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Drawing the line between freedom of expression and antisemitic hate speech: a legal analysis under Article 10 of the European Convention on Human Rights

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ABSTRACT

La presente tesi si concentra sul confine giuridico tra la critica legittima allo Stato di Israele e le espressioni antisemite ai sensi dell'articolo 10 della Convenzione europea dei diritti dell'uomo (CEDU). La questione ha assunto particolare rilevanza nel contesto del conflitto israelo-palestinese e della crescente polarizzazione del dibattito pubblico a seguito degli attacchi di Hamas contro Israele risalenti al 7 ottobre 2023. In primo luogo, la tesi fornisce un quadro storico del conflitto israelo-palestinese, esaminandone le fasi iniziali e i successivi sviluppi. Successivamente, analizza i principi giuridici che regolano la libertà di espressione ai sensi dell'articolo 10 della CEDU e ne studia la portata, i limiti e il concetto di incitamento all'odio. Particolare attenzione è riservata all'incitamento all'odio antisemita e alle misure adottate per combatterlo. Il nucleo centrale della tesi consiste in un'analisi comparativa di due sentenze della Corte europea dei diritti dell'uomo: *M'Bala M'Bala c. Francia* e *Baldassi e altri c. Francia*. Sebbene entrambi i casi riguardassero espressioni relative a Israele e al conflitto israelo-palestinese, hanno portato a esiti diversi ai sensi dell'articolo 10. Il loro confronto è fondamentale per individuare i fattori presi in considerazione dalla Corte nel distinguere le espressioni che esulano dalla protezione della convenzione dal legittimo discorso politico. Tale analisi mira a dimostrare che la critica allo Stato di Israele o alle sue politiche non dovrebbe, di per sé, essere interpretata come antisemita. Al contrario, la natura politica o artistica di un'espressione non ne garantisce la tutela ai sensi dell'articolo 10, né impedisce che tale espressione venga definita come incitamento all'odio antisemita.

ABSTRACT

This thesis focuses on the legal boundary between legitimate criticism of the State of Israel and antisemitic expressions under Article 10 of the European Convention on Human Rights (ECHR). The issue has become particularly relevant in the context of the Israeli-Palestinian conflict and the increasing polarisation of public debate after the Hamas attacks against Israel on 7 October 2023. First, this thesis provides a historical background of the Israeli-Palestinian conflict, examining its origins and subsequent developments. Then, it analyses the legal principles governing freedom of expression under Article 10 ECHR and studies its scope, its limitations and the concept of hate speech. Particular attention is given to antisemitic hate speech and the measures adopted to combat it. The core of the thesis consists of a comparative analysis of two judgements of the European Court of Human Rights: *M'Bala M'Bala v. France* and *Baldassi and Others v. France*. Although both cases concerned expressions relating to Israel and the Israeli-Palestinian conflict, they led to different outcomes under Article 10. Their comparison is crucial in order to identify the factors considered by the Court when identifying expressions that fall outside the protection of the Convention and legitimate political speech. This analysis aims at demonstrating that criticism of the State of Israel or its policies should not, in itself, be interpreted as antisemitic. By contrast, the political or artistic nature of an expression does not guarantee its protection under Article 10, nor does it prevent the expression from being defined as antisemitic hate speech.

ABSTRACT

Im Mittelpunkt dieser Arbeit steht die rechtliche Abgrenzung zwischen legitimer Kritik an Israel bzw. and der Politik des Staates Israel und antisemitischen Äußerungen gemäß Artikel 10 der Europäischen Menschenrechtskonvention (EMRK). Das Thema hat in Zusammenhang mit dem israelisch-palästinensischen Konflikt und der zunehmenden Polarisierung der öffentlichen Debatte infolge der Angriffe der Hamas auf Israel am 7. Oktober 2023 besondere Bedeutung gewonnen. Erstens liefert diese Arbeit einen historischen Überblick über die Ursprünge des israelisch-palästinensischen Konflikts und seine folgenden Entwicklungen. Anschließend werden die rechtlichen Grundsätze analysiert, die die Freiheit der Meinungsäußerung im Lichte des Artikel 10 EMRK regeln. Dabei werden insbesondere der Schutzbereich, die Grenzen und das Konzept der Hassrede untersucht. Besonderes Augenmerk wird dabei auf antisemitische Hassrede sowie auf Maßnahmen zu ihrer Bekämpfung gelegt. Der Kern der Arbeit besteht in einer vergleichenden Analyse zweier Urteilen des Europäischen Gerichtshofs für Menschenrechte: *M'Bala M'Bala gegen Frankreich* und *Baldassi und andere gegen Frankreich*. Obwohl es in beiden Fällen um Äußerungen ging, die sich auf Israel und den israelisch-palästinensischen Konflikt bezogen, führten sie gemäß Artikel 10 zu unterschiedlichen Ergebnissen. Der Vergleich ermöglicht es, die Bestimmung der Kriterien des Gerichtshofs zu bestimmen. Im Mittelpunkt steht dabei die Abgrenzung zwischen Äußerungen, die keinen Schutz nach der Konvention genießen, und legitimer politischer Meinungsäußerung. Diese Analyse zeigt, dass Kritik am Staat Israel oder an seiner Politik nicht als antisemitisch interpretiert werden sollte. Gleichzeitig führt der politische oder künstlerische Charakter einer Äußerung nicht automatisch dazu, dass sie dem Schutz des Artikel 10 EMRK unterliegt. Er schließt auch nicht aus, dass eine solche Äußerung als antisemitische Hassrede eingestuft wird.

TABLE OF CONTENTS

INTRODUCTION 1

CHAPTER I: THE HISTORICAL ORIGINS OF THE CONFLICT BETWEEN ISRAEL AND PALESTINE ..... **Error! Bookmark not defined.**

1.1. The origins and development of Zionism 4

1.2. The first *Aliyot* 7

1.3. The political transformation of Palestine 10

1.3.1 From World War I to the British Mandate 10

1.3.2 The end of the British mandate and the UN intervention 12

1.3.3 The UN Partition Plan (1947) 13

1.3.4 The 1948 war and the Palestinian Nakba 14

1.3.5 The evolution of the Israeli-Palestinian conflict after 1948 15

1.4 Freedom of expression and polarisation in the Israeli-Palestinian conflict 17

CHAPTER II: FREEDOM OF EXPRESSION AND HATE SPEECH WITHIN THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 19

2.1 Freedom of expression under Article 10 ECHR 19

2.2 General guarantees of freedom of expression under Article 10 (1) 21

2.3 Limitations to freedom of expression under Article 10 (2) 24

2.3.1 Main forms of restrictions under Article 10 (2) 26

2.4 Hate speech in the case law of the ECHR 30

2.4.1 Different types of hate speech 33

2.4.2 Antisemitic hate speech 36

2.4.3 Italian national strategies against antisemitism 39

CHAPTER III: LIMITS OF FREEDOM OF EXPRESSION IN THE CONTEXT OF ANTISEMITISM: *M'BALA M'BALA V. FRANCE* AND *BALDASSI AND OTHERS V. FRANCE* ..... **Error! Bookmark not defined.**

3.1 Background of the case *M'Bala M'Bala v. France* 44

3.1.1 Reasoning of the French courts 45

3.1.2 Reasoning of the European Court of Human Rights: exclusion from Article 10 protection 47

3.2 Background of the case *Baldassi and Others v. France* 48

3.2.1 Reasoning of the French courts 50

3.2.2 Reasoning of the European Court of Human Rights: protection under Article 10 51

3.3 The difficulty of drawing the line between political criticism and antisemitic expressions 53

3.3.1 The object of the expression 54

3.3.2 The meaning of the expression and its context 54

3.3.3 Where should the line be drawn? 56

CONCLUSION 58

BIBLIOGRAPHY 65

LIST OF IMAGE SOURCES 71

INTRODUCTION

Freedom of expression is one of the fundamental principles of democratic societies and is protected under Article 10 of the European Convention on Human Rights (ECHR). However, its protection is not absolute. Under specific circumstances, States may restrict the exercise of this freedom, specifically when expressions contribute to the spread of hatred and interfere with the rights of others. The relevance of this issue has become particularly evident after the Hamas attacks against Israel on 7 October 2023 and the rapid increase of violence across the region. The conflict has led to a strong international debate and to a significant political polarisation. As discussed in this thesis, contemporary antisemitism may also involve the attribution of collective responsibility to Jews for the actions of the State of Israel. Despite this, criticism of Israeli policies does not, by itself, constitute antisemitism.

This context makes it necessary to examine the blurred boundary between two fundamental interests that deserve preservation: the fight against antisemitism and the protection of freedom of expression. Drawing a clear line between the two is particularly important, because an excessively broad understanding of antisemitic expressions may result in a restriction of legitimate political criticism. On the other hand, an exceedingly narrow understanding of antisemitic hate speech may allow discriminatory expressions to be presented as political speech and enjoy the protection afforded by Article 10 ECHR. The legal relevance of this issue is further illustrated by measures adopted at national level, such as in Italy.

In light of this, this thesis aims at investigating where the legal boundary between legitimate criticism of the State of Israel and antisemitic expressions should be drawn under Article 10 ECHR. More specifically, the main research questions are: *To what extent does Article 10 ECHR protect criticism of the State of Israel? Which factors does the European Court of Human Rights consider when assessing whether expressions concerning Israel constitute protected political speech or fall outside the protection of Article 10?*

The thesis is divided into three chapters. Chapter I presents the historical background of the Israeli-Palestinian conflict. In particular, it analyses the origins and the development of Zionism, the first *Aliyot,* the British Mandate, the United Nations Partition Plan, the 1948 war and the following evolution of the conflict. Then, the implications of the Israeli-Palestinian conflict for the

contemporary debate are discussed. Chapter II offers an overview of freedom of expression within the system of the European Convention on Human Rights. It focuses on Article 10 and its general guarantees, its limitations and its main forms of restrictions. Then, it describes the concept of hate speech and its different forms. A relevant part focuses on antisemitic hate speech and Italian strategies for combating antisemitism. Chapter III investigates the criteria used by the European Court of Human Rights to identify expressions that fall outside the protection of Article 10 and legitimate political criticism. The analysis draws on a comparative study of two judgements of the European Court of Human Rights: *M'Bala M'Bala v. France* and *Baldassi and Others v. France*. The comparison leads to the conclusion that drawing a clear boundary involves multiple difficulties.

Ultimately, the thesis seeks to demonstrate that such a distinction cannot be established exclusively on the basis of the provocative language used or the subject addressed. More precisely, particular attention must be paid to the nature and the object of the expression, the target, the context in which it was made, its contribution to public debate and the presence of elements encouraging hatred or intolerance. As the comparison between *M'Bala M'Bala* and *Baldassi* shows, the very fact that an expression concerns Israel does not automatically make it antisemitic, just as its political or artistic nature does not automatically place it within the protection of Article 10.

CHAPTER I

THE HISTORICAL ORIGINS OF THE CONFLICT BETWEEN ISRAEL AND PALESTINE

1.1. The origins and development of Zionism

The rise of Zionism in the late 19th century cannot be understood without considering the broader political, social and intellectual transformations that affected Jewish communities in Europe over the previous decades. During the 19th century, the integration of Jewish communities into European societies was deeply affected by processes of modernization and emancipation. In particular, representatives of Reform Judaism argued that Jews no longer constituted a separate nation but rather a religious community fully integrated into the European communities. Jewish nationhood was considered as a historical phenomenon that had ceased to exist centuries earlier, yielding to the modern nation-state. German Jews, for instance, claimed equal civil rights and highlighted their attachment to Germany, insisting that they were neither foreigners nor members of a separate community. The desire to achieve full integration reflected the belief that emancipation would eventually eliminate social and political barriers between non-Jews and Jews. [1] However, the anti-Jewish prejudice was not entirely eliminated and despite the legal reforms and increasing participation in public life, Jews continued to be subject to antisemitic attitudes. Throughout the nineteenth century, politicians and intellectuals portrayed Jews as a separate collective entity. In Germany, figures like Friedrich Rühs and Jakob Friedrich Fries provided a nationalist *(völkisch)* framework for Jewish hostility, arguing that Jews already constituted their own nation whose interests were in contrast with those of the nation. Jewish communities were described as a "state within the state", implying that their religious and cultural differences prevented their full integration into national life. Antisemitic pamphlets and political publications promoted restrictions on Jewish rights and strongly contributed to the spread of negative stereotypes that intensified social exclusion of Jews. These dynamics show that emancipation had not succeeded in overcoming prejudices against Jewish communities.

The growth of modern antisemitism was closely connected to the rise of modern nationalism throughout Europe. During the first half of the nineteenth century, the Romantic movement promoted

[1] Walter Laqueur, "The Historical Roots of Zionism", *MFJ Books*, (1996): 8.

the importance of history, tradition and national identity. In Germany, Romantics promoted the idealization of the national past and the building of a Christian-German nation. [2] In this context, minorities were perceived as obstacles to the achievement of the national unity. While seeking integration into European societies, many Jews continued to be perceived as outsiders, frequently regarded with suspicion because of their cultural identity.

The coexistence between emancipation and exclusion created uncertainty regarding the future of Jews in Europe. Although assimilated intellectuals and political figures considered themselves fully integrated members of their national communities, they remained associated with their Jewish origins and identified as a distinct group. [3] Many supporters of emancipation expected Jews to adapt or abandon their customs, behaviour and traditions in order to assimilate. At the same time, antisemites rejected the idea that adaptation could solve the so-called "Jewish Question", arguing that Jews constituted a separate race. [4] In this context, Zionism emerged as a political movement. Although Zionism took shape in the nineteenth century, references to *Zion*, the spiritual heart of Israel and God's earthly dwelling place, are much older. Its origins, lay in the preexisting historical and religious bond between the Jewish people and the land of Israel. This connection had been maintained for centuries through religious tradition, collective memory and the continuous presence of Jewish communities in Palestine. Thus, the movement was the political modernization of an already existing historical and religious attachment. [5] Political Zionism viewed the return to the historic homeland not only as a religious aspiration, but also as a political objective aimed at the creation of a sovereign Jewish state. Statehood was therefore considered as the most effective response to antisemitism and to the limitations of Jewish integration within European societies. [6]

Before the late 1890s, however, these efforts, such as those of the *Hovevei Zion* (Lovers of Zion)[7], lacked a solid political presence at international level. A decisive turning point was reached through the work and the leadership of Theodor Herzl, a Hungarian-Jewish journalist. From 1891, he became the Paris correspondent for the newspaper *Neue Freie Presse.* During his stay in Paris, Herzl closely followed the Dreyfus affair [8] and realised that anti-Semitism was a central issue within European

[2] Ivi, pp.20-21.
[3] Ivi, p.19.
[4] United States Holocaust Memorial Museum, "The 'Jewish Question'", *Holocaust Encyclopedia*, Nov 26, 2019, https://encyclopedia.ushmm.org/content/en/article/the-jewish-question.
[5] Leon I. Yudkin, "Zionism and Israel"*, European Judaism: A Journal for the New Europe*, vol. 9, n. 2 (Summer 1975): 40, https://www.jstor.org/stable/41444262.
[6] Andrea Rasenti, "Lo stato di Israele: note per un'analisi storico istituzionale", *Rivista Internazionale Di Scienze Sociali*, vol. 44 (Anno 81), n. 6 (1973): 521, https://www.jstor.org/stable/41630765.
[7] Laqueur, "The Historical Roots of Zionism", 75.
[8] Ivi, p.88

societies. Driven by the failure of Jewish social integration across Europe, Herzl suggested that the only possible solution to the Jewish Question was the establishment of a sovereign Jewish homeland. In 1896, the publication of his booklet *Der Judenstaat* (*The Jewish State*) turned fragmented initiatives to a more settled political project and organizational structure within the international context. [9] In particular, Herzl argued that the optimal resolution of the Jewish problem could not rely exclusively on gradual infiltration and local tolerance. Instead of a progressive settlement, Herzl suggested to focus on obtaining an internationally sanctioned charter that formally acknowledged the Jewish people's right to establish their national political entity. [10] Although Herzl had first considered different territorial options like Argentina, Palestine soon became central in his project because of its historical and religious significance for the Jewish people. [11]

In order to translate this political vision into an institutional structure, Herzl convened the first Zionist Congress in 1897. [12] Representatives of European Jewish communities, intellectuals, activists and supporters of the creation of a Jewish state met in Basel to define the plan of action for the creation of a legally secured home of the Jewish people in Palestine. During the debates held within the assembly, four main objectives were suggested: encouraging Jewish settlement in Palestine, particularly by farmers and workers; strengthening cooperation among Jewish communities worldwide; promoting a stronger sense of Jewish national identity and consciousness; ensuring the political support of governments for the achievement of Zionist goals. [13] In order to implement this program, a representative body known as the World Zionist Organization (WZO) was created. Delegates and members of Zionist organizations worldwide would have met periodically to propose the future measures for all Jews participating in the program for the restoration of national unity.

