Article L. 135-4 of the Code and Law n°2016-1691 on transparency, the fight against corruption and the modernisation of economic life).¹⁰⁷ Outside of the workplace, the duty of reserve (*devoir de reserve*) applies, which requires civil servants to show moderation in *public*

¹⁰⁰ Code of Ethics for Civil Servants and Employees (Narodne novine no. 8/2025) available at: [Code of Ethics for Civil Servants and Employees \(Narodne novine no. 8/2025\) | Croatian Parliament](#).

¹⁰¹ General Code of Civil Service, In force as of 1 March 2022, Articles L. 111-1, L. 113-1, L. 114-1.; Declaration of Human and Civic Rights (1789), Article 10

¹⁰² General Code of Civil Service, In force as of 1 March 2022 Article L 121-2

¹⁰³ France, Case n°244428 M. Odent Council of State 15 October 2003

¹⁰⁴ General Code of Civil Service, In force as of 1 March 2022 Article L 121-7

¹⁰⁵ France, Case n°393320 Council of State 20 March 2017

¹⁰⁶ General Code of Civil Service, In force as of 1 March 2022 Article L 121-6

¹⁰⁷ France, Law n°2016-1691 on transparency, the fight against corruption and the modernisation of economic life (2016)

expressions of personal opinions. The extent of the duty varies depending on several criteria: seniority; circumstances of the expression; the extent of publicity; and the form of the expression.¹⁰⁸

77. In Greece, the Code of Ethics and Professional Conduct for Public Sector Employees provides guidance on the freedom of expression of public sector employees. It is based on a single obligation, namely the service of the public interest, which requires adherence to standards of professional conduct, establishing a culture of ethics in the public administration, enhancing citizens' confidence in the integrity of its institutions. With a few exceptions, such as military, teaching staff amongst other, the code applies to all public sector employees regardless of rank and responsibilities.¹⁰⁹ With respect to social media specifically it instructs, amongst other, that employees must use social media and the Internet in a way that does not harm the interests of their organization and should pay particular attention to the expression of opinions and personal convictions so as not to create in any way the impression that they are the views of or are directly or indirectly linked to their employer.
78. In Scotland, the Parliament approved the Code of Conduct for Councillors (2021), which is applicable to local government. This is based on the Ethical Standards in Public Life etc. (Scotland) Act 2000. The Act introduced an ethical framework which required Scottish Ministers to issue a Code of Conduct for Councillors and a Model Code of Conduct for members of the devolved public bodies. The Standards Commission publishes guidance for councillors on how to interpret the provisions within the Code of Conduct. In the 2025 version of the Councillors Code of Conduct Guidance, the issue of Article 10 ECHR is specifically addressed.¹¹⁰ In it, it specifies that councillors should note that the protection, which Article 10 ECHR affords, is not absolute and does not extend to, or excuse, hate speech or egregious offensive and abusive personal attacks. It gives various factors to consider, including whether the comments are likely to bring your office or the local authority itself into disrepute; whether treatment is courteous, respectful and considerate; whether a point is made in a respectful and constructive manner which may have more of an impact in terms of influencing others; the fact that 'liking', re-posting and re-tweeting comments or posts, or publishing links to other sites are likely to be perceived as endorsing the original opinion, comment or information, including information on other sites; whether to allow disagreement on your social media pages; whether humour, irony and sarcasm will be perceived as the fact and that tone can be harder to convey online; whether a response is needed and/or if it is appropriate or helpful to do so; the stricter rules that apply to election publicity; whether anything that is posted could be considered obscene.¹¹¹ The Standards Commission also developed advice notes addressing the application of Article 10 ECHR in light of their Code of Conduct and on the use of social media by councillors.¹¹²

108 France, Ministerial response n°48 699 Official Journal of the National Assembly (23 December 1991); Guide on the duty of reserve and the freedom of expression of civil servants, Nos Services Publics, July 2021. See also: Duties of reserve, discretion, neutrality and professional secrecy in the public service | Service-Public.fr

109 Code of Ethics and Professional Conduct for Public Sector Employees, 2022. Available at: [Code-final.cdr](#).

110 See Councillors Code of Conduct Guidance, 2025, p. 12 available at: 1743158220250328GuidanceonCouncillorsCode2025v2.pdf

111 See Councillors Code of Conduct Guidance, 2025, p. 12 available at: 1743158220250328GuidanceonCouncillorsCode2025v2.pdf

112 See Freedom Of Expression - Advice Note On The Application Of Article 10 Of The ECHR And The Councillors' Code Of Conduct and the Advice Note on the Use of Social Media for Councillors available at: Advice Notes | The Standards Commission for Scotland.

