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Media Coverage on Migration and Asylum: Legal Framework

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ABSTRACT

This thesis reflects on the intricate interplay between the right to freedom of expression and the rights to privacy and human dignity of migrants, refugees, and asylum seekers. This research aims to discuss how the media's right to inform the public can be balanced against the legal imperative to safeguard the private sphere and human dignity of these individuals. The core hypothesis is that current media practices often overstep these boundaries, contribute through language to the dehumanisation of migrants, and reinforce stigma towards them. It addresses the right to freedom of expression as a pillar of democracy while discussing the necessity of restrictions in some circumstances, in particular when it interferes with other rights, resulting in defamation, discrimination, and hate speech. In addition, the discursive practices of the media and political actors are discussed. They significantly influence the public perception of the migration phenomenon and seem to normalise discriminatory and violent expressions and promote dangerous narratives. For this reason, it is becoming increasingly necessary to act to prevent and limit them through regulation. Moreover, the study evaluates the impact of emerging technologies, in particular Artificial Intelligence, on data retention and surveillance of these vulnerable individuals. The research is conducted through a multidisciplinary and comparative approach and rigorous analysis of a wide range of key texts, including the Universal Declaration of Human Rights, the Geneva Convention, the Treaty of Lisbon, and the Italian Constitution. They underscore the need to protect these individuals and ensure confidentiality for them both at a global and local level. Through a review of the European Court of Human Rights jurisprudence, it explains how the Court assesses the need for limitations and carefully balances the two rights. Finally, the focus shifts to journalists and their duty to safeguard migrants' identity and rights whilst exercising their right to criticise and inform. Journalists are expected to follow the standards and principles enshrined in their deontological codes. The research centres on the Italian context to assess their compliance with key guidelines, such as the Charter of Rome, particularly concerning the use of proper terminology.

ABSTRACT

Cette thèse porte sur la complexe relation entre le droit à la liberté d'expression et les droits à la vie privée et la dignité humaine des migrants, des réfugiés et des demandeurs d'asile. Cette recherche vise à déterminer dans quelle mesure le droit des médias à informer le public peut être concilié avec l'impératif juridique de sauvegarder la sphère privée et la dignité humaine de tels sujets. L'hypothèse centrale est que les pratiques actuelles des médias souvent dépassent ces frontières, en contribuant par leur langage à la déshumanisation des migrants et au renforcement de la stigmatisation envers eux. On aborde le droit d'expression en tant que pilier de la démocratie et en même temps on discute de la nécessité d'imposer des restrictions dans certaines circonstances, en particulier lorsque ce droit interfère avec d'autres, et aboutit au dénigrement, à la discrimination et à des discours de haine. Les pratiques discursives des médias et des acteurs politiques sont également traitées. Ceux-ci influencent profondément la perception publique du phénomène migratoire et il semble qu'ils normalisent des expressions discriminatoires et violentes et promeuvent des narrations dangereuses. Pour cette raison, il faut intervenir pour les prévenir et les limiter à travers leur réglementation. En outre, l'étude évalue l'impact de nouvelles technologies, en particulier l'Intelligence Artificielle, sur la rétention des données et la surveillance de ces personnes vulnérables. Cette recherche est conduite à travers une approche multidisciplinaire et comparative et s'appuie sur une analyse rigoureuse d'un vaste corpus de textes clés, notamment la Déclaration Universelle des Droits de l'Homme, la Convention de Genève, le Traité de Lisbonne et la Constitution italienne. Ceux-ci soulignent la nécessité de protéger tels individus et de garantir leur anonymat tant au niveau global que local. À l'aide d'une analyse de la jurisprudence de la Cour européenne des droits de l'homme, on explique comment la Cour établit la nécessité de restrictions et équilibre attentivement ces deux droits. Enfin, l'accent est porté sur les journalistes et leur devoir de sauvegarder l'identité et les droits des migrants dans l'exercice de leur droit de critiquer et d'informer. Les journalistes sont tenus de respecter les normes et principes inscrits dans leurs codes de déontologie. La recherche se concentre sur le contexte italien afin d'évaluer s'ils respectent les lignes directrices, surtout en ce qui concerne l'utilisation d'une terminologie appropriée.