Despite the initial unity of the movement, Zionism did not develop as a homogeneous movement. Alongside the political Zionism of Theodor Herzl, for instance, there was also the Spiritual Zionism led by Ahad Ha-am, which focused on the spiritual rebirth of the Jewish people. [14] After Herzl's death, a new synthesis emerged to bridge these multiple currents. At the Eighth Zionist Congress, held in The Hague in 1907, Chaim Weizmann, who will become Israel's first president in 1949, promoted the idea of Synthetic Zionism, which soon became the movement's principal strategy. This new

[9] Ivi, pp.83-84
[10] Ivi, p.94
[11] Rasenti, "Lo stato di Israele: note per un'analisi storico istituzionale", 519.
[12] Andrea Rasenti, "Le origini di Israele. Formazione dell'yishubh", *Rivista Internazionale Di Scienze Sociali*, vol. 43 (Anno 80), n. 1/2 (1972): 84, https://www.jstor.org/stable/41630669.
[13] Rasenti, "Lo stato di Israele: note per un'analisi storico istituzionale ", 522.
[14] Rasenti, "Le origini di Israele. Formazione dell'yishubh", 85.

approach can be seen as a clear break from Herzl's diplomatic approach, as it placed greater importance on immediate colonization efforts in Palestine. [15]

1.2. The first *Aliyot*

The formation of the modern Jewish presence in Palestine is known as *Yishuv*. It is divided into the Old Yishuv and the New Yishuv. The Old Yishuv refers to the Jewish communities that had maintained a stable and continuous presence in Palestine for centuries, whereas the New Yishuv refers to the consecutive waves of immigration, known as *aliyot,* associated with the spread of Zionist ideology. [16] Derived from the Hebrew language, the term *aliyah* (pl. *aliyot*) literally means "ascent" and refers to the migration of Jews from the diaspora to the land of Palestine. [17] However, the concept of *aliyah* should not be understood simply as migration. The term has an ideological and spiritual connotation, as it refers specifically to the Zionist ideal of returning to the Jewish homeland. [18]

Before the beginning of Zionist immigration, Palestine was part of the Ottoman Empire and was mainly characterized by rural societies. Approximately 70% of the population lived in rural villages, while the remaining 30% lived in urban centres, such as Jerusalem, Jaffa, Hebron and Gaza. Around the middle of the nineteenth century, the territory had approximately 350.000 inhabitants, of whom about 85% were Muslims, 11% Christians and 4% Jews. [19] By 1882, the population had increased to approximately 470.000 inhabitants. [20]

The First Aliyah (1882-1903) arose as a direct response to anti-Jewish persecution and pogroms in the Russian Empire and Eastern Europe. The aim was not a religious pilgrimage but a permanent settlement. They sought to establish agricultural colonies that would provide Jews with a stable economic base and enable the gradual reconstruction of a refuge for Jews of the diaspora. Several organizations contributed to support the colonisation effort. In France, for instance, the Alliance Israélite Universelle promoted educational and cultural advancement of Jews living in Muslim countries. In order to achieve this aim, the organization developed a network of Jewish schools in the

[15] Ivi, pp.87-88.
[16] Jehuda Reinharz, "Old and New Yishuv: The Jewish Community in Palestine at the Turn of the Twentieth Century." *Jewish Studies Quarterly* 1, no. 1 (1993): 54, 57, http://www.jstor.org/stable/40753109.
[17] Gershon Shafir, "Land, Labor, and the Origins of the Israeli Palestinian Conflict, 1882-1914", University of California Press, (1996): 258.
[18] Fred S. Sherrow, Paul Ritterband, "An Analysis of Migration to Israel", *Jewish Social Studies*, vol. 32, n. 3 (1970): 214, https://www.jstor.org/stable/4466593.
[19] Alexander Schölch, "The Demographic Development of Palestine, 1850-1882." *International Journal of Middle East Studies* 17, no. 4 (1985): 503, http://www.jstor.org/stable/163415.
[20] Ivi, p.504.

Middle East and North Africa. In particular, the Alliance founded an agricultural training school at Mikveh Israel (near Jaffa) in 1870, offering practical training in agricultural work to local Jews. Alongside educational initiatives, other Jewish associations focused on land acquisition and agricultural settlement. The association *Geulath ha-ares* ("Redemption of the land") was founded with the aim of acquiring land for Jewish agricultural settlement. It was through this support that the first Jewish agricultural colony, *Petah tiqwa* ("Gateway of hope") was established in 1878 on land that had previously belonged to an Arab village. Eventually, this colony developed as one of the most important privately managed agricultural communities in Palestine. Through these initiatives, the rise of a new vision of Jewish settlement was possible. For Jews who had traditionally lived in urban centres and were engaged in commercial occupations, agricultural and manual labour came to be viewed as the necessary means to establish a meaningful connection to their ancestral homeland. [21] This early phase of colonization is often referred by historians as the era of philanthropic colonization. In fact, the success and expansion of settlements was possible through the financial support of wealthy Jewish philanthropists. Baron Maurice de Hirsch and Edmund de Rothschild guided the settlement of agricultural communities in Palestine. In 1891, Hirsch founded the Jewish Colonisation Association (JCA), enabling the birth of a large Jewish rural community. [22]

While the First Aliyah laid the foundations of Jewish agricultural settlement in Palestine, the Second Aliyah (1904-1914) marked a new phase in the development of the Zionist project. Around 40.000 Jewish immigrants arrived during this period, making it a significant immigration wave both in demographic and ideological terms. In particular, this new generation of immigrants sought to transform Zionism from a project of agricultural settlement into a broader national program that included collective organization and conquest of labour. [23] The origins of the Second Aliyah were closely connected to the influence of political and social crises on Jewish communities in Eastern Europe. In particular, the Kishinev pogrom of 1903 and the general instability of the Russian Empire showed that Jewish emancipation was insufficient to guarantee security and equality in European societies. Therefore, these events accelerated the radicalization of a generation already influenced by socialism and Zionist activism, consolidating Zionism as a collective plan for self-emancipation. For these newcomers, immigration to Palestine represented a conscious commitment to the creation of a new Jewish society, embodied in the symbols of the *halutz* (pioneer) [24] and the conquest of labour.

[21] Rasenti, "Le origini di Israele. Formazione dell'yishubh", 91-93.
[22] Gershon, "Land, Labor, and the Origins of the Israeli Palestinian Conflict, 1882-1914", 46.
[23] Rasenti, "Le origini di Israele. Formazione dell'yishubh", 95.
[24] Ben Halpern and Jehuda Reinharz, "The Cultural and Social Background of the Second Aliyah", *Middle Eastern Studies,* vol. 27, n. 3 (1991): 487, 494, 497, https://www.jstor.org/stable/4283452.

Pioneers had to guide the permanent settlement of Jews based on the idea that the national regeneration could be achieved only through direct participation in productive labour. The future Jewish homeland had to be built through personal sacrifice, work and social commitment (*Halutziuth*). [25] A significant influence on this vision came from Aaron David Gordon, one of the main theorists of Labour Zionism. Gordon argued that labour was not merely an economic necessity, but the foundation of a national civilization.
However, for this process to be successful, the development of a common cultural identity was fundamental. Hebrew was an essential instrument of national cohesion and was meant to become the main language of everyday life and education in Palestine. Eliezer Ben-Yehuda, a Russian journalist and philologist, catalogued terms used in ancient literature and coined new ones, expanding the vocabulary. The spread of Hebrew was also facilitated by the establishment of a new system of Jewish schools. In other words, Ben-Yehuda transformed ancient Hebrew into a modern spoken language and strengthened the national identity in Palestine. [26] Hence, pioneering settlement and the rebirth of Hebrew contributed to the formation of a more cohesive *Yishuv*.

Soon, the Jewish settlement process gave rise to tensions with the local Arab population. During the First Aliyah, Jewish landowners and colonists favoured a form of hierarchical cohabitation. In this early phase, relations between the two communities remained relatively peaceful and conflicts were limited to legal and economic matters over land purchase and possession. However, the situation significantly changed with the Second Aliyah. During this period, the intensification of Jewish settlement caused much deeper tensions over labour and integration of the growing Jewish population in the Arab society. Accordingly, the Palestinian presence on the land became the basis of future political and social conflicts between the two communities. [27]

[25] Rasenti, "Le origini di Israele. Formazione dell'yishubh", 95, 100.
[26] Ivi, p. 99-101.
[27] Gershon, "Land, Labor, and the Origins of the Israeli Palestinian Conflict, 1882-1914", 5-6, 80.

1.3. The political transformation of Palestine

1.3.1 From World War I to the British Mandate

The outbreak of World War I led to the suspension of the colonial enterprise in Palestine, as international mobility was significantly restricted. Moreover, colonization efforts were constrained by restrictive measures imposed by the Ottoman regime. Since Palestine was governed by the Ottoman Empire, the Turkish government tightened restrictions on Zionist immigration, already regarded with suspicion before 1914. By the conclusion of the conflict, the size of the Jewish population in the region had substantially been reduced. Despite such adverse consequences, the Zionist movement obtained an important achievement through the formal recognition of Jewish nationalist ambitions by Great Britain, a key player in the Triple Entente. On 2 November 1917, the British government published a historic document known as the Balfour declaration. The Balfour declaration was a private letter sent by the head of the Foreign Office to Lord Lionel Rothschild, a leading figure within the British Jewry. Through this document, Great Britain explicitly expressed its political commitment to recognize the Zionist project and facilitate the establishment of a Jewish national home within the geographic borders of Palestine. At the international level, the Balfour Declaration subsequently acquired greater legal and political significance through its incorporation into the international framework governing the Palestine Mandate, particularly following the San Remo Conference of 1920 and the approval of the Mandate by the League of Nations in 1922. Significant were the Congress of San Remo on 24 April 1920, which officially entrusted the administration of Palestine to Great Britain, and the Council session of the League of Nations. On 24 July 1922, , the League officially approved the creation of the British Mandate in Palestine, recognizing the historical connection between Jewish people and Palestine. Great Britain was required to create the necessary conditions for the establishment of the Jewish National Home, protect the civil and religious rights of all the inhabitants and work with the Jewish Agency, the representative body of the Jewish community. Furthermore, the Mandate established English, Arabic and Hebrew as the official languages of the country.

The institution of the Mandate created a stable base for the consolidation of the Jewish community, providing the international recognition that the Zionist movement had always sought. [28] However,

[28] Rasenti, “Le origini di Israele. Formazione dell’yishubh”, 101-103.

British support for Zionism was not a matter of moral sympathy. Great Britain's interest for Palestine was shaped by the geopolitical importance of the territory, especially for the Suez Canal and for the maritime route to its economic and military base in India. Therefore, supporting the Zionist movement would have automatically secured geopolitical advantages for Great Britain. [29]

During the first decade of British administration, the *Yishuv* grew significantly and recovered rapidly from the impact of World War I. British policy was influenced by the concept of settler developmentalism. According to British officials, Jewish settlers represented a more advanced and modern economic force and their development would benefit Palestine as whole. Since this ideology considered the Jewish settlement as the engine of progress, any negative impact on the local Arab population was irrelevant and an acceptable cost of modernization. The idea of settler developmentalism created a firewall, allowing the British to ignore evidence of Arab landlessness. [30] Further tensions arose with the acquisition of land by Zionist institutions, such as the Jewish National Fund. Given the limited availability of cultivable land and its intensive use, large land sales led to the displacement of tenant farmers and Arab communities. Many were unable to find new land or employment and, as a result, the number of landless farmers increased. The rise of an agrarian crisis represented a contradiction with the structure of the Mandate. Great Britain had to facilitate the establishment of the Jewish national home but also to safeguard the civil and religious rights of the Arab population. Nevertheless, the British administration gave priority to the development of the Jewish national home. [31] These developments led to the violent Arab rebellion known as *Thawrat al-Buraq* or *Western Wall riots* in Jerusalem from 23 to 29 August 1929. Such protests spread quickly to Hebron and Safad, where Jewish and Muslim communities coexisted, and worsened the relations between Arabs and Jews. [32]

In response to the growing tensions, the British government sought to redefine its administration in Palestine through the White Papers, guidelines for the administration of Palestine. The 1930 Passfield White Paper recognized the extent of Arab farmers' landlessness and suggested a restriction of land sales. [33] Nevertheless, Prime Minister Ramsay MacDonald's "Black Letter" of 1931 restored the ideology of settler developmentalism [34]. The agrarian crisis deepened throughout the 1930s and led

[29] Mathew William, "The Balfour Declaration and the Palestine Mandate, 1917—1923: British Imperialist Imperatives", *British Journal of Middle Eastern Studies*, vol. 40, no. 3 (2013): 231, https://www.jstor.org/stable/23525764.
[30] Charles Anderson, "The British Mandate and the Crisis of Palestinian Landlessness, 1929–1936", *Middle Eastern Studies*, vol. 54 (2), (2018): 172, https://doi.org/10.1080/00263206.2017.1372427.
[31] Ivi, pp. 174-176.
[32] Alex Winder, "The 'Western Wall' Riots of 1929: Religious Boundaries and Communal Violence", *Journal of Palestine Studies*, vol. 42, no. 1 (2012): 6, https://doi.org/10.1525/jps.2012.xlii.1.6.
[33] Anderson, "The British Mandate and the Crisis of Palestinian Landlessness, 1929–1936", 181-183.
[34] Ivi, p.183-185.

to the Great Revolt (1936-1939). [35] Because of such instability, the British government issued a further White Paper on May 1939. The document was drafted in consultation with Arab States and shows a significant change in Great Britain's attitude towards Zionism, as it was intended as a strategy of appeasement towards the Arab states. In particular, the 1939 White Paper promised the creation of an independent Palestinian state within ten years and restricted Jewish immigration to 75.000 immigrants over the following five years. Furthermore, it imposed new restrictions on Jewish land purchases. By restricting Jewish immigration and promising Arab independence, the British government gained Arab support. For Great Britain, peace in Palestine was militarily important in order to protect the Suez Canal. [36]

1.3.2 The end of the British mandate and the UN intervention

By the end of the 1930s, British attempts to reconcile tensions over immigration and land between Arabs and Jews had largely failed. Unable to find a satisfactory resolution, Great Britain concluded that abandoning the Mandate was the only available option. [37] Therefore, in February 1947 the British government decided to transfer responsibility for the Palestine question to the United Nations, [38] established only two years earlier, and declared to terminate the Mandate by 15 May 1948. [39] In May 1947, the United Nations established the United Nations Special Committee on Palestine (UNSCOP). The main tasks of the Committee were to investigate conditions in Palestine and propose a political solution capable of reducing tensions between Arab and Jewish communities. UNSCOP suggested the creation of two independent states in Palestine. Under the proposal, the territory assigned to the proposed Jewish state covered approximately 16,000 square kilometres, around 62% of Palestine. [40]

[35] Ivi, p.172.
[36] Michael J. Cohen "Appeasement in the Middle East: The British White Paper on Palestine, May 1939." *The Historical Journal* 16, no. 3 (1973): 571-572, http://www.jstor.org/stable/2638205.
[37] Laqueur, "The Historical Roots of Zionism", 75.
[38] United Nations Department of Public Information, "The United Nations and the Question of Palestine", part I, *The Question of Palestine Before the United Nations,* https://www.un.org/unispal/document/auto-insert-208097/.
[39] Rasenti, "Lo stato di Israele: note per un'analisi storico istituzionale", 531.
[40] Itzhak Galnoor, "The Zionist Debates on Partition (1919-1947)", *Israel Studies,* vol. 14, no. 2 (2009): 84, https://www.jstor.org/stable/30245854.