79. Serbia's Code of Conduct for Public Servants¹¹³ provides mandatory duties that public servants need to adhere to. Serbia also enacted a Law on Employees in Autonomous Provinces and Local Self-Government Units that also takes into account certain duties of public servants. In it, it is also determined that public servants have a duty to act without bias and politically neutral¹¹⁴. It is furthermore provided that failure to do so represents a serious breach of duty.¹¹⁵ However, the case law states that public servants may not be held accountable for blanket breaches of duties. It is stated that in each individual case there needs to be determined what breach of duty exactly took place and that the regulation that was violated by the illegal work of the employee must be precisely marked¹¹⁶.
80. The public service sector in Sweden contains three different categories: the ministries, government offices, and government agencies at the national level; municipalities; and the counties. The Freedom of the Press Act and the Fundamental Law on Freedom of Expression contain specific rules to guarantee freedom of expression, particularly via printed media, as well as television broadcasting.¹¹⁷ The former contains a principle of openness under which most correspondence and documents may be released to those who request it.¹¹⁸ Despite these broad protections, restrictions are found, such as within the Sweden Public Employment Act which regulates activities of civil servants beyond their professional activities.¹¹⁹ In particular, Section 7 prevents civil servants from taking up activity that may affect confidence in their impartiality or that may harm the reputation of the government agency.¹²⁰
81. Ukraine has adopted the General Rules of Ethical Conduct for Civil Servants and Local Government Officials.¹²¹ The Code contains standard ethical guidelines, such as prohibitions against swearing, discriminatory remarks, and harassment. Of particular relevance to freedom of expression, is the provision that obliges public officials to refrain from sharing information, including posting comments on websites and social networks, which may damage the reputation of state bodies and local self-government even within the after-work hours.
82. The United Kingdom distinguishes between political officials (those that are elected and appointed) from administrative and civil service roles. Broadly, the UK distinguishes the roles in its civil service according to whether the personnel is engaged in direct operational delivery of policies, or in providing policy advice and support to Ministers, or being responsible for implementing programmes and projects, or any combination of

113 Serbian Code of Conduct for Public Servants, <https://www.paragraf.rs/propisi/kodeks-ponasanja-drzavnih-sluzbenika-republike-srbije.html>

114 Law on Employees in Autonomous Provinces and Local Self-Government Units, art. 16 https://www.paragraf.rs/propisi/zakon_o_zaposlenima_u_autonomnim_pokrajinama_i_jedinicama_lokalne_samouprave.html

115 Article 138 of the Law on Employees in Autonomous Provinces and Local Self-Government Units, art. 16 https://www.paragraf.rs/propisi/zakon_o_zaposlenima_u_autonomnim_pokrajinama_i_jedinicama_lokalne_samouprave.html.

116 Judgement of the Administrative Court, U 13796/20, 12 January 2022.

117 Freedom of the Press Act (Tryckfrihetsförordningen; SFS 1949:105); www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105_sfs-1949-105; Fundamental Law on Freedom of Expression (Yttrandefrihetsgrundlagen; SFS 1991:1469); www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/yttrandefrihetsgrundlag-19911469_sfs-1991-1469.

118 Chapter 2 of the Freedom of the Press Act

119 Sweden Public Employment Act 1994:260

120 Sweden Public Employment Act 1994:260 section 7

121 General Rules of Ethical Conduct for Civil Servants and Local Government Officials, originally approved by Order No. 158 of the National Agency of Ukraine on Civil Service on August 5, 2016, most recently amended in 2023 <https://zakon.rada.gov.ua/laws/show/z1203-16#Text>

the above. The route to accountability is outlined in the Civil Service Code,¹²² noting that the Civil Service is an integral and key part of the government of the United Kingdom. It supports the government in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament.¹²³

83. The Civil Service Code was given statutory recognition in 2010.¹²⁴ It establishes the core values of the civil service: integrity (putting the obligations of public service above personal interests), honesty (being truthful and open), objectivity (basing advice and decisions on rigorous analysis of the evidence), and impartiality (acting solely according to the merits of the case and serving equally well governments of different political persuasions). The Code regards the following behaviour as unacceptable: the misuse of their official role, deceiving or knowingly misleading Parliament, frustrating the implementation of policy.¹²⁵ There are no explicit protections in relation to freedom of expression for civil servants, although whistleblower protections are present in the Public Interest Disclosure Act 1998, which protects civil servants from dismissal if they make a protected disclosure of malpractice or criminality. Violations of the Code is a disciplinary matter falling within the relevant department, such that breaches are reported to senior officials. Where the department's assessment of the breach or relevant conclusion is not satisfactory, it can be referred to the Civil Service Commission¹²⁶, which can then make a recommendation. Public sector employees benefit directly from Section 6 of the Human Rights Act 1998 that makes it unlawful for public authorities to act incompatibly with the ECHR rights.