ABSTRACT

Questa tesi riflette sull'intricata relazione fra il diritto alla libertà di espressione e i diritti alla privacy e alla dignità umana di migranti, rifugiati e richiedenti asilo. La ricerca mira a discutere in che modo il diritto dei media di informare il pubblico possa essere bilanciato con l'imperativo giuridico di salvaguardare la sfera privata e la dignità umana di tali soggetti. L'ipotesi centrale è che le attuali pratiche dei media spesso oltrepassino questi confini, contribuendo tramite il linguaggio alla deumanizzazione dei migranti, rinforzando lo stigma nei loro confronti. Viene trattato il diritto di espressione come pilastro della democrazia e al contempo si discute sulla necessità di imporre restrizioni in alcune circostanze, in particolare quando questo diritto interferisce con altri, sfociando in diffamazione, discriminazione e discorso d'odio. Vengono discusse anche le pratiche discorsive dei media e degli attori politici. Questi influenzano profondamente la percezione pubblica del fenomeno migratorio e sembrano normalizzare espressioni discriminatorie e violente e promuovere narrazioni pericolose. Per questo si rende sempre più necessario intervenire per prevenirle e limitarle tramite regolamentazioni. Inoltre, lo studio valuta l'impatto di tecnologie emergenti, in particolare l'Intelligenza Artificiale, sulla conservazione dei dati e sulla sorveglianza di questi individui vulnerabili. Questa ricerca è condotta attraverso un approccio multidisciplinare e comparativo e un'analisi rigorosa di un'ampia gamma di testi chiave che includono la Dichiarazione Universale dei Diritti Umani, la Convenzione di Ginevra, il Trattato di Lisbona e la Costituzione Italiana. Questi sottolineano la necessità di proteggere tali individui e di assicurare riservatezza nei loro confronti sia a livello globale che locale. Attraverso l'analisi della giurisprudenza della Corte Europea dei Diritti dell'Uomo, si spiega come la Corte stabilisce la necessità di limitazioni e bilancia attentamente i due diritti. Infine, il focus si sposta sui giornalisti e sul loro dovere di salvaguardare l'identità e i diritti dei migranti nell'esercizio del loro diritto di criticare e informare. I giornalisti sono tenuti a seguire degli standard e dei principi inscritti nei loro codici deontologici. La ricerca si concentra sul contesto italiano per valutare se rispettino importanti linee guida, in particolare per quanto riguarda l'uso di una terminologia appropriata.

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INTRODUCTION

Migration is a multifaceted and complex phenomenon and a source of many contemporary debates. To fully understand it, it should be approached through a multidimensional perspective, considering political, linguistic, and juridical factors that are often intertwined. In particular, this research aims to discuss the coverage of migrants, refugees, and asylum seekers in the Italian media. Their representation undoubtedly has cultural and social implications, influences public opinion and could negatively affect these individuals. Thus, the present work argues that Italian journalists fail to protect the privacy and identity of migrants by breaching their fundamental rights safeguarded by several legal texts. In this regard, some documents, treaties and conventions have been consulted, which are applied at international, European, and national levels. Furthermore, the relevant case law of important organisations was analysed, such as the European Court of Human Rights and the Italian Corte di Cassazione, and eventually the decisions reached by the National Council of the Order of Journalists. The thesis is structured into three chapters.

The first chapter sets out the juridical foundations of this study. To begin with, it explains the distinction among the figures of migrants, refugees, and asylum seekers. Then, it provides an overview of several legislative instruments that safeguard their rights: from the Universal Declaration of Human Rights to the Geneva Convention, the Lisbon Treaty, and the European Convention on Human Rights. Moreover, given that the focus of this work is on the Italian context, the Italian Constitution, as well as other relevant legislative decrees, are mentioned. At the core of the study lies the infringement of these individuals' right to privacy in circumstances that render them hyper-visible, when their identity is disclosed, and their physical integrity threatened. This work underlines how, especially due to the development of new digital technologies, such as the EURODAC database that collects their sensitive data, they risk being exposed and persecuted, despite the existence of provisions such as the General Data Privacy Regulation. The central conflict of this thesis, between the right to privacy and the right to information, is introduced here.

In the second chapter, the research centres on the importance of freedom of expression, considered a pillar of a democracy. Indeed, it is a principle safeguarded and enshrined in several provisions, in particular in Article 10 of the European Convention of Human Rights. However, freedom of expression is not absolute and cannot override other interests. Some statements may cross the line, thereby contributing to the proliferation of hate speech, defamation, and disinformation. Thus, juridical bodies must carefully evaluate when to impose legitimate restrictions through a balancing exercise. Some relevant decisions reached by the European Court of Human Rights concerning hate

speech and discrimination are analysed herein. Towards the end of the chapter, the focus shifts to online hate speech, which poses a challenge since the digital environment seems difficult to regulate, despite the introduction of the Digital Services Act and the European Code of Conduct on Countering Illegal Hate Speech Online. The last paragraphs explore political discourse, given that politicians play a significant role in the era of digital information, post-truth, and fake news. Just like the media, they could affect the public perception of this complex phenomenon. In particular, they could amplify distorted narratives and encourage discriminatory and dangerous attitudes towards migrants.