1.3.3 The UN Partition Plan (1947)

On 29 November 1947, the United Nations General Assembly adopted Resolution 181, known as the Partition Plan. [41] It reflected the recommendations proposed by UNSCOP, although the territory allocated to the Jewish state was reduced to approximately 14,000 square kilometres (about 55% of Palestine). [42] According to the Resolution, Jerusalem had to be placed under the UN trusteeship in order to protect the Holy Places and guarantee freedom of access for all religious communities. The Resolution also established constitutional guarantees for both proposed states. They included equality before the law, prohibition of discrimination on the grounds of race, religion, language or sex, freedom of conscience and worship and safeguard of primary and secondary education for the Arab and Jewish minorities, in their own languages and according to their cultural traditions. [43] The Resolution recommended the establishment of an Arab state and a Jewish state, but the proposed partition was never implemented as envisaged. Following the declaration of independence of the State of Israel in May 1948 and the subsequent war, Israel gained international recognition from a number of States and was admitted to the United Nations in 1949. However, neither the Palestinian state nor the international regime for Jerusalem outlined in the Partition Plan was ever implemented. This resulted in an asymmetrical outcome. [44] Beyond the territorial division, the Resolution proposed economic cooperation between the two states through an Economic Union. The plan included a common currency system, the joint management of transport infrastructure and public utilities and a coordinated economic development. In addition, both states and the city of Jerusalem had access to water facilities and electricity infrastructures. A joint economic committee, composed of three representatives from each of the two states and three foreign members chosen by the UN, was also to be established. [45]

While the establishment of the UNSCOP and the adoption of the Partition Plan marked the formal involvement in the Palestine question, it is often argued that the United Nations' role was far from neutral or autonomous. In fact, the organization operated under the control of the major powers that

[41] United Nations General Assembly, *Resolution Adopted on the Report of the Ad Hoc Committee on the Palestinian Question,* A/RES/181(III), November 29, 1947: 1, 12.
[42] Galnoor, "The Zionist Debates on Partition (1919-1947)", 84.
[43] Center for Israel Education, *United Nations General Assembly Resolution 181 (II): Future Government of Palestine,* Italian translation, (2012): 14-16.
[44] Phyllis Bennis, "THE UNITED NATIONS AND PALESTINE: PARTITION AND ITS AFTERMATH", *Arab Studies Quarterly*, vol. 19, n. 3 (1997): 47, https://www.jstor.org/stable/41858997
[45] Center for Israel Education, *United Nations General Assembly Resolution 181 (II):* 18.

had created it after World War II. In particular, the United States had a significant influence over UN policy in the Middle East by encouraging the organization to adopt certain positions. [46]

After the adoption of Resolution 181, contrasting views regarding how territory should be understood within the Zionist movement emerged. On the one hand, territory carried a symbolic meaning, as it was associated with cultural belonging and the need for a Jewish homeland. On the other hand, territory was considered as a necessary resource to ensure security and population growth, develop infrastructure and agriculture and make a functioning state possible. [47] Furthermore, the devastating consequences of the Holocaust increased the urgency of establishing a Jewish state to overcome the dispersion of the Jewish people. [48] Therefore, territory was also valued in terms of the opportunities it provided. Nevertheless, not all Zionists accepted the territorial compromise. Some Zionist opponents of the partition did not reject the idea of a Jewish state itself but questioned the territorial compromise. More specifically, they argued that a Jewish state could only be legitimate if it included the entire territory of Eretz-Israel, the entire land which they considered part of the Jewish homeland in historical and religious terms. By contrast, Palestinian leaders categorically rejected the Partition Plan, arguing that the establishment of a Jewish state in Palestine was unacceptable. According to them, the Jewish population had no legitimate right to sovereignty over any territory of Palestine. Thus, they continued to insist on the creation of an Arab state in Palestine. [49] Consequently, violence increased in Palestine. On the day after the United Nations vote, Palestinian Arabs declared a three-day protest and attacked Jewish communities. In this context, the *Yishuv* strengthened its military defence. Meanwhile, Arab military activity further intensified through the creation of the Arab Liberation Army, supported by Syrian officers. By early 1948, the conflict had evolved into a civil war between the Arab and Jewish communities. [50]

1.3.4 The 1948 war and the Palestinian Nakba

On 14 May 1948, the Jewish People's Council proclaimed the establishment of the State of Israel through the Declaration of Independence. The People's Council transformed itself into the Provisional State Council and assumed the role of the state's legislative authority, while the

[46] Ivi, p.48
[47] Galnoor, "The Zionist Debates on Partition (1919-1947)", 86.
[48] Yehoyada Haim, "Zionist Attitudes toward Partition, 1937-1938", *Jewish Social Studies,* vol. 40, n. 3/4 (1978): 310, https://www.jstor.org/stable/4467019.
[49] Galnoor, "The Zionist Debates on Partition (1919-1947)", 78, 82, 84.
[50] Laqueur, "The Historical Roots of Zionism", 582-583.

Provisional Government became the executive authority. [51] The United States, followed by the Soviet Union, immediately recognized the new Jewish State. Despite the declaration of independence, the military intervention of Arab states followed instantly. During the night of 14 and 15 May 1948, Arab armies invaded Palestine, transforming the internal conflict into the first of a long series of Arab-Israeli wars. [52] The military escalations resulted in what the Palestinians defined as the *Nakba* (the catastrophe). Israel successfully resisted the invading armies, defeated them and expanded its borders. Consequently, hundreds of thousands of Palestinians lost their homes, lands and properties and were immediately displaced. [53]

When the war ended and the ceasefire agreements were signed in 1949, the geopolitical reality of Palestine had already been altered. Israel established itself on approximately 78% of Palestinian territories, annexing about half of the territory that the UN Resolution 181 had originally allocated for the Arab state. The remaining territories were divided under foreign administration. The hilly region of West Bank was occupied by the Hashemite regime of Jordan and the Gaza Strip fell under Egyptian administration. Gaza Strip became densely populated, as the original population of 80,000 in the Gaza strip was soon doubled by the refugee influx. The presence of a large refugee population in such a small territory made the Gaza Strip an unstable area. Moreover, the war transformed the Palestinian society into a fragmented and marginalized community. It is estimated that the number of Palestinians permanently displaced amounts to approximately 750,000 and roughly 156,000 Palestinians remained within the borders of the new Jewish state, forming a marginalized minority. The political repercussions of the military defeat also extended beyond Palestine, generating many coups d'état in Syria, Lebanon, Jordan and Egypt in the early 1950s. [54]

1.3.5 The evolution of the Israeli-Palestinian conflict after 1948

The 1948 war did not end the conflict. Rather, it gave rise to a long period of political and military instability in the Middle East. In this context, Israel firmly opposed the creation of a Palestinian state, arguing that the territory between the Jordan and the Mediterranean did not allow for a third state.

[51] Rasenti, "Lo stato di Israele: note per un'analisi storico istituzionale", 531-532.
[52] Laqueur, "The Historical Roots of Zionism", 586.
[53] Adel Manna', "The Palestinian Nakba and Its Continuous Repercussions", *Israel Studies,* vol. 18, n. 2 (2013): 87-88, https://doi.org/10.2979/israelstudies.18.2.86.
[54] Ivi, pp. 91-93.

The opportunity for Israel to remove the administration of the West Bank and Gaza from the Arab states came in June 1967 with the outbreak of the Six-Day war. [55]

After 1967, the conflict took a more defined shape. In particular, Palestinians assumed a central role in the resistance against Israel. Although the Palestine Liberation Organization (PLO) was created in 1964, after the 1967 war it increasingly became the main political representative organization of the Palestinian people. [56] With the 1988 declaration of Palestinian independence, the PLO reaffirmed its claim to statehood and to regain control over Palestine. However, the declaration was mainly symbolic, as no sovereign Palestinian state was established. [57]

Another attempt to resolve the conflict came with the Oslo Accords. The Oslo Accords were interim agreements concluded between Israel and the PLO. Their aim was to establish a temporary system for governing the West Bank and the Gaza Strip until an agreement could be reached. As Israel and Palestine were not prepared to reach a peaceful agreement, an interim phase of five years was necessary for building trust and creating the conditions for future negotiations. [58] However, the agreements did not provide a concrete solution for the main issues of the conflict, such as borders, refugees and Jerusalem. They were classified as "final status issues" and postponed until the final phases of negotiations. [59] After the Oslo Accords, as early as 1994, violent attacks restarted and Israeli settlements expanded significantly. [60]

The year 2000 was decisive for Israel, as the government had to accept the establishment of a Palestinian state on all or part of the territories occupied in 1967, abandoning Judea and Samaria, temporarily administrated by the Israeli government. In the 2000s, political support for negotiations weakened and the most extreme positions prevailed. However, the Israeli Prime Minister Ariel Sharon adopted pragmatic decisions, such as the Israeli withdrawal from the Gaza Strip between 15 August and 12 September 2005. [61]

[55] Giampaolo Calchi Novati, "Israele, Palestina e Il Diritto Di Autodeterminazione." *Contemporanea* 9, n. 2 (2006): 226-227 http://www.jstor.org/stable/24652179.
[56] Ivi, pp. 222, 224.
[57] Ivi, p.228
[58] Shamir Hassan, "Oslo Accords: The Genesis and Consequences for Palestine." *Social Scientist* 39, n. 7/8 (2011): 67-68 http://www.jstor.org/stable/41289422.
[59] Ivi, p.70.
[60] Novati, "Israele, Palestina e Il Diritto Di Autodeterminazione.", 221.
[61] Ivi, p.231.

1.4 Freedom of expression and polarisation in the Israeli-Palestinian conflict

The evolution of the Israeli-Palestinian conflict has transformed it into one of the most controversial issues in the international context. Recently, particularly after the Hamas attack against Israel of 7 October 2023, the conflict has attracted media attention and has rapidly led to a polarisation in the global public debate. Social media platforms have become the main channels for the global spread of information about the conflict and turned the digital world into a geopolitical battlefield. Meanwhile, numerous public protests have taken place in several countries around the world in support of either Israel or Palestine. A significant part of international public debate has involved allegations that Israel's conduct in Gaza may amount to genocide under international law. Such a polarised environment raises an important issue, that is the difficulty of drawing a clear distinction between legitimate criticism of the policies of the Israeli government and statements that may be understood as antisemitic speech.

CHAPTER II

FREEDOM OF EXPRESSION AND HATE SPEECH WITHIN THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

2.1 Freedom of expression under Article 10 ECHR

The Council of Europe was founded in 1949. It has its seat in Strasbourg and nowadays it includes 46 States. Unlike the European Union, the Council of Europe is not a supranational organisation. Instead, it is an intergovernmental organisation in which European states cooperate to adopt conventions and treaties. [62] Among these, the European Convention on Human Rights represents the main expression of commitment of the Member States of the Council of Europe to the principles of democracy, peace and justice. [63] Adopted in Rome on 4 November 1950 and entering into force on 3 September 1953, it was the first international treaty to transform the principles of the Universal Declaration of Human Rights into legally binding obligations for the Contracting States. [64] The institution responsible for enforcing the obligations undertaken by the Contracting States is the European Court of Human Rights, based in Strasbourg. Only after having exhausted all available domestic remedies, individuals can bring complaints directly against a State for alleged violations of the rights guaranteed by the Convention. [65]

The European Convention on Human Rights protects a broad range of civil rights. Among the rights protected, Article 10 of the Convention occupies an important role. It sets a common standard for the protection of freedom of expression among the Contracting States, protects democratic debate and the free exchange of ideas. As affirmed by the Court in *Handyside v. the United Kingdom*, freedom of expression constitutes "one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man". Moreover, freedom of expression protects not only ideas that are received or regarded as inoffensive, but also those capable of shocking,

[62] European Parliamentary Research Service, "At a glance: Council of Europe", PE 625.169, September 2018: 1.
[63] Council of Europe, "Introduction to the European Convention on Human Rights", Collected Texts, (1994): 9.
[64] European Court of Human Rights, "European Convention on Human Rights", accessed on 7 July 2026, https://www.echr.coe.int/european-convention-on-human-rights.
[65] Council of Europe, "The Convention in 1950", accessed on 7 July 2026, https://www.coe.int/en/web/human-rights-convention/the-convention-in-1950.

offending or disturbing the State or any part of the population. Pluralism, tolerance and broadmindedness are the main features of a democratic society, therefore even controversial and disturbing expression enjoy the protection granted by Article 10. [66] In addition to protecting democratic debate, freedom of expression also plays a fundamental role in enabling the effective exercise of other rights guaranteed by the Convention and its Protocols.

The European Court of Human Rights affords different levels of protection to various forms of expression depending on the nature of the expression concerned. Political speech enjoys the highest level of protection under Article 10. [67] This reflects the core of democratic discourse and is essential for ensuring pluralism and public debate. Given its central role in democratic societies, interferences with political speech can be justified only in exceptional circumstances. The Strasbourg Court also grants significant protection to artistic expression, as it is recognised as a "value in itself". [68] Artistic works contribute to the public exchange of cultural, social and political ideas and, for this reason, they are included in the scope of the freedoms to impart and receive information and ideas protected by Article 10. [69] The protection provided by Article 10 extends to a wide range of artistic expressions, such as paintings, sculptures, plays, poems, novels and satire. Against this background, the Convention has accorded particular importance to artistic expression, acknowledging that exaggeration, provocation, satire and irony are inherent features of such form of communication. [70] States are therefore required to avoid imposing unjustified restrictions on authors' freedom of expression. [71] By contrast, commercial expression receives a lower degree of protection in comparison to political and artistic expression. [72] This is because speech aimed at promoting economic interests or advertising products is mainly connected to economic objectives rather than with values associated with political or public interest speech.