8. CONCLUSION

84. Public officials—both elected and civil servants—enjoy the rights as afforded by Article 10 ECHR and Article 19 ICCPR, but those are qualified to a certain extent by the professional duties, reserve, impartiality, and discretion, and respect and political neutrality. General limitations are applied for defamation and so-called hate speech, whilst Article 20 (1) ICCPR explicitly prohibits propaganda for war. In this respect, public officials have increased responsibility due to their status and potentially stronger influence and broader reach, and hence should exercise special vigilance in order not to perpetuate negative stereotypes and/or incite their audiences to intolerance, hate, discrimination or violence.
85. Where the expressions concern insults or other potential harmful expressions, public officials should exercise restraint and respect towards the values and norms upheld by the code of professional conduct. However, each situation should be determined by the circumstances of the case and take into account various factors. These factors include the following: the position of the official (where higher-ranking or politically sensitive roles may warrant stricter scrutiny); the medium of communication (where the use of social

¹²² <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

¹²³ Civil Service, 'Civil Service Code' (London 2015)

¹²⁴ Constitutional Reform and Governance Act 2010

¹²⁵ Civil Service, 'Civil Service Code' (London 2015) <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code>

¹²⁶ The Commission has not routinely published outcomes of complaints since 2021, although some information is provided in their Annual Reports. The vast majority of complaints are regarded as out of scope of the Commission. webpage of outcome of complaints: Those available to 2021 indicate that there are investigations in cases related to: May 2021 - Foreign, Commonwealth and Development Office Conduct of civil servant on social media (Outcome Closed – No response from complainant); July 2021 - Home Office Terminology used in internal communications. Outcome: Referred back to Department; December 2021 - Ministry of Defence Conduct of civil servant on social Media. Outcome Referred back to Department.

- media platforms may increase the risk of reputational harm or other negative consequences due to the broader outreach and speed of dissemination); the capacity in which the official was acting (personal or official/professional); the content and tone of the expression (satirical or humorous posts may be perceived and treated differently than hostile or inflammatory ones); and the timing and circumstances of the expression (speech made during a politically sensitive period or crisis may have significantly more serious consequences). Similar considerations apply to disinformation in which situations public officials should be under an enhanced obligation to offer verified and reliable information at all times and to the extent possible. Furthermore, civil servants could be expected to exhibit caution in expressing views in their official capacity with regard to policies or issues officially proclaimed by the respective public authorities. At the same time, public officials may be justified or even have a duty to speak out on matters of a great public interest and importance, while whistleblowers should be protected when acting in public interest and in good faith (e.g. without malicious motives).
86. In any disputable case, the following aspects must be considered, namely: 1) what were the motives of an impugned behaviour/speech of a public official and 2) whether it concerns a matter of public interest. The existence of a code of conduct or other regulatory frameworks applicable to the professional conduct of public officials should not preclude them from contributing to public debate in an honest and meaningful way. At the same time, public officials have the right to one's own personality which is separate and distinctive from their professional image and workplace. It could not be legitimately expected that their views, opinions and expressions will fully align with the official position. Otherwise, the mere essence of their freedom of expression rights would be impaired. Codes of conduct should not nurture and encourage conformism. Instead, they should allow for sufficient degree of freedom to deviate from the majority's opinion and should encourage creative thinking and problem solving.
87. Due to their very nature, codes of conduct are an ethical, aspirational framework and thus may be phrased in a manner that may be otherwise incompatible with legal certainty principles that apply to laws. It must be underlined that codes of conduct must reflect proportional application without stifling democratic discourse. It is common for codes of ethics/conduct to contain references to fundamental principles and values that are significant for the state concerned and its population, which generally also have a unifying function. That said, when such principles are broad and may be subject to various interpretations, they should not be misused as a ground to unduly restrict the right to freedom of expression, for instance to prevent the expression of opinion or political views that are critical of the government or its policies, or may imply discussing autonomy, administrative or territorial organization of the country.
88. Public bodies must develop policies that respect the fundamental right to freedom of expression while ensuring that public officials uphold the integrity, impartiality, and trust expected of their office. A well-balanced policy framework should: recognize that public officials do not forfeit their rights as private citizens; acknowledge the legitimate public interest in open debate and criticism of government actions; and set clear boundaries whereas speech undermines institutional integrity or violates public trust. Any restrictions must meet the tripartite test of: legitimacy (pursuing a legitimate aim); legality (being prescribed by law or in this case, by the codes of conducts stemming from the law); necessity (there is a genuine need for such restriction) and proportionality (the measure is the least intrusive option to achieve the desired goal).
89. Any policies in place should not adopt a "zero tolerance" approach but instead promote balanced, well-measured, case-specific responses, which duly take into account both the

rights and responsibilities of a public official and recognize the overall prevalence of public interest. It must also be acknowledged that the intersection of freedom of expression and codes of conduct for public officials has become increasingly complex in the age of social media which, among other implications, effectively blur the distinction between private and public spheres. While public officials retain their rights as private citizens, those rights must be exercised in a way that does not undermine the trust placed in public institutions without valid reasons and proper justification for doing so. Social media amplify the voices of public officials and blur the line between personal and professional identity. As such, codes of conduct must evolve to reflect this reality, ensuring that their guidance is clear, fair, and aligned with international human rights law and applicable standards.

90. The ultimate goal is not to silence public officials but to create a regulatory and/or policy environment where freedom of expression is preserved within the framework of ethical responsibility. Through thoughtful policy development, clear expectations, and respect for human rights and constitutional protections, public institutions can navigate this evolving terrain without compromising democratic values or institutional integrity.

[END OF TEXT]