In the last chapter, the study examines more concretely how the Italian press represents migrants and asylum seekers, paying particular attention to the language used by the media. Frequent negative practices are highlighted, starting with the *ethnicisation* of news, the alarmist frame, the use of spatial metaphors, and sensationalistic tones. On the other hand, migrants and asylum seekers' voices are silenced and repressed. This study then evaluates whether journalists comply with their deontological obligations, set forth in Law 69/1963 applied in Italy, in the code of ethics of the Order of Journalists and in the Charter of Rome. This Charter is of particular importance since it sets out guidelines and principles that must be respected by journalists, in particular the principle of accuracy, appropriate terminology, and protection of identity. To assess compliance, some disciplinary decisions from the National Council of the Order and from the Regional Council of Lombardy are analysed inhere.

In conclusion, the media arena is affected by the insurgence of new technologies, especially since the development of Artificial Intelligence, the abundance of information on the web, and the increasing polarisation of political debate. This makes it necessary to question whether to restrict freedom of speech since some expressions cannot be justified, especially if they compromise people's dignity and identity and intrude into their private lives. It must be a moral imperative for media professionals to exercise their right to criticise and inform responsibly, in compliance with their ethical principles. To guarantee that the right to freedom of expression is not exploited to incite discrimination and reinforce stigmatisation, stricter enforcement and disciplinary sanctions are necessary.

CHAPTER 1 – MIGRANTS AND THE RIGHT TO PRIVACY

1.1 Introduction

This chapter outlines key legal definitions to distinguish among migrants, asylum seekers, and refugees, as well as the instruments regulating migration, including entry, border crossing, and the recognition of asylum and refugee status. This status is determined through a rigorous process that constrains migrants to intensive scrutiny, requiring the disclosure of their personal data and narratives to immigration authorities. The specific vulnerability of migrants, asylum seekers, and refugees arises from their precarious legal and social status, marginalisation, and unique needs. Their data are extensively collected and retained, often through digital technologies, which can erode privacy rights. Immigration agencies may process and share this information without adequate transparency or accountability, sometimes disclosing it to government agencies or third parties without consent, resulting in disproportionate surveillance and diminished privacy. Migrants are entitled to special assistance and enhanced protection. Authorities and media must safeguard their identities, photographs, personal histories, and sensitive details such as ethnic or national origin, religion, and gender. Legal instruments impose constraints on public discourse and media practices, requiring media professionals and digital platforms to uphold strict confidentiality and human rights standards. Upholding the anonymity and dignity of vulnerable individuals in public discourse and media coverage is essential, as improper disclosure may expose them to harm, discrimination, or exclusion. Legal frameworks at international, European, and local levels are necessary to protect their private sphere and reputation and ensure that privacy laws keep pace with evolving digital technologies.

The initial sections provide an overview of significant legal texts and articles that protect these individuals at both global and local levels, with particular attention to principles such as non-refoulement. Key legal instruments discussed herein include the Universal Declaration of Human Rights, the Geneva Convention, the Treaty of Lisbon, and relevant European Union directives. The analysis then turns to the Italian legal framework, examining the Italian Constitution and legislative decrees aligned with European standards. The chapter concludes by addressing the right to privacy, which is essential for safeguarding people's private sphere, particularly the most vulnerable. This right encompasses the protection of personal data, family, home, and correspondence, and permits disclosure only under specific circumstances and for legitimate purposes. The right to privacy may conflict with other rights, such as the right to information or national security interests. Thus, the complex interplay and potential restrictions between these rights will be examined in the following chapter.