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[66] Case of *Handyside v. The United Kingdom,* n. 5493/72, European Court of Human Rights, 1976, § 49.
[67] Elvin Abbasli, "The Protection of the Freedom of Expression in Europe: Analysis of Article 10 of the ECHR, *Baku State University Law Review,* vol. 2, n.1, 2015: 20.
[68] Case of *Jelševar and others v. Slovenia*, n. 47318/07, European Court of Human Rights, 2014, § 33.
[69] Case of *Lindon, Otchakovsky-Laurens and July v. France,* n. 21279/02 and 36448/02, European Court of Human Rights, 2007, § 47.
[70] Dominika Bychawska-Siniarska, "Protecting the right to freedom of expression under the European Convention on Human Rights - A handbook for legal practitioners", printed at the Council of Europe, 2017, https://edoc.coe.int/en/fundamental-freedoms/7425-protecting-the-right-to-freedom-of-expression-under-the-european-convention-on-human-rights-a-handbook-for-legal-practitioners.html : 17-18.
[71] European Court of Human Rights, "Key Theme - Article 10 Artistic expression", last updated 28 February 2026: 1.
[72] Monica Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights, *Human Rights Handbooks,* 2001, n.2, https://www.refworld.org/reference/research/coe/2004/67097 : 9.

In order to understand the scope of this protection, it is necessary to analyse the structure of Article 10. Article 10 is divided into two paragraphs. The first paragraph includes the general guarantees of freedom of expression, whereas the second defines the lawful limitations to its exercise.

2.2 General guarantees of freedom of expression under Article 10 (1)

Article 10, paragraph 1 [73]

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

The first paragraph entails the right to hold opinions, to receive information and ideas and to impart them. All these freedoms must be exercised without interference by public authorities and regardless of frontiers. Article 10, however, protects the entire process of communication through which information and ideas circulate in a society. It guarantees the right of individuals, journalists and associations to communicate facts, opinions and viewpoints without interference by public authorities.

The freedom to impart information and ideas represents a fundamental component of a democratic society, since it enables individuals to criticise governmental actions and participate in the public debate. As a consequence, the protection afforded by Article 10 extends also to the corresponding right of the public to receive such information. Freedom to receive information safeguards the interests of individuals by ensuring access to information that others intend to circulate. [74]

The concept of "information and ideas" is interpreted broadly under Article 10. As a consequence, the Strasbourg Court has extended the scope of Article 10 to a broad range of categories and forms of expression. The protection guaranteed under Article 10 is not limited to written or spoken language but extends to every form of communication that conveys information or ideas and the way in which they are communicated. Therefore, expression may take the form of books, newspapers, radio broadcasts, artistic forms (e.g. paintings, literary works, pictures), as well as customs and traditions

[73] Article 10, European Convention on Human Rights, Council of Europe.
[74] Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights", 8.

and, in particular circumstances, even clothing, providing that such forms intend to communicate a specific message.

Information concerning an individual's private life might fall within the scope of Article 10. In cases in which freedom of expression is in conflict with the right to respect for private life protected by Article 8 of the European Convention on Human Rights, the European Court of Human Rights requires a balancing exercise of the two rights. In particular, the Court must examine whether: [75]

a) the publication contributes to a debate of general interest;
b) the notoriety of the person concerned;
c) the subject matter of the news;
d) the person's previous conduct;
e) the content, the form and the consequences of the publication of the information or photographs.

In the case of *Von Hannover v. Germany*, the Court recognised that the public has the right to be informed, which may extend to aspect of the private life of public figures, especially politicians. By contrast, publications regarding the private life of public figures and intended to satisfy public curiosity do not contribute to democratic debate and may be subordinated to the requirements imposed by Article 8, receiving a lower degree of protection. [76] Information concerning moral issues is also protected. In *Open Door and Dublin Well Woman v. Ireland*, the Strasbourg Court analysed a prohibition preventing two counselling organisations from providing pregnant women with information about abortion services available in the United Kingdom. The domestic court had previously found that such activities were in contrast to constitutional principles and the applicants brought the case before the Strasbourg Court, arguing that the prohibition interfered with the freedom to impart and receive information. The European Court of Human Rights found that the restriction imposed by the national court was too broad and disproportionate, since it prevented the access to information already available elsewhere. [77]

The protective umbrella of Article 10 also extends to religious discourse and criticism. However, individuals choosing to manifest their religion cannot expect to be exempt from all criticism. Instead, they must tolerate and accept the denial of their religious beliefs by others. [78] While believers must

[75] European Court of Human Rights, "Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression", updated in 2024: 32-34.
[76] Ivi, 37.
[77] Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights", 48-49.
[78] European Court of Human Rights, "Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression", 116.

tolerate criticism, the respect for the religious beliefs and sacred symbols may be violated by offensive expressions. In *Otto Preminger v. Austria,* the Court stated that "the respect for the religious feelings of believers (…) can legitimately be thought to have been violated by provocative portrayals of objects of religious veneration". [79]

The reciprocal relationship between the freedom to impart and the freedom to receive information is evident in the field of press. This principle applies to both printed and broadcast media. Although Article 10 does not expressly refer to the freedom of press, the Court has elaborated a set of principles granting a privileged position in relation to the rights guaranteed under Article 10. This is because an informed public capable of accessing a wide range of opinions and critical reporting is necessary in a democratic society. The press plays a fundamental role, as it operates as a public watchdog. In *Lingens v. Austria*, the European Court of Human Rights rejected the argument that value judgements could be subjected to proof requirements [80]. Moreover, imposing such a requirement would prevent the press from exercising its democratic role as a political watchdog. Such protection is necessary to impart information and ideas on political matters and to enable the public to receive them. Moreover, the Court has clarified that the press has the task to report on political matters as well as on any issue of public concern. [81] The *Thorgeirson v. Iceland* case illustrates this clearly. In that case, Mr Thorgeirson had made public a series of articles using harsh language to denounce police misconduct in Iceland. Even though he was convicted domestically for defamation, the European Court of Human Rights found that his writings dealt with a matter of public interest and thus fell within the protection afforded to journalistic expression. Furthermore, the Strasbourg Court held that the applicant's conviction could have discouraged free discussion on issues of public interest, threatening the democratic function of the press. [82]

[79] Case of *Otto Preminger v. Austria,* n. 13470/87, European Court of Human Rights, 1994, § 47.
[80] Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights", 11.
[81] Ivi, 9.
[82] Ivi, 12.

2.3 Limitations to freedom of expression under Article 10 (2)

Unlike certain absolute rights protected by the European Convention on Human Rights, the right to freedom of expression is not unlimited. The Convention establishes a legal framework according to which States may, under specific circumstances, interfere with the exercise of this freedom.

Article 10, paragraph 2 [83]

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

The concept that the exercise of freedom of expression carries duties and responsibilities is distinctive in the Convention, as it does not appear in any other provision regulating rights and freedoms. [84] A clear definition of such duties and responsibilities is not provided by the Convention. Instead, their meaning has been clarified by the Court's case law, which established that they depend on the circumstances of each case. Such duties and responsibilities apply, in principle, to all individuals who exercise freedom of expression, although their scope may vary according to the status and professional position of the person concerned. [85] In the case of journalists, these duties and responsibilities are of particular relevance, given the role played by the press as a public watchdog in a democratic society. Journalists are expected to act in good faith and to report on matters of public interest in compliance with the standards of responsible journalism. [86] Nevertheless, these requirements should be distinguished from the more specific standards of professional journalistic ethics. The requirements derived from Article 10 of the Convention have been gradually elaborated in the Court's case law, whereas professional journalistic ethics concerns the deontological rules

[83] Council of Europe, European Convention on Human Rights, Article 10.
[84] Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights", 21.
[85] Case of *Handyside v. The United Kingdom,* n. 5493/72, European Court of Human Rights, 1976, § 49.
[86] Case of *Bladet Tromsø and Stensaas V. Norway,* n. 21980/93, European Court of Human Rights, 1999, § 65.

governing the exercise of journalistic activities. In Italy, for instance, the deontological standards established by the Italian Order of Journalists include requirements relating to the accuracy and truth of news, the verification of its reliability, the correction of possible inaccurate information and the protection of confidential sources. [87]

In order to assess whether an interference with freedom of expression is justified under Article 10 (2), the European Court of Human Rights relies on a three-part test. A restriction imposed by a State is legitimate only when three cumulative criteria are met:

a) The interference is prescribed by law
b) The interference pursues a legitimate aim
c) The interference is necessary in a democratic society

The respondent State must provide relevant and sufficient reasons demonstrating that the interference satisfies the requirements of Article 10(2). If the Court finds that one of these requirements is not met, the interference is unjustified and incompatible with Article 10. [88]

According to the Court, the notion "prescribed by law" must satisfy two conditions. Firstly, the relevant norm must be accessible, that is, individuals must be able to obtain sufficient information about the rules applicable to a given case. Secondly, it must be formulated precisely in order to enable individuals to regulate their conduct and to foresee the possible consequences of their actions. [89] The second requirement concerns the pursuit of a legitimate aim. Article 10 (2) acknowledges different legitimate aims, namely national security, territorial integrity, public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, the prevention of the disclosure of confidential information and the maintenance of the authority and impartiality of the judiciary. Therefore, States may not rely on objectives that differ from those explicitly recognised by the Convention. [90]. Lastly, the State interference must be "necessary in a democratic society". When reviewing the decisions of the national courts, the Strasbourg Court pays particular attention to the principles of democracy, namely pluralism, tolerance and broadmindedness. As found by the Court, the term "necessary" must not be interpreted as a synonym of "reasonable", "useful" or "desirable". Instead, it refers to the existence of a "pressing social need", an urgent social

[87] Ordine dei Giornalisti, "Etica: Le Regole", accessed on 6 September 2026, https://www.odg.it/etica-le-regole; Centro Giornalismo, "Testo unico dei doveri del giornalista", accessed on 6 September 2026, https://www.centrogiornalismo.it/testo-unico-dei-doveri-del-giornalista/.
[88] Dominika Bychawska-Siniarska, "Protecting the right to freedom of expression under the European Convention on Human Rights", 32-33.
[89] Case of *The Sunday Times v. the United Kingdom,* n. 6538/74, European Court of Human Rights, 1979, § 47-49.
[90] Council of Europe, Article 10 §2, European Court of Human Rights.

interest that justifies the interference. The Court also requires that national authorities provide relevant and sufficient reasons in support of the restriction. [91] Since a simple reference to a legitimate aim under Article 10 (2) is not sufficient, it must be demonstrated that limiting freedom of expression was required by the specific circumstance of the case. National authorities enjoy a margin of appreciation, giving them a certain degree of discretion to judge the necessity considering the local circumstances. Despite this, the Court exercises European supervision over the national authorities' assessment of the necessity and proportionality of the interference. [92] After having identified a pressing social need, the Court evaluates the proportionality of the interference. This means that the measure adopted did not restrict freedom of expression beyond what was strictly necessary to achieve the intended aim. The Court considers several factors, such as the nature of the expression, the context in which it was made, the status of the individual concerned and whether the expression contributed to a debate of public interest.

2.3.1 Main forms of restrictions under Article 10 (2)

a) CENSORSHIP

One of the most serious threats to freedom of expression is censorship prior to publication. This results from the fact that prior restrictions prevent ideas and opinions from reaching the public. Prior censorship can take different forms, such as the requirement of authorisation and the analysis of journalistic content before publication or the prohibition of the publication itself. Although temporary, such measures may significantly reduce the value of the information involved, as in journalism the importance of news depends on the speed with which it reaches the public. As held by the Court, even a short delay in publication may deprive it of its value and public interest and such authorisations are not accepted in a democratic society. [93] However, such measures may be justified only if they comply with the requirements of Article 10 (2), that is, the interference is prescribed by law, pursuits a legitimate aim and is necessary in a democratic society.

Censorship may also occur through measures adopted after the publication of information, such as criminal convictions or financial sanctions. Even though a fine does not directly

[91] Case of *The Sunday Times v. the United Kingdom,* n. 6538/74, European Court of Human Rights, 1979, § 62-65.
[92] Case of *Handyside v. The United Kingdom,* n. 5493/72, European Court of Human Rights, 1976, § 48-50.
[93] Case of *Gaweda v. Poland*, n. 26229/95, European Court of Human Rights, 2002.

prevent the journalist from expressing himself, the fact of being subject to such penalty creates an intimidating effect. This situation may lead to an implicit form of censorship, since a journalist may be discouraged to express similar opinions in the future. In *Okçuoğlu v. Turkey*, the severity of the one year and eight months' imprisonment sentence and the authorities' efforts to obtain a conviction suggested clear attempt to silence a critical voice. [94] Therefore, the imposition of excessive sanctions on journalists may affect their participation in discussions on matters of public interest and may lead to a limitation of public debate.

b) DEFAMATION

Another context in which restrictions on freedom of expression may arise is the protection of reputation and rights of others. The main objective of defamation law is protecting the reputation of individuals. Reputation is an important aspect of private life, but also a matter of social interest. In this context, defamation law is designed to protect an individual from unjust attacks on their reputation and to maintain respectful social relationships. Therefore, harm to reputation may also damage the social relationships and the functioning of a community. [95] At the same time, freedom of expression protects right to express opinions and criticise others. Therefore, these two rights may create a conflict, since statements that contribute to public debate may also affect the reputation of others. Article 10 (2) of the Convention addresses the conflict through a careful balancing exercise between the protection of reputation and preservation of freedom of expression.

States may legitimately restrict freedom of expression, providing that such restrictions follow the requirements included in the Convention. When considering an interference under Article 10 (2), the status of both the person exercising freedom of expression and of the person targeted by the expression must be taken into account. It has been established that the limits of criticism depend on the position and public role of the subject concerned. Figure 1 displays the different levels of protection against defamation.

[94] Case of *Okçuoğlu v. Turkey,* n. 24246/94, European Court of Human Rights, 1999.
[95] Fiona Brimblecombe, "Searching for a Theoretical Basis of Defamation Law." In Defamation in the Digital Age and the 'Right to Be Forgotten,' 1st, First Edition ed. Bristol University Press, 2025, https://doi.org/10.2307/jj.25941135.6: 41.

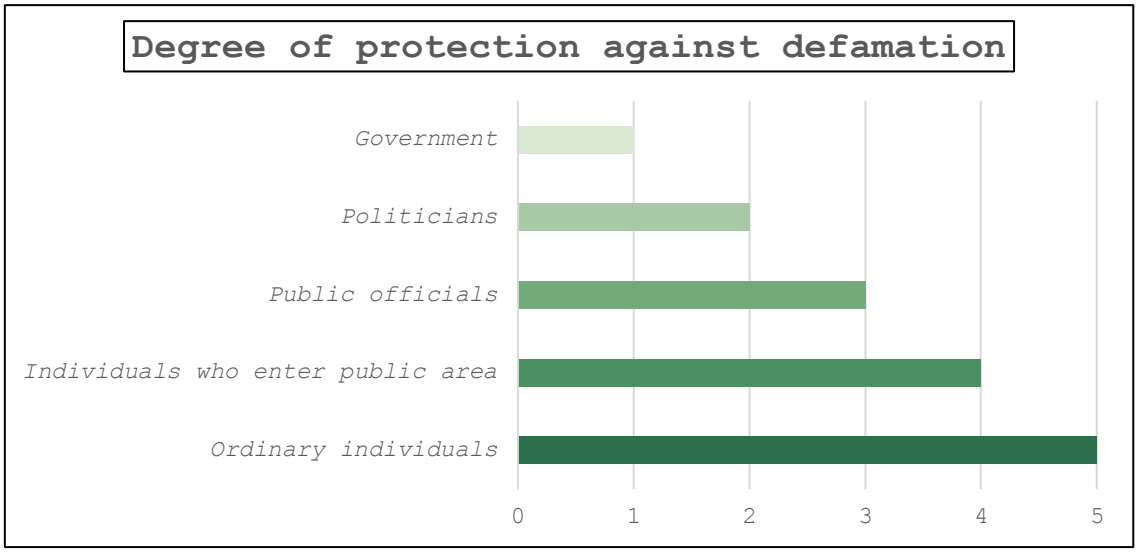


Figure 1.

Degree of protection against defamation (1= lowest and 5 = highest)

Private individuals enjoy stronger protection against defamatory statements, while public officials must tolerate a broader degree of criticism because of their public functions. Politicians, for instance, voluntarily expose themselves to public attention and lay themselves "open to close scrutiny of every word and deed by both journalists and the public" and "must consequently display a greater degree of tolerance". [96] Criticism of governmental institutions and authorities is also part of the protected political speech. The case of *Handzhiyski v. Bulgaria* concerned a symbolic act carried out by a local political activist during a demonstration against the government. In particular, the applicant placed a Santa Claus hat and a red bag on a statue of a communist leader. The intent was to satirically express criticism of the political situation and of the authorities. Although the national court found that the act interfered with public authority and imposed a sanction to the applicant, the European Court of Human Rights found that the applicant's behaviour constituted a symbolic form of protest aimed at conveying a political message. As a form of political expression, it enjoyed a significant level of protection under Article 10. [97]

One of the principles developed by the European Court of Human Rights in defamation cases is the distinction between statements of facts and value judgements. Factual statements can

[96] Case of *Lingens v. Austria*, n. 9815/82, European Court of Human Rights, 1986, § 42.
[97] European Court of Human Rights, "Guide on Article 10 of the European Convention on Human Rights – Freedom of Expression", 28.

be verified as either true or false, while value judgements represent subjective opinions that, by their nature, cannot be objectively proven. [98]. In *Lingens v. Austria*, a journalist had criticised the Austrian Federal Chancellor for forming a coalition with a party led by an individual associated with Nazi ideology. After publishing critical comments on the Chancellor's behaviour ("immoral", "undignified", demonstrating "the lowest opportunism"), the journalist was prosecuted and found guilty of defamation, as the domestic court found that the journalist could not prove the truth of his statements. However, the European Court of Human Rights rejected the approach, affirming that value judgements cannot be subjected to proof requirements. [99] A requirement to prove the truth of a value judgement would infringe the core of freedom of expression. Political criticism and evaluative language are part of democratic debate and therefore require a high level of protection. The protection does not depend on the language being polite or not offensive. In this regard, the Court held that Article 10 also protects information and ideas that may shock, offend or disturb and the fact that an expression is offensive does not automatically classify as defamatory. The key distinction lies in determining whether the expression transmits heavy criticism and contributes to matters of public interest or whether it amounts to an unjustified personal attack that damages another individual's reputation. As the Court stated in *Palomo Sánchez and Others v. Spain,* "a clear distinction must be made between criticism and insult and that the latter may, in principle, justify sanctions." [100] In that case, members of a trade union had published a newsletter containing articles criticising their employer and colleagues in a workplace dispute. It also included a cartoon portraying two employees engaging in sexual acts with the human resource manager of the company. Therefore, the national court imposed a sanction on the applicants due to the offensive and insulting nature of the publication. The European Court of Human Rights found that the expression was related to a matter of public interest, but exceeded the limits of protected criticism, representing a personal attack that resulted in a gratuitous offense. The primary purpose was to denigrate the dignity of the individuals concerned and therefore the restriction imposed by the national court is legitimate under Article 10 (2).

[98] Costas Stratilatis, "On the distinction between statements of facts and value judgements", *Sakkoulas publications,* Annuaire international des droits de l'homme, vol. VIII, 2016: 731.
[99] Macovei, "A guide to the implementation of Article 10 of the European Convention on Human Rights, 11.
[100] Case of *Palomo Sánchez and Others v. Spain,* European Court of Human Rights, nos. 28955/06, 28957/06, 28959/06 and 28964/06, 2011, § 67.

2.4 Hate speech in the case law of the ECHR

Certain forms of expression may fall outside the protection of freedom of expression and may constitute hate speech. According to the European Commission against Racism and Intolerance, hate speech is understood as the "advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatization or threat of such person or persons and any justification of all these forms of expression" when they are based on personal characteristics or status such as race, colour, language, religion, descent, age, disability, sex, gender, gender identity and sexual orientation.[101] Hate speech does not arise out of nowhere. Sometimes is the final stage of a process characterized by stereotypes and prejudices. Stereotypes are generalised beliefs about characteristics, attributes and behaviours of members of a particular group. However, not all stereotypes are plainly negative. Despite this, they may strengthen prejudices, since they present individuals homogeneously as members of a social group with fixed characteristics and ignore their peculiarities. Prejudices are preconceived judgements or opinions of a group of people. They can significantly shape feelings and attitudes towards such categories. [102] In most cases, hate speech is precisely the manifestation of such underlying stereotypes and prejudices. The Anti-Defamation League has developed the Pyramid of Hate, which illustrates how prejudices, stereotypes and discriminatory behaviours can be harmful for a society. However, the Pyramid of Hate is not aimed at showing a progression in which each level leads to the next. Instead, it highlights how such attitudes can lead to serious forms of hatred. [103]

[101] European Commission against Racism and Intolerance, "ECRI General Policy Recommendation No. 15 On Combating Hate Speech", Council of Europe, 2015, § 9.
[102] Amnesty International Italia, "Hate speech: conoscerlo e contrastarlo. Guida breve per combattere i discorsi d'odio online", 2020, https://www.senato.it/application/xmanager/projects/leg18/attachments/documento_evento_procedura_commissione/files/000/387/301/Manuale_Amnesty_Hate_Speech_2020.pdf: 10.
[103] Anti-Defamation League, "Pyramid of Hate", 2025, https://www.adl.org/resources/tools-and-strategies/pyramid-hate.

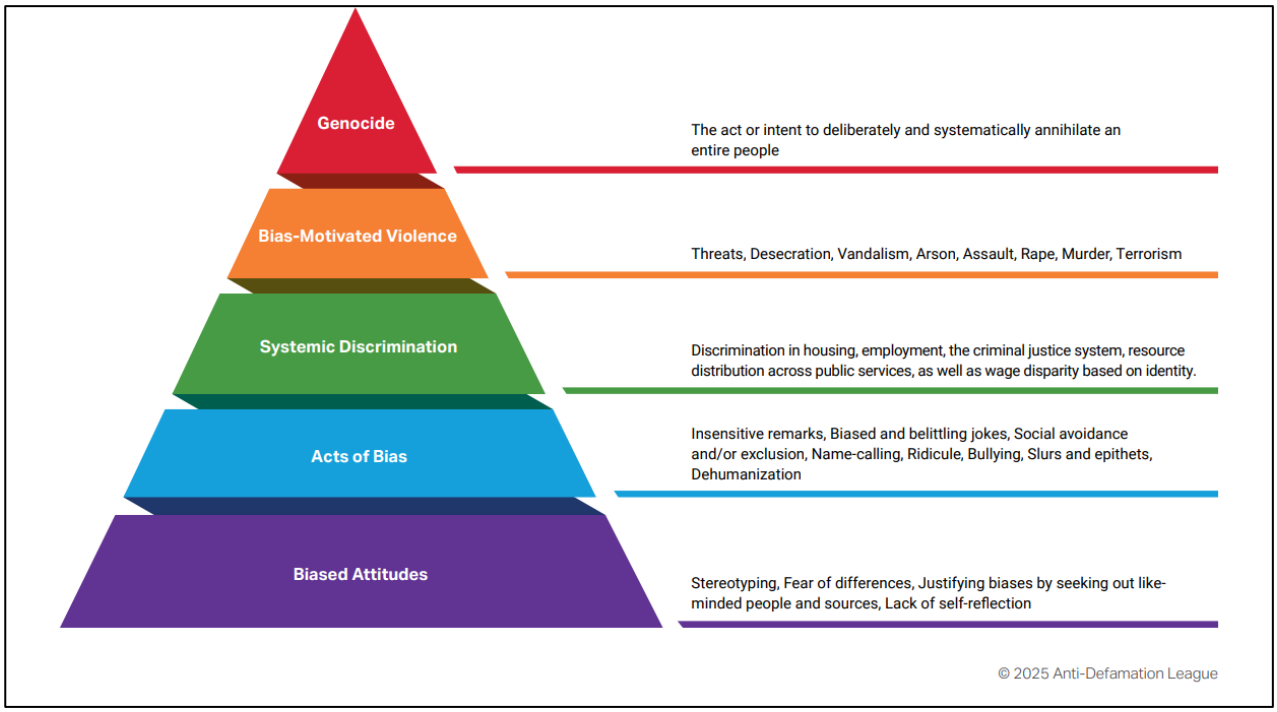


Figure 2.

Pyramid of Hate (Anti-Defamation League)

Hate speech can take different forms in addition to written and spoken forms, such as:

> *[…] pictures, signs, symbols, paintings, music, plays or videos. It also embraces the use of particular conduct, such as gestures, to communicate an idea, message or opinion.*

Other forms of expression covered by the Recommendation include:

> *[…] the public denial, trivialisation, justification or condonation of crimes of genocide, crimes against humanity or war crimes which have been found by courts to have occurred and the glorification of persons for having committed such crimes.* [104]

Particular importance is also given to incitement to hatred. Expressions intended to provoke violence, intimidation, hostility or discrimination are considered as the most serious forms of hate speech. The relationship between hate speech, incitement to hatred and the right to freedom of expression requires considering the circumstances of each case. Thus, the European Court of Human Rights has

[104] European Commission against Racism and Intolerance, "ECRI General Policy Recommendation No. 15 On Combating Hate Speech", § 11-12.

developed two main approaches for dealing with cases of hate speech and freedom of expression. [105] The first approach is the exclusion from protection under Article 17 ECHR.

Article 17: Prohibition of abuse of right [106]

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

This implies that a person cannot invoke the protection of the Convention when they adopt behaviours aimed at undermining the rights and freedoms guaranteed by the Convention. Article 17 therefore operates as an exceptional safeguard against the misuse of the Convention rights, preventing individuals from relying on the Convention for activities incompatible with the fundamental values. In such cases, the expression is excluded from the protection of Article 10. For instance, expressions that encourage the denial of the fundamental rights of a particular group protected by the Convention may be subject to Article 17. Therefore, the person involved cannot rely on the right to freedom of expression, since this freedom cannot be used as a way to eliminate the rights of others. However, not all forms of hate speech are automatically excluded from the protection of the Convention. Despite being offensive, certain expressions may not be aimed at destroying the Convention's fundamental values and may still be protected under Article 10.

The relationship between Articles 10 and 17 is best understood by considering the role they play within the Convention. First of all, Articles 10 and 17 have different objectives. On the one hand, Article 10's primary function is to guarantee the right to freedom of expression. On the other hand, Article 17's function is to prevent the abuse of Convention rights. The distinction between the two provisions is also evident in the legal assessment undertaken by the Court. In cases where an expression falls within the scope of Article 10, any interference with the exercise of freedom of expression must be examined under Article 10 (2). In other words, the Court must examine whether such an interference is prescribed by law, pursues a legitimate aim and is necessary in a democratic society. When Article 17 is applicable, however, the question is whether the applicant is entitled to

[105] European Court of Human Rights, "Factsheet – Hate speech", Council of Europe, November 2023: 1.
[106] Article 17. European Convention on Human Rights, Council of Europe.

rely on the Convention at all, rather than whether the restriction imposed on the expression is proportionate within the meaning of Article 10 (2).

This distinction is particularly relevant in cases involving hate speech and it is necessary to understanding the Court's reasoning in *M'Bala M'Bala v. France* and *Baldassi and Others v. France*, both of which will be examined in Chapter III.

2.4.1 Different types of hate speech

Hate speech may assume different forms according to the way in which the discriminatory message is conveyed.

Overt hate speech refers to direct and unambiguous speech in which the target is explicitly identified and the discriminatory intent is clearly identifiable. [107] According to the characteristics of the target, it may assume different forms, such as racist language, religious hatred or discriminatory expressions. An example of overt hate speech is the case of *Norwood v. the United Kingdom*, where a member of the British National Party displayed outside his home a poster picturing the Twin Towers and the slogan "Islam out of Britain – Protect the British People". The national court convicted him of displaying hostility towards a religious group and the applicant argued that his freedom of expression under Article 10 was violated. The European Court of Human Rights found that the poster represented an attack against an entire religious community by associating Islam with the terrorist attacks to the Twin Towers. Therefore, the Court applied Article 17 of the Convention, holding that the applicant's behaviour represented an abuse of right and that the applicant could not rely on the protection guaranteed by Article 10. Such an expression is incompatible with the Convention's fundamental values of tolerance, non-discrimination and social peace. [108]

By contrast, there are expressions that do not explicitly incite violence or hatred. Covert hate speech relies on implicit discriminatory messages through allusions, codes or implications that the audience can recognise. [109] Following the adoption of the EU Code of Conduct on Countering Illegal Hate

[107] Jessie Daniels, "Race, Civil Rights, and Hate Speech in the Digital Era", City University of New York (CUNY), 2008, https://academicworks.cuny.edu/gc_pubs/193/: 129.
[108] European Court of Human Rights, "Factsheet – Hate speech", Council of Europe, November 2023: 4.
[109] Fabienne Baider, "Covert Hate Speech, Conspiracy Theory and Anti-semitism: Linguistic Analysis Versus Legal Judgement", 2022, https://doi.org/10.1007/s11196-022-09882-w: 2353.

Speech Online in 2016 and the increasing moderation of online content, covert forms of hateful expression have received growing attention.

Hate speech may involve different forms of linguistic content that can be expressed explicitly or implicitly [110]:

- **Derogation**: content that explicitly attacks, diminish or insult a group. E.g. *[Members of [religious group] are ignorant fanatics.*
- **Threatening language**: content that encourages inflicting harm against members of a group. E.g. *members of [ethnic group] should be expelled by force.*
- **Dehumanization**: content that denies human qualities to members of a group. E.g. *Members of [ethnic group] are rats who contaminate our country.*
- **Support for hateful entities**: content that glorifies and praises hateful actions, events or organizations. E.g. *The historical persecution of [members of a group] was necessary.*

Despite the theoretical difference, it is not always easy to draw a line between overt and covert hate speech. An example is the case of Cassandre Fristot's sign. On 7 August 2021, Cassandre Fristot, a French teacher, displayed a sign during an anti-health pass demonstration in Metz (France). The purpose of the sign was to suggest that a group of people was responsible for the management of the COVID-19 pandemic and for the public health measures adopted. The sign displayed the sentence "*Mais qui?*" ("*But who?*") decorated with small horns, the word *Traîtres* (*Traitors*) and a list of names of politicians, journalists and public figures. [111]

[110] Vidgen et al., "Learning from the Worst: Dynamically Generated Datasets to Improve Online Hate Detection", The Alan Turing Institute, 2021, https://aclanthology.org/2021.acl-long.132/: 1669.
[111] L'Express, "A Metz, l'ombre de la pancarte antisémite plane sur la manifestation anti-pass", August 2021, accessed on 20 July 2026, https://www.lexpress.fr/societe/a-metz-l-ombre-de-la-pancarte-antisemite-plane-sur-la-manifestation-anti-pass_2156582.html?cmp_redirect=truesed.



Figure 3.

"Procès de la pancarte antisémite: 3 mois de prison avec sursis requis contre Cassandre Fristot".

(*Franceinfo*)



Figure 4.

"Pancarte « Mais qui ? » : « L'antisémitisme auquel nous sommes confrontés avance en oblique, il prend des détours »".