1.2 Migrants, refugees, asylum seekers: legal definitions

Migrants are individuals who move elsewhere due to reasons that do not include persecution or human rights violations. They decide to migrate to seek better working conditions, for educational purposes, or to rejoin their family. Therefore, they can safely return to their country of origin. Their lives are not at risk there since, unlike asylum seekers, they are protected by their governments. In this regard, asylum seekers, as stated by the UN High Commissioner for Refugees, the UN Refugee Agency, are individuals who seek safety elsewhere and demand international protection. They are often forced to leave their country due to wars, persecutions, and human rights violations. At the end of 2024, there were 8.4 million asylum-seekers globally.[1] To be legally recognised as a refugee, they must apply and wait for a decision on their claim. In the meantime, while their application is being handled, they are considered asylum seekers, and, therefore, deserve humanitarian support as they are unable to seek protection from their governments. Governments have the responsibility to determine whether an individual's circumstances make them a refugee, establishing their own procedures. If there is no efficient national asylum procedure or if a State has not adhered to the 1951 Refugee Convention, then the UNHCR has to examine asylum applications. Not all applicants will be granted the refugee status; only who complies with the criteria set out in international refugee law. The 1951 Refugee Convention and its 1967 Protocol are two key legal documents that provide an internationally recognised definition of refugees, outlining their rights and the international standards of treatment for their protection. Article 1 of the 1951 Convention defines a refugee as someone who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." [2]

1.3 Legal framework for the protection of migrants and asylum seekers

Migrants and asylum seekers are protected by international and national legal instruments: the Universal Declaration of Human Rights, conventions, treaties, and charters in force globally and in the European Union. They regulate their entry, status, and procedures and, above all, protect migrants as human beings, emphasising their dignity, privacy, and personal integrity, especially in vulnerable situations such as asylum procedures and media exposure.

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[1] UN High Commissioner for Refugees (UNHCR). *Asylum-Seekers* | UNHCR. https://www.unhcr.org/about-unhcr/who-we-protect/asylum-seekers

[2] Office of the High Commissioner for Human Rights (OHCHR). *Convention relating to the Status of Refugees* OHCHR. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees

1.3.1 Universal Declaration of Human Rights: Article 14

Right after the end of the Second World War, in 1946, the representatives from several countries, reunited in a committee, started discussing and drafting the Universal Declaration of Human Rights (UDHR). This milestone document was later discussed by the UN Commission on Human Rights and finally adopted by the General Assembly in 1948, recognising the inherent dignity and worth of the human person and promoting cooperation between nations. World leaders had come together to make sure that the atrocities of the previous years would not happen again, guaranteeing freedom, peace, and equality. It outlines thirty essential rights for human beings, which continue to form the basis for international human rights law.[3] Among the set forth rights in the Declaration, the right to seek asylum, the right to be free from torture, and the right to freedom of expression will be addressed hereunder.[4] Although this document is not binding, it inspired other documents that have a legally binding value.

The right to seek asylum is a core human right, recognised in Article 14 of the Declaration, which acknowledges the individual's extreme vulnerability resulting from persecution. It places an immediate duty on the international community to safeguard the applicant's well-being, dignity, and life against further harm or exposure.

Article 14.1: "Everyone has the right to seek and to enjoy in other countries asylum from persecution"[5]

1.3.2 The European Convention on Human Rights

Since the 20th century, the European Union has worked to grant all its citizens fundamental freedoms and rights, enshrined in several instruments. The Union ensures that all its member states implement them through its Directives and institutions.

The European Convention on Human Rights was signed on 4 November 1950 in Rome and then entered into force on 3 September 1953. States that ratify it (called "State Parties") are bound by its provisions. Therefore, domestic courts have to apply it and guarantee these rights to any individual within their territory. The Convention is a living document, as it continues to evolve, by interpreting and extending these rights to apply them to new circumstances. Indeed, over the last decades, new rights have been amended or incorporated into the Convention, enshrined in 16 protocols, binding on the States that have ratified them. The most significant protocols include Protocol No. 13, which abolished the death penalty in any case, and Protocol No. 12 on non-discrimination. These provisions

[3] United Nations (UN). *History of the Declaration.* United Nations. https://www.un.org/en/about-us/udhr/history-of-the-declaration

[4] Amnesty International. *Universal Declaration of Human Rights.* Amnesty International .https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/

[5] Art. 14, United Declaration of Human Rights (UDHR)

secure inalienable rights, such as the right to life, the right to freedom of expression, thought and religion, and punish any degrading treatment and violence, unlawful detention, and discrimination. Aside from setting out civil and political rights, the ECHR also established the European Court of Human Rights (ECtHR), an important international judicial organ that reviews cases brought before the Court by individuals or States, alleging rights violations, as stated by Article 13 on the right to an effective remedy. [6]