(*Le Monde*)

Quickly, the sign gained visibility and, in support of Cassandre Fristot, in the later protests "*Mais qui?*" and the hashtag #JeSuisCassandre were used by some demonstrators.



Figure 5.

"A Metz, l'ombre de la pancarte antisémite plane sur la manifestation anti-pass".

(*L'Express*)



Figure 6.

"Du "Qui ?" de Cassandre Fristot aux protocoles des Sages de Sion : antisémitisme et complotisme, une longue histoire".

(*Radiofrance*)

As the demonstration's aim was to protest against the health pass, it is possible to deduce that the term *traîtres* referred to those supporting such health measures, portrayed as violating the freedom of French citizens.

It must be noted that several of the people listed in the sign are Jewish. However, the sign did not explicitly refer to Jews and transmitted the intended message through an implication.The inclusion of Jewish people was interpreted by the French court as a coded reference to an antisemitic stereotype, that is, a Jewish conspiracy that controls politics, media and finance. The simple fact that a person is Jewish has no significance in itself, but it becomes relevant only in the context of the sign's message. Reactions to the sign were polarized. On the one hand, the Union of Jewish Students of France (UEJF) argued that the sign conveyed an implicit message, stating that "*without saying it, it says it; without accusing the Jews, it accuses them*" [112]. On the other hand, the International League Against Racism and Antisemitism (LICRA) interpreted the sign as an example of overt hate speech. Even though Jewish identity was not directly mentioned, the different interpretations of the sign demonstrate the difficulty of distinguishing between covert and overt hate speech. Eventually, Cassandre Fristot was sentenced to imprisonment of six months by the court of Metz on 20 October 2021. [113]

2.4.2 Antisemitic hate speech

Antisemitism is defined by the European Commission against Racism and Intolerance (ECRI) as a phenomenon that is based on discrimination, hate speech and violence, whose prevention is a responsibility of both states and societies. Antisemitism has a long history in Europe. For centuries, Jews have been marginalised and discriminated because of religious reasons and were accused of deicide, i.e. the collective responsibility for Jesus' death, and blood libels, i.e. ritual murders. A fundamental change occurred in the second half of the nineteenth century, when antisemitism gained a racial interpretation. In that period, the tendency to classify and organise the natural world in scientific categories spread across Europe. Such a method was also applied to human beings, societies and cultures and aimed at creating different racial groups. The term was then transformed into a racial

[112] Baider, "Covert Hate Speech, Conspiracy Theory and Anti-semitism: Linguistic Analysis Versus Legal Judgement", 2358.
[113] Franceinfo, "Du "Qui'" de Cassandre Fristot aux protocoles des Sages de Sion: antisémitisme et complotisme, une longue histoire", *Podcast Complorama*, October 2021, accessed on 20 July 2026, https://www.radiofrance.fr/franceinfo/podcasts/complorama/du-qui-de-cassandre-fristot-aux-protocoles-des-sages-de-sion-antisemitisme-et-complotisme-une-longue-histoire-4576382.

category and used by many racist ideologists to identify the human group of "Jews" according to biological and unchangeable characteristics. The main difference with the previous forms of antisemitism is that Jews were portrayed as a homogeneous group and the Jewish identity was considered as a permanent and hereditary characteristic. Even conversion could no longer be a solution according to antisemites. [114] Therefore, antisemitism was no longer focused only on Jewish religion, as Jews were no longer seen as people who followed a particular faith but as belonging to a fixed category based on heritage. The Nazi regime, for instance, persecuted people with Jewish origins even when they or their families had converted to Christianity.

Over time, the collection of negative ideas about Jews has been strengthened and expanded, leading to the creation of stereotypes. Antisemitism may differ from other forms of racism in the specific stereotypes through which Jewish people are represented, including conspiracy theories portraying Jews as a powerful and hidden group capable of controlling political, economic or social processes. They are accused of controlling the international financing system, manipulating media, causing wars or spreading diseases. According to political and social issues of different historical periods, Jews have been targeted as a common enemy to blame for crises and instability. ECRI also found that the tendency of blaming Jews as responsible for actions of the Israeli government is more evident during periods of heightened tension in the Middle East. [115] These prejudices have influenced modern forms of antisemitism. Among the forms of Antisemitic hate speech, Holocaust denial and justification of genocide are the most common. The European Court of Human Rights has held that Holocaust denial does not enjoy the protection of freedom of expression under Article 10 ECHR. In *Pästors v. Germany* [116], the Strasbourg Court found that statements denying the existence of gas chambers during the Shoah were aimed at promoting antisemitic ideologies and could not be considered a meaningful contribution to debate of general interest. According to the ECRI, any attempt to deny the Holocaust is aimed at minimising the crimes committed by the Nazi regime and to erase the status and identity of victims. [117]

In Italy, after the terrorist attack carried out by Hamas against Israel on 7 October 2023, a significant increase in manifestations of antisemitism was recorded. As shown by data of the Annual Report on antisemitism in Italy, 963 antisemitism episodes occurred in 2025, 89 more than in 2024.[118] These manifestations include expressions like antisemitic inscriptions and graffiti, physical and verbal

[114] European Commission against Racism and Intolerance (ECRI), "ECRI General Policy Recommendation No. 9 (Revised) on preventing and combating Antisemitism", Council of Europe, 2021: 6.
[115] Ivi, 8.
[116] Case of *Pastörs v. Germany*, European Court of Human Rights, no. 55225/14, 2020.
[117] ECRI, "ECRI General Policy Recommendation No. 9 (Revised) on preventing and combating Antisemitism":9.
[118] Ivi, 13.

assaults and attacks to kosher restaurants and shops. The Report also argues that this form of antisemitism consists in transferring to the State of Israel accusations traditionally directed against Jews, e.g. hostility towards humanity, accusations of conspiracy, racism and demonization of Jews. Furthermore, the Report underlines that this phenomenon should be distinguished from political criticism of the State of Israel. [119] As noted by the International Holocaust Remembrance Alliance (IHRA), "[…] criticism of Israel similar to that levelled against any other country cannot be regarded as antisemitic" [120]. This means that criticising a law, a political decision or a government policy, as one would do with any other country, is not automatically understood as antisemitism. On the contrary, when criticism relies on antisemitic and discriminatory stereotypes or conspiracy theories against Jews, it amounts to antisemitism disguised as criticism of Israel.

A case in point that shows this distinction is the intervention of Alessandro Di Battista, an Italian former member of the Chamber of Deputies representing "Movimento Cinque Stelle" and writer. During one of his speeches on the Gaza Flotilla, Di Battista referred to Zionism as the "cancer of the world" [121]. Rather than criticising specific Israeli policies, he attributed a single and negative feature to an entire political movement. Through the dehumanising metaphor, he presented Zionism as a symbol of evil. Another example concerns the indiscriminately negative use of the term "Zionist" to refer to Jews. Sometimes Jews are automatically associated with Zionism, despite the fact that not all Jews are Zionists and that the Jewish identity and the political affiliation do not automatically correspond. In some cases, the term "Zionist" acquires a negative label associated with the accusations of conspiracy, control, supremacy and cruelty against Jews. [122] When negative characteristics are indiscriminately attributed to an entire group, the group is portrayed as a homogeneous and dangerous identity. Therefore, individuals are no longer judged according to their own actions, since they are perceived as representatives of a state or political entity. Presenting an entire category as a threat may contribute to the normalisation and legitimisation of expressions of hatred or prejudice against that group.

[119] Fondazione CDEC, "Rapporto su Azioni e retoriche contro gli ebrei in Italia nel 2025", 2025: 15.
[120] International Holocaust Remembrance Alliance, "Working definition of Antisemitism", accessed on 21 July 2026, https://holocaustremembrance.com/resources/working-definition-antisemitism.
[121] Osservatorio Antisemitismo, "Ex deputato fa una conferenza dai forti toni complottisti e antisemiti", 7 September 2025, accessed on 21 July 2026, https://www.osservatorioantisemitismo.it/episodi-di-antisemitismo-in-italia/ex-deputato-fa-una conferenza-dai-forti-toni-complottisti-e-antisemiti/.
[122] Fondazione CDEC, "Rapporto su Azioni e retoriche contro gli ebrei in Italia nel 2025", 27.

2.4.3 Italian national strategies against antisemitism

Several European countries had already developed initiatives to combat antisemitism. Germany and France, which are home to the largest Jewish communities in Europe [123], have introduced national plans of action to combat antisemitism. [124] Italy has also implemented prevention initiatives, such as the *Guidelines for Combating Antisemitism in Schools* issued by the Ministry of Education and Italy's cooperation with the Organization for Security and Co-operation in Europe (OSCE) and European institutions. [125] However, after the terrorist attacks of 7 October 2023 and the following increase of antisemitic episodes in Europe, governments strengthened measures to protect Jewish communities. In 2025, Italy adopted the *National Strategy for Combating Antisemitism,* approved by the Presidency of the Council of Ministers. This strategy is an update of the previous national plan adopted in 2021 and builds on the *EU Strategy on combating antisemitism and fostering Jewish life* (2021-2030). According to the National Strategy, antisemitism is also a threat to democratic values and pluralism, as Jewish citizens may face difficulties in exercising rights that should be equally granted to all individuals, such as freedom of religion. [126]

In order to prevent and combat antisemitism, the National Strategy has identified five strategic priorities: [127]

1) **Scenario**: understanding the phenomenon of contemporary antisemitism in all its complexity to develop effective policies.
2) **Training:** promotion of education and specialised training programmes, with the aim to raise awareness for early identification of discriminatory behaviours.
3) **Implementation:** ensuring that efforts to combat antisemitism result in concrete actions and effective measures in every social context.

[123] European Union Agency for Fundamental Rights (FRA), "Esperienze e percezioni di antisemitismo: seconda indagine sulla discriminazione e i reati generati dall'odio subiti dagli ebrei nella UE", 2019, https://fra.europa.eu/it/publication/2020/esperienze-e-percezioni-di-antisemitismo-seconda-indagine-sulla-discriminazione-e-i:13

[124] See also Daniela Santus, "Spazi della memoria e spazi dell'odio: il contrasto all'antisemitismo nella Germania contemporanea", *Terzo Settore nel Terzo Millennio***,** vol. 11, no. 1, 2026, https://doi.org/10.54103/2531-6710/31261; Human Rights Watch, "France's New Anti-Racism Plan Falls Short", July 2026, accessed on 22 July 2026, https://www.hrw.org/news/2026/07/13/frances-new-anti-racism-plan-falls-short.

[125] Presidenza del Consiglio dei Ministri, "Strategia nazionale per la lotta contro l'antisemitismo", 2025, https://www.governo.it/sites/governo.it/files/Strategia_Nazionale_2025-IT.pdf : 7.

[126] Ivi, 4.

[127] Ivi, 21.

4) **Protection:** physical, digital and institutional protection of Jewish communities, their activities and their places of prayer.
5) **Communication:** clear and accurate communication strategies to fight disinformation and prevent prejudices.

Beyond the five priorities, the Strategy relies on the role of the National Coordinator for Combating Antisemitism, whose tasks are promoting and strengthening prevention measures, facilitating cooperation among public administrations and ensuring compliance with European standards. [128]

An example of implementation of the Strategy's objectives is the *Charter of good practices for respecting freedom of religion and belief in the workplace*, drafted and presented by the University of Modena and Reggio Emilia on 4 November 2024 [129]. The National Strategy has officially recognised the Charter and encourages its adoption by public administrations. In particular, the Charter strengthens the protection of religious minorities, such as Jewish communities, and provides ten guidelines to prevent religious discriminations in workplaces.[130] Among these, the main areas of intervention covered by the Charter are:

1) **Recognition of religious and cultural diversity**
   Employers acknowledge the plurality of religious, ideological and cultural identities among employees and foster an inclusive environment in respect of differences.

2) **Prevention of religious discrimination**
   Any form of direct or indirect discrimination based on religious belief is prohibited. This includes discrimination related to clothing, observance of religious holidays and the organisation of spaces for religious practice.

3) **Reasonable accommodations**
   Employers commit to providing reasonable accommodations for religious needs, such as prayer breaks and adjustments to working hours during fasting or other religious obligations, ensuring that such measures do not compromise freedom of conscience, productivity or the well-being of other employees.

[128] Ivi, 5.
[129] Ivi, *Azione 1.2*, 30.
[130] Interdepartmental Research Centre on Freedom of Religion and Belief, University of Modena and Reggio Emilia, "Charter of good practices for respecting freedom of religion and belief in the workplace", October 2024, https://www.orfect.unimore.it/wp-content/uploads/2024/12/Presentazione-della-Carta-di-Buone-Prassi-per-il-Rispetto-della-Liberta-di-Religione-e-di-Culto-nei-Luoghi-di-Lavoro-1.pdf : 11-12.

4) **Food and catering**

   Workplace canteens commit to offering food options in compliance with employees' religious dietary requirements and ensuring the availability of specific diets, such as kosher.

5) **Religious symbols and clothing**

   Employees are free to wear symbols or clothing related to their religious faith, such as veils or crosses, providing that these do not conflict with workplace safety and hygiene regulations or organisational needs.

6) **Religious holidays**

   Companies commit to being flexible in relation to religious holidays, allowing employees to practice their faith and participate in religious celebrations.

7) **Monitoring and revision**

   Employers commit to monitoring the implementation of inclusion policies and periodically updating the Charter of good practices, taking into account the employee feedback and legal and social developments.

Alongside these initiatives, Italy has adopted legislative measures in response to antisemitism. The latest legislative development dates to 4 March 2026, when the Italian Senate approved Draft Law No. 1004, known as *Provisions on combating antisemitism and on the adoption of the operational definition of antisemitism* [131]and still under parliamentary review. The Draft Law No. 1004 does not introduce any new criminal offences and is aimed at providing a legislative basis for measures already adopted through the National Strategy for Combating Antisemitism.

Article 3 of the Draft Law No. 1004 outlines the plan of action. [132]

Among the lines of action:

a) Monitoring of antisemitic episodes through the Ministry of the Interior's database
b) Measures against online antisemitic hate speech

[131] Senato della Repubblica, Disegno di legge n. 1004, "Disposizioni per il contrasto all'antisemitismo e per l'adozione della definizione operativa di antisemitismo", approved on 4 March 2026, https://documenti.camera.it/leg19/pdl/pdf/leg.19.pdl.camera.2830.19PDL0185570.pdf.
[132] Ivi, Article 3.

c) Training for teachers, educational activities for students
d) Information campaigns on antisemitism through radio, television and multimedia channels

Moreover, the Draft Law incorporates the International Holocaust Remembrance Alliance (IHRA) definition of antisemitism, adopted on 26 May 2016 by the Plenary in Bucharest, as a tool for guiding actions to contrast antisemitism. [133]

Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

Article 1 explicitly states that the fight against antisemitism must be pursued in compliance with "the freedom of political criticism and freedom of expression, as well as the freedom of assembly and association". [134] Therefore, Article 1 seeks to ensure that the IHRA definition is not used to restrict legitimate political debate or to censor opinions. This safeguard is extremely important, as the boundary between legitimate criticism and discriminatory speech may sometimes become blurred. In order to analyse how the European Court of Human Rights has dealt with such a fine line, the following chapter will analyse two important cases: *M'Bala M'Bala v. France* and *Baldassi and Others v. France.*

[133] International Holocaust Remembrance Alliance (IHRA), "Working definition of Antisemitism", adopted on 26 May 2016, accessed on 22 July 2026, https://holocaustremembrance.com/resources/working-definition-antisemitism.
[134] Camera dei Deputati, Proposta di Legge n. 2830, "Disposizioni per il contrasto all'antisemitismo e per l'adozione della definizione operativa di Antisemitismo, 4 Marzo 2026, https://www.robertocaso.it/wp-content/uploads/2026/05/DDL-antisemitismo-Camera-2026.pdf, Article 1.

CHAPTER III

LIMITS OF FREEDOM OF EXPRESSION IN THE CONTEXT OF ANTISEMITISM: *M'BALA M'BALA V. FRANCE* AND *BALDASSI AND OTHERS V. FRANCE*

This chapter investigates the limits of freedom of expression in relation to antisemitism through an analysis of two judgements of the European Court of Human Rights: *M'Bala M'Bala v. France* and *Baldassi and Others v. France*. Despite the fact that both cases involved expressions concerning antisemitism, the European Court of Human Rights reached opposite conclusions under Article 10 of the European Convention on Human Rights. The different outcome shows that the Court's assessment of whether an expression is protected by freedom of expression depends on different factors, such as the circumstances in which the expression was made, the form of the expression, the connection with incitement to hatred or whether the expression concerns a matter of public interest.

3.1 Background of the case *M'Bala M'Bala v. France*

Dieudonné M'Bala M'Bala is a French comedian known on the stage as *Dieudonné*. Alongside his comedian career, he was actively involved in politics, running as a candidate in the 2004 European elections on the EuroPalestine list and in the 2009 elections on the Antizionist list. The case concerned a performance entitled *J'ai fait l'con*, performed by Dieudonné at the Zénith theatre in Paris on 26 December 2008. At the end of the performance, Mr M'Bala M'Bala invited Robert Faurisson on the stage. Robert Faurisson, a French essayist and journalist, was widely known for his denial of the Holocaust and the existence of the Nazi chambers.

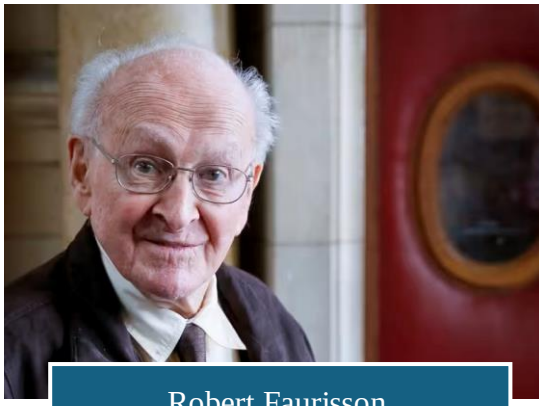


Dieudonné, French comedian

Figure 7.

"Court Rules Against French Comedian Dieudonné in Free-Speech Case".

(*The New York Times*)



Robert Faurisson, essayist and journalist

Figure 8.

"La mort du négationniste Robert Faurisson".

(*Franceinfo*)

By the time of the performance, Robert Faurisson had already been convicted on multiple occasions, one of which was a conviction by the Paris Court of Appeal for contesting crimes against humanity on 4 July 2007. Before introducing him, Dieudonné referred to a previous criticism describing his shows as "the biggest antisemitic rally since the Second World War" and argued that he would have to improve his previous performances. During the final moments of the performance, Mr M'Bala M'Bala gave Robert Faurisson the *Prix de l'infréquentabilité et de l'insolence* ("Prize for unapproachability and insolence"). In particular, the prize was a three-branch candlestick with three apples and was presented by an actor wearing a striped outfit with the star of David sewn on it, resembling the uniform worn by Jewish deportees in Nazi concentration camps.

3.1.1 Reasoning of the French courts

The performance was investigated by the law enforcement agents. On 29 December 2008, the public prosecutor at the Paris District Court requested an investigation of the events to the Judicial Police and during the investigations a video recording of the parts of the performance at issue was found on an online website. The recording showed mainly the exchanges between Mr M'Bala M'Bala and

Robert Faurisson which repeatedly referred to freedom of expression, criticism of Zionism and support for Palestine. Meanwhile, the audience responded with applauses and shouts of approval, such as *Faurisson a raison* ("Faurisson is right").

On 27 March 2009, the Paris Public Prosecutor charged Mr M'Bala M'Bala with publicly insulting a group of individuals based on their origin or religion, contrary to the French law on the Freedom of the Press of 2 July 1881. The prosecution relied on the speeches pronounced during the performance, on the staging of the event and the symbolic elements involved (deportee costume with the star of David, the tribute to a Holocaust denier and the three-branch candlestick with three apples as a prize). In the end, on 27 October 2009 the Paris Criminal Court found Mr M'Bala M'Bala guilty and imposed the payment of a fine of €10.000. Furthermore, the Court ordered the payment of symbolic damages of one euro to each of the eight civil parties joining the proceedings and, at Mr M'Bala M'Bala expenses, the publication of a notice in the newspapers *Le Parisien-Aujourd'hui en France* and *Le Monde*.

The French Court held that the performance meaning had to be interpreted considering Mr M'Bala M'Bala's intention to create a more provocative show. In this regard, inviting a figure such as Robert Faurisson strengthened the antisemitic nature of the performance and encouraged the audience to applaud him. According to the French Court, the performance conveyed an insulting message towards Jewish community and mocked the memory of Holocaust victims. Moreover, the designation of the prize to Robert Faurisson transformed social rejection into a positive value. Mr M'Bala M'Bala's aim was to celebrate victims of the powerful and of supporters of commonly accepted ideas. Robert Faurisson was presented through a narrative in which social disapproval was intended as a mark of distinction and a badge of honour. This narrative appealed to the audience, which positively identified with Robert Faurisson. The French Court also rejected Mr M'Bala M'Bala claim that his conduct was part of a comedy performance, as the right to humour has certain limits, such as the respect for the dignity of individuals.

The applicant then appealed against the judgement, but on 17 March 2011 the Paris Court of Appeal confirmed Mr M'Bala M'Bala conviction and the sanctions previously imposed. Then, the applicant appealed to the Court of Cassation. However, on 16 October 2012 the Court of Cassation held that the appeal was inadmissible and found that the Court of Appeal had correctly assessed Mr M'Bala M'Bala conduct. The Court of Cassation interpreted the performance considering the context that provided the statements and symbols with their insulting meaning, such as the mockery of the deportation of Jews through the use of a deportee uniform and the star of David.

[135] However, Mr M'Bala M'Bala alleged a violation of his rights according to Articles 7 ("No punishment without law") and 10 ("Freedom of expression") of the European Convention on Human Rights. In particular, Mr M'Bala M'Bala argued that his performance constituted a *mise en scène* and that neither he nor Robert Faurisson had made any insulting or defamatory statements. He claimed that his performance should not have been interpreted literally but as a form of satire. According to him, the restriction of his freedom of expression imposed by the French authorities was not justified.

3.1.2 Reasoning of the European Court of Human Rights: exclusion from Article 10 protection

After the conclusion of the domestic proceedings, the applicant decided to submit the case to the European Court of Human Rights. The Court decided to examine the case under Article 10 of the Convention and analysed whether the applicant could benefit from freedom of expression's protection.

The Court held that the national courts had correctly analysed the context of the performance. In particular, the Court highlighted that expressions cannot be examined separately from the circumstances in which they manifest. The purpose of the performance had to be evaluated in light of the entire context – in this case, the presence of a famous Holocaust denier, the organisation of an award ceremony, the uniform worn by the actor reminding of a deportee, the audience reaction and Mr M'Bala M'Bala's previous statements. According to the Court, the performance was perceived as an act of recognition and support for an individual promoting negationist ideas.

Although satire and humour enjoy a high level of protection under Article 10, the Court found that the performance had gone beyond a form of humour or social criticism and had become a demonstration of hatred. Eventually, the Court stated that the applicant could not enjoy the protection of Article 10 as freedom of expression cannot be used to support ideas contrary to the fundamental principles of the Convention. Therefore, by applying Article 17 of the Convention, the Court concluded that the expression fell outside the scope of Article 10 protection. The Court's reasoning followed the principles developed in previous cases related to Holocaust denial. In particular, it relied on *Garaudy v. France* and *Marais v. France,* in which statements denying crimes against humanity

[135] Case of *M'Bala M'Bala v. France,* "Les circostances de l'espèce", European Court of Human Rights, no. 25239/13, 2015.

were found to be incompatible with the Convention and excluded from the protection of Article 10. [136]

3.2 Background of the case *Baldassi and Others v. France*

The case of *Baldassi and Others v. France* concerned a series of peaceful demonstrations organised in France in support of the campaign against Israel promoted by the Boycott, Divestment, Sanction (BDS) movement. The BDS movement promotes the use of non-violent forms of pressure, such as consumer boycotts, divestments and sanctions, in order to influence Israeli policies towards Palestinians. The movement identifies three main goals: ending the occupation of territories captured in 1967, ensuring equal rights for Palestinian citizens in Israel and promoting respect for Palestinian refugees' rights in compliance with international law. [137]

The campaign promoted by BDS was launched on 9 July 2005 following an appeal by a Palestinian non-governmental organisation. The appeal came after the opinion issued by the International Court of Justice, according to which "the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem and its associated regime, are contrary to international law". [138]

The applicants were eleven French activists associated with the group *Collectif Palestine 68*, a local branch of BDS movement. In 2009, they participated in demonstrations promoting the boycott of products imported from Israel, intended as a means of political protest against Israel's policies in the Occupied Palestinian Territory and to raise public awareness of violations of international law.

[136] Ivi, "The Law. Alleged violation of Article 10 of the Convention".
[137] BDS Movement, "What is BDS?", accessed on 6 August 2026, https://bdsmovement.net/what-bds.
[138] European Court of Human Rights, "Criminal conviction of activists involved in the BDS campaign boycotting products imported from Israel had no relevant and sufficient grounds and violated their freedom of expression", Press Release, 2020: 2.



Figure 9.

Demonstration of Collectif Palestine 68 in the streets of Mulhouse against the genocide in Gaza. (L'Alsace)

The events of the case took place during two demonstrations inside a hypermarket in Illzach, located in eastern France. On 26 September 2009, five activists took part in a demonstration organised by Collectif Palestine 68. They displayed products they claimed to be of Israeli origin in three shopping trolleys and distributed flyers explaining the aim of the boycott.

The information provided were the following:

You can force Israel to respect human rights. Boycott products imported from Israel.

'If apartheid (in South Africa) ended, so can the occupation, but the moral force and international pressure will have to be just as determined.
The current divestment effort is the first move in that direction',
Archbishop Desmond Tutu, Nobel Peace Prize winner, October 2002.

To buy products imported from Israel is to legitimise the crimes in Gaza, to endorse the policies of Israeli governments.

Some products imported from Israel sold in supermarkets in the Mulhouse area:
[list of brands or product names].

The second demonstration was organised in the same hypermarket on 22 May 2010. Eight applicants invited customers to sign a petition requesting the hypermarket to stop selling products imported from Israel. During the demonstrations, most of the applicants wore T-shirts displaying the slogans *Long*

live Palestine and *Boycott Israel*. Despite the calls for boycott, both demonstrations were peacefully conducted and no damage was caused to the hypermarket. After the demonstrations, the activists were prosecuted before the Mulhouse Criminal Court on charges of publicly inciting discrimination, hatred and violence. More specifically, it was argued that the distribution of flyers and the statements of the demonstrations encouraged discriminatory behaviours against Israeli producers and suppliers because of their nationality. [139]

3.2.1 Reasoning of the French courts

In its judgements of 15 December 2011, the Mulhouse Criminal Court absolved all the applicants and held that the demonstrators' conduct was aimed at persuading customers not to purchase Israeli products. Hence, it did not represent an incitement to hatred. According to the Mulhouse Criminal Court, the campaign was directed against products rather than against individuals. Moreover, it was observed that the applicants' actions belonged to the political campaign of an organisation that did not promote racist or antisemitic views.

However, on 27 November 2013 the Court of Appeal of Colmar reversed the acquittals. In fact, it held that the boycott campaigns exceeded the limits of political criticism and incited discrimination against individuals belonging to a specific group. Therefore, all the applicants were convicted. Each of them received a fine of €1.000 and was ordered to pay damages to three civil parties (the *International League Against Racism and antisemitism*, the association *Avocats sans frontières* and the association *Alliance France-Israël*).

As a consequence, the applicants brought the case before the French Court of Cassation. They argued that the conviction violated Article 10 of the European Convention on Human Rights and claimed that their actions represented a legitimate form of political expression concerning a matter of public interest. Despite this, the French Court of Cassation rejected their appeals and held that the Court of Appeal had correctly applied the law. The French Court of Cassation also found that the interference with the applicants' freedom of expression was legitimate and complied with Article 10 (2), since it constituted a necessary measure in a democratic society for the protection of the rights of others. [140]

[139] Case of *Baldassi and others v. France,* n. 15271, European Court of Human Rights, 2020, § 5-11.
[140] Ivi, § 12-17.

3.2.2 Reasoning of the European Court of Human Rights: protection under Article 10

Once the domestic proceedings had been concluded, the applicants brought the case before the European Court of Human Rights, claiming a violation of their freedom of expression. The Court had to assess whether a peaceful boycott campaign fell within the scope of Article 10 of the Convention and whether the restrictions imposed by the national authorities satisfied the requirements of Article 10 (2).

The European Court of Human Rights established that the applicants' convictions and the fines imposed by the French Courts represented an interference with their right to freedom of expression guaranteed by Article 10 of the Convention. The Court observed that the applicants had been sanctioned for taking part in and promoting a boycott campaign distributing flyers and encouraging consumers to avoid purchasing products imported from Israel. As these activities represented an expression of political views, the sanctions imposed on the applicants interfered directly with their right to freedom of expression. In this regard, Article 10 also protects expressions capable of offending, shocking and disturbing.

In analysing the restriction, the Court established that only the first two requirements of Article 10 (2) were fulfilled. The interference therefore had a legal basis under the French law of 29 July 1881 on Freedom of the Press and the convictions pursued a legitimate aim, that is protecting the rights of Israeli producers and suppliers against discriminations based on their origin. Nevertheless, the Court found that the interference was not necessary in a democratic society, since the convictions were not justified by a pressing social need and disproportionate to the aim pursued. Although States enjoy a specific margin of appreciation in determining whether such a need exists, the choice is still subject to European supervision. [141]

Above all, the Court observed that the applicants' actions were part of a political campaign concerning an issue of public interest, that is, the situation in the occupied Palestinian territories and the policies implemented by the State of Israel. [142] The very fact that a boycott may influence consumers' purchasing decisions does not exclude it from the protection of Article 10. The boycott must therefore be understood as a form of expression falling within the scope of Article 10. [143] This is also due to

[141] Ivi, § 58-61.
[142] Ivi, § 78.
[143] Ivi, § 63.

the fact that freedom of expression extends to the substance of the ideas conveyed and the forms through which ideas are expressed.

In assessing whether the interference was necessary in a democratic society, the Court investigated whether the applicants' conduct could fall outside the protection of Article 10 because of its potential discriminatory nature. The Court recognised that the boycott integrates the expression of an opinion with a call to action, since it seeks to encourage others to adopt a specific behaviour in accordance with that opinion. Boycott campaigns involve a form of differential treatment (for instance, avoid purchasing products from specific companies). Precisely because a boycott involves a differential treatment, in some situations it may be equivalent to a call for discrimination. However, the Court drew a distinction between a call to treat someone differently, which is not automatically discriminatory, and a call for discrimination and hatred, which may exceed the limits of Article 10. In other words, not every selective choice amounts to a form of discrimination. A political boycott may persuade people to change their behaviour for political, social or ethical reasons without necessarily conveying a discriminatory message. [144]

This reasoning is consistent with the principle established by the Court in the case of *Perinçek v. Switzerland:*

> *It is in the nature of political speech to be controversial and often virulent. That does not diminish its public interest, provided of course that it does not cross the line and turn into a call for violence, hatred or intolerance.* [145]

In assessing whether the applicants' convictions were justified, the Court considered several factors[146]:

a) The applicants' message was part of the political debate concerning a matter of public interest
b) The applicants' statements did not contain any racist or antisemitic elements
c) The applicants did not engage in a violent conduct and did not cause any damage during the events
d) The applicants were private individuals expressing their political opinions. Unlike the case of *Willem v. France,* where the expression concerned involved a public authority, the applicants of this case were ordinary citizens contributing to a political debate in a democratic society. The Court nevertheless took into account the applicants' status as private individuals when

[144] Ivi, § 64.
[145] Case of *Perinçek v. Switzerland,* n.27510/08, European Court of Human Rights, 2015, § 231.
[146] *Baldassi and Others v. France,* § 70-71.

assessing the scope of the duties and responsibilities attached to their exercise of freedom of expression.

According to the Court, the applicants' campaign, considered in the light of the specific circumstances of the case, was not aimed at encouraging hatred, violence or intolerance towards Israeli citizens or Jewish people. The campaign sought to express opposition to the measures adopted by the State of Israel. Hence, the fact that the boycott involved a distinction based on the origin of the product was not, by itself, sufficient to define the applicants' conduct as an incitement to discrimination. In light of these considerations, the European Court of Human Rights concluded that the applicants' convictions lacked relevant and sufficient justification and found that there had been a violation of Article 10 of the Convention. [147]

3.3 The difficulty of drawing the line between political criticism and antisemitic expressions

The different outcomes reached by the European Court of Human Rights in *M'Bala M'Bala v. France* and *Baldassi and Others v. France* highlight a significant issue concerning the distinction between legitimate political criticism and antisemitic expression. The Court's assessment relied on the nature of the expressions and, most importantly, on their objectives, the context in which they were made and the applicants' conduct. Being dependent on multiple factors, it is not always easy to determine whether an expression falls within the scope of Article 10 of the European Convention on Human Rights.

[147] Ivi, § 80.

3.3.1 The object of the expression

The object of the expression is a relevant factor in distinguishing political criticism from antisemitic expressions. In *M'Bala M'Bala v. France,* the performance involved symbols of the Jewish persecution during the Second World War, references to the deportation of Jewish people and the presence of Robert Faurisson. In this context, the Court considered the whole context, holding that the expression was linked to the mockery of the many Holocaust victims and to the support of a Holocaust denier. Therefore, it could not be understood simply as political criticism.

On the contrary, in *Baldassi and Others v. France* the applicants' campaign concerned the policies adopted by the State of Israel. The boycott was considered by the Court as a form of political expression and, most importantly, the applicants' conduct did not reveal any hostility towards Israeli citizens or Jewish people as such. Criticism of Israeli government should not necessarily be regarded as criticism of Jewish people. Likewise, views opposing Zionism or specific Israeli policies should not automatically be considered antisemitic. Therefore, the assessment should be focused on the target of the expression concerned. However, such a distinction does not determine a general exemption for expressions concerning Israel or Zionism. Their compatibility with Article 10 must be assessed considering the content, context and purpose of each case.

3.3.2 The meaning of the expression and its context

The meaning of the expression itself is important as well. It is not determined only by the literal interpretation of the words pronounced. The circumstances in which the expression was made influence its interpretation significantly. This is evident in cases involving humour and satire, where a discriminatory message may be conveyed implicitly. In *M'Bala M'Bala* case, the Court considered Mr M'Bala M'Bala performance as a whole, taking into account the circumstances in which it took place. Although the applicant claimed that the performance should be understood as satire, the Court found that the performance represented a demonstration of hatred. At the same time, the broad reliance on contextual elements may affect the predictability of restrictions on freedom of expression. If Courts can rely on surrounding circumstances to determine the meaning of an expression, it may become difficult for individuals to predict whether their conduct will fall within the protection of Article 10. This is relevant in cases of political or artistic expression in which satire and humour are

often used to convey a message. Despite the importance of the context, it should not be used to attribute a meaning that the expression at issue could not reasonably have.

The main differences between the two cases can be identified as follows:

	M'Bala M'Bala v. France	***Baldassi and Others v. France***
Form of expression	Comedy performance	Boycott and political demonstration
Subject matter	Holocaust, Faurisson and Jewish victims	Israel, its policies and situation in the Palestinian territories
Political relevance	Limited, the performance was characterised by provocative content	High, the boycott as a form of expression was linked to a matter of public interest
Target of the expression	Holocaust victims and Jewish people	Israeli policies and products
Conduct	No physical violence	No physical violence
Court's conclusion	Excluded from Article 10 protection through Article 17 (Abuse of right)	Protected under Article 10

Table 1. *Main differences between the two cases*

The table shows that the distinction of the two judgements cannot be based simply on the absence of violence or on the subject of the expression. An expression concerning Israel is not necessarily antisemitic, just as an artistic or political expression does not automatically fall within the protection of Article 10.

3.3.3 Where should the line be drawn?

Drawing a boundary too broadly or too narrowly may lead to possible risks. On the one hand, if the boundary drawn is too broad, the measures adopted to fight antisemitism may restrict legitimate criticism of Israel and participation in the political debate. On the other hand, if the boundary is drawn too narrowly, antisemitic expressions may be presented as political criticism and, thus, enjoy the protection of Article 10 of the European Convention on Human Rights. As discussed previously, the line cannot be drawn considering a single criterion. It is therefore necessary to consider the message conveyed and against whom it is directed. Criticism of Israel, including criticism expressed through political advocacy and boycotts, falls within the scope of Article 10 when it contributes to public debate and does not amount to incitement to hatred, violence or intolerance. However, the political or artistic character of an expression does not automatically shield it from restrictions, particularly where its content, context, target and purpose reveal antisemitic hatred or an abuse of Convention rights.

CONCLUSION

The thesis has examined the complex relationship between criticism of the State of Israel, antisemitism and freedom of expression under Article 10 of the European Convention on Human Rights (ECHR). The research was driven by the difficulty of distinguishing between legitimate political criticism of a State and expressions that may constitute antisemitic speech and therefore fall outside the protection afforded by the Convention. This issue has become particularly significant in the contemporary context, where public and political debate concerning the Israeli-Palestinian conflict has become increasingly polarised.

In light of this, the thesis was structured on two main research questions:

1. ***To what extent does Article 10 ECHR protect criticism of the State of Israel?***

2. ***Which factors does the European Court of Human Rights consider when assessing whether expressions concerning Israel constitute protected political speech or fall outside the protection of Article 10?***

To answer these questions, the thesis relied mainly on the jurisprudence of the European Court of Human Rights and, in particular, on a comparative analysis of *M'Bala M'Bala v. France* and *Baldassi and Others v. France.* The two cases are significant because they show contrasting approaches adopted by the European Court of Human Rights to expressions concerning Israel, antisemitism and political debate. The analysis shows that Article 10 provides strong protection to freedom of expression, which includes political speech and criticism of matters of public interest. This protection is essential in a democratic society, since the possibility of questioning government policies and political decisions is a fundamental component of democratic public debate. However, freedom of expression is not absolute. Article 10 in itself may be subject to restrictions where the conditions of paragraph 2 are satisfied. At the same time, Article 17 may exclude from the Convention's protection forms of expression that are not compatible with its basic values. The key question is to distinguish legitimate political criticism from hate speech that may be disguised as political criticism. This requires establishing whether the content, meaning and circumstances of an expression fall within the

scope of protected political speech or include elements that justify the possible exclusion from the protection of Article 10.

The analysis conducted shows that no automatic distinction should be drawn between antisemitic expressions and legitimate criticism of the State of Israel. This is based on the fact that an expression on the subject of Israel, its policies or its government does not make that expression antisemitic. In particular, criticism of a State conduct is generally protected under Article 10, especially when it contributes to a debate on matters of public interest. At the same time, the fact that an expression is presented as political criticism does not automatically justify the protection of Article 10. This results from the fact that expressions concerning political issues may target Jewish people or promote hatred or discrimination in its content, meaning or context. A similar consideration applies to the form in which an expression is conveyed. Artistic, satirical or political expression may benefit from the protection of Article 10, but their form cannot determine whether Article 10 protection applies, since being presented as satire or humour does not necessarily prevent an expression from conveying messages inciting intolerance. The meaning conveyed by such expressions must be considered in light of the circumstances in which it was made and the general context. Therefore, it can be concluded that neither the reference to Israel nor the artistic, satirical or political nature of an expression is sufficient to establish whether the expression is protected under Article 10.

The comparison between *M'Bala M'Bala v. France* and *Baldassi and Others v. France* clearly demonstrates the difficulty of drawing a boundary between political criticism and antisemitic expressions. More specifically, the cases involved different forms of expression and led the Court to reach different outcomes. In *M'Bala M'Bala v. France,* the expression concerned was a comedy performance. However, the subject and the content referred to the deportation of Jewish people during World War II and Holocaust denial through the presence of the denier Robert Faurisson. The Court took into account the symbols used, the audience's reaction, Faurisson's presence and Mr M'Bala M'Bala's previous statements and held that the performance went beyond the boundaries of humour and criticism, representing a demonstration of hatred. More precisely, the Court relied on Article 17 to exclude the expression from the protection of Article 10, as it was incompatible with the fundamental values of the Convention. Instead, the circumstances were different in *Baldassi and Others v. France.* As a means of expressing opposition to policies adopted by the State of Israel arising from the Israeli-Palestinian conflict, the applicants took part in peaceful demonstrations and participated in a boycott campaign directed at products originating from Israel. The Court judged the boycott as a legitimate form of political expression contributing to public debate. Moreover, the Court found that the campaign was neither directed against Jewish people as such or Israeli citizens nor

promoting hatred, intolerance or violence. In this context the distinction based on the origins of the product was not sufficient to establish an incitement to discrimination. As a consequence, the applicants' conduct was interpreted as a form of political opposition to the policies of the State of Israel. Ultimately, the Court concluded that their convictions represented an unjustified interference with their freedom of expression.

Following this comparison, it was possible to identify several elements that are particularly relevant to the Court's assessment of expressions concerning antisemitism and Israel. These elements are part of a contextual assessment in which different aspects of the expression are interconnected and must be considered together. The overall assessment of the relevant circumstances may be decisive in determining the meaning and the nature of an expression.

In particular, the assessment should address the following questions.

First: *Who is the target of the expression?*

The starting point is to identify the person or group that is being targeted by the expression. In the context of this thesis, this requires identifying whether the statement is directed at Jewish individuals because of their Jewish identity or whether it is directed at Israel as a State, its institutions or political leaders. The importance of the target of the expression is evident in the case law examined above: if criticism is directed towards a political decision, it may be protected as a form of political expression, whereas statements directed towards Jews as a group require a different assessment.

Second: *What is the object of criticism?*

The assessment must consider what the speaker is actually criticising, namely a State conduct or, as in the case examined, Israel as a State. The cases examined demonstrate that a reference to Israel, considered on its own, cannot determine whether an expression is antisemitic.

Third: *What is the content and meaning of the expression?*

It is necessary to establish what the statement actually conveys beyond its literal wording. This is particularly relevant in cases of expressions involving irony, satire, symbols or other indirect forms of communication. The case law analysed above shows that the meaning of an expression may become apparent considering the different elements of a message. However, the contextual interpretation cannot be used to attribute to an expression a meaning that it could not reasonably bear. In other terms, the assessment must consider the language used and the message that is objectively communicated by the expression.

Fourth: *In what circumstances was the expression made?*

The Court may analyse the circumstances in which an expression was made. This can include the setting, the audience or the persons involved. More specifically, the meaning of words and symbols may differ depending on whether they appear in a political speech, in a public demonstration, in a private conversation or in an artistic performance. As illustrated above, the circumstances surrounding expressions are determinant in defining whether a message is classified as an attack against a group, political criticism or satire.

Fifth: *What form does the expression take?*

Another relevant aspect of the assessment concerns the form through which a message is conveyed. Forms of communication like artistic expressions and political speech enjoy a particularly strong protection. However, as highlighted in the analysis above, the classification of an expression does not automatically define the outcome, since the Court does not rely exclusively on its categorisation.

Sixth: *What is the purpose conveyed by the expression?*

The assessment should also consider the speaker's intention, their conduct and the message objectively conveyed. In cases of provocative political or artistic expressions, it is necessary to understand whether the expression contributes to the spread of discriminatory ideas.

Seventh: *Does the expression concern a matter of public interest? Does it contribute to a debate of general interest?*

As emphasised by the Court, Article 10 confers a high level of protection to expression on issues of general interest and allows for limited restrictions under Article 10 (2). Therefore, expressions concerning Israel or Israeli-Palestinian conflict may be included in the protected political speech provided that they contribute to public debate.

Eight: *Does the expression promote or contain incitement to hatred, discrimination or violence?*

The presence of incitement to hatred, discrimination or violence may provide strong evidence that the expression exceeds the boundaries of protected political speech. As clarified in *Baldassi and Others v. France,* the Court found that the demonstration did not amount to incitement to hatred or promoted hostility against a group. However, the absence of such condition is not sufficient to establish that an expression is peaceful and falls within the scope of Article 10.

Ninth: ***Does the expression seek to destroy or undermine the fundamental values protected by the Convention?***

In some cases, the assessment may also involve consideration of whether Article 17 applies. Because of the exceptional nature of Article 17, it should be distinguished from the ordinary balancing exercise and applied exclusively where a Convention right is invoked in a clearly incompatible way with the values protected by the Convention. The Court's reasoning in *M'Bala M'Bala v. France* shows that the decisive issues were the provocative character of the speech itself and, most importantly, the purpose for which freedom of expression was employed, namely the spread of ideas contrary to the principles of the Convention.

The analysis conducted has certain limitations that should be considered when interpreting the findings. First of all, the analysis focuses exclusively on two judgments of the European Court of Human Rights. Although the two judgments represent significant examples of the Court's approach to expressions concerning Israel and antisemitism, these cases alone do not allow for an exhaustive assessment of all expressions concerning antisemitism and Israel. Therefore, the comparison highlights specific aspects of the Court's reasoning and does not establish universal criteria to be applied in other cases. Moreover, the Court's reliance on context has implications for the predictability of the assessment. Understanding the circumstances in which an expression was made is essential for determining its meaning. At the same time, it is more difficult for individuals to foresee whether their expression will fall within the protection of Article 10 or be subject to restrictions. Therefore, an appropriate balance must be struck between the taking context into account and ensuring that the interpretation of the expression remains predictable and based on its objective meaning.

With regard to future developments, the distinction between legitimate criticism of Israel and antisemitic speech is likely to remain relevant to the European human rights system. In particular, the growing polarisation of public debate on Israel and the Israeli-Palestinian conflict may generate new cases in which the boundary between political criticism and antisemitic speech is difficult to identify. This situation is further complicated by the widespread use of social media, as images, videos, satire and other forms of communication concerning Israel circulate rapidly among a large and diverse public. The rapid circulation of such content may also make it more difficult to identify the context in which an expression was made and to determine the meaning that should be attributed to it. Therefore, future cases may require the European Court of Human Rights to apply the principles of its case law to forms of communication that differ significantly from those considered in previous

judgments. The further development of the Court's case law will be important for clarifying which contextual element should be taken into account when assessing such expressions.

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