The European Court of Human Rights does not explicitly grant a right to asylum, but it has extensively interpreted Articles 2 (right to life), 3 (prohibition of torture) and 6 (right to fair trial) to include it under the umbrella of the European Convention. In particular, the Court stated the prohibition of return of a person to a country where he/she risks being tortured, punished, treated in an inhuman or degrading way, where the death penalty still exists, or where the trial could be conducted through torture. Thus, the Convention reaffirms the non-refoulement principle. Moreover, Article 4 of Protocol 4 of the Convention explicitly states that the "collective expulsion of aliens is prohibited".[7]

In 2012, in the case of Hirsi Jamaa and Others v. Italy, the European Court of Human Rights found that, by sending back migrants to Libya, without examining their case, Italy exposed them to the risk of ill-treatment. Additionally, it was considered a collective expulsion, prohibited by Article 4 of Protocol No. 4. The case concerned 24 migrants from Somalia and Eritrea travelling from Libya to Italy, intercepted at sea by the Italian authorities who sent them back to Libya. Non-European citizens can also appeal to the ECtHR if their rights are violated in a country under the Council of Europe system. Furthermore, the applicants claimed that while travelling back to Tripoli, the Italian authorities had not informed them about the location they were being taken to. Neither were their identities checked. Lastly, they did not have an effective remedy in Italy against the alleged violations of Article 3 of the Convention. The ECtHR found that the applicants fell within the jurisdiction of Italy according to: Article 3 on degrading treatment, as the applicants had been exposed to a risk of ill-treatment in Libya and the risk of repatriation to the countries of Eritrea and Somalia; Article 4 of Protocol No. 4 on the prohibition of collective expulsion; Article 13 (on the right to an effective remedy). Hereupon, Italian authorities were held to pay. [8]

[6] European Court of Human Rights. *The ECHR in 50 questions*. Council of Europe. https://www.echr.coe.int
[7] European Court of Human Rights. *Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights: Prohibition of collective expulsions of aliens*. Council of Europe. https://ks.echr.coe.int/documents/d/echr-ks/guide_art_4_protocol_4_eng
[8] European Court of Human Rights (ECtHR), *Hirsi Jamaa and Others v Italy* [GC], 23 February 2012, n. 27765/09

1.3.3 The Geneva Convention

The European Convention on Human Rights does not include any specific provision regarding refugees, unlike the Refugee Convention (also known as the Geneva Convention) that was signed in 1951, to give refugees at that time, living in the former Soviet Union, the possibility to flee those countries and live in others. The Geneva Convention has an ongoing and permanent value even after years, thanks to its 1967 Protocol (New York Protocol). These two binding international documents, the Refugee Convention and its Protocol, form the basis of the United Nations High Commissioner for Refugees' work. The UNHCR, established in 1950 and operating in 137 countries, is the UN Refugee Agency, a global organisation aimed at saving lives, safeguarding rights, and ensuring the well-being of refugees, displaced, or stateless persons worldwide by leading international action and allowing them to find safe asylum or voluntarily return home. Furthermore, it cooperates with governments worldwide to ensure that such provisions are implemented without discrimination (Art.3) and translated into national laws. [9] The Convention provides a clear definition of a refugee, affirming that the right to seek and enjoy asylum can be granted only to someone who is recognised as a refugee. Moreover, it sets out the legal protection, rights, and assistance that states should accord to refugees. Refugees also have obligations to the country hosting them, as they must comply with its laws and regulations (Art. 2).

At the core of the 1951 Refugee Convention and its 1967 Protocol is the principle of "non-refoulement", which prohibits the expulsion or return of refugees to a country where they face persecution or serious dangers. In particular, Articles 32 and 33 forbid their expulsion or repatriation to a territory where their lives or freedoms are threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, unless serious grounds of public order and national security exist.

Article 32 – Expulsion

"1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority."

[9] UNHCR *About UNHCR*. UNHCR. https://www.unhcr.org/about-unhcr

Article 33 - Prohibition of expulsion or return ("refoulement")
"1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."[10]

Another key document, the 1984 UN Convention against Torture, prohibits their expulsion also in the case that they may be tortured back in their country.
Article 3(1): *"*No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". [11]

1.3.4 The Treaty of Lisbon

The Treaty of Lisbon, ratified by all EU member states in 2007, came into effect on 1 December 2009, amending two treaties: the Treaty on European Union (TEU) and the Treaty establishing the European Community (renamed the Treaty on the Functioning of the European Union – TFEU). It is a significant document that reformed the EU's institutional framework and aimed at encouraging citizens' participation in the Union, introducing notable changes. To begin with, it conferred the EU full legal personality, which means that, from then on, the Union could sign international treaties or join international organisations. Furthermore, it strengthened the powers of the European Parliament and created new institutional roles such as the President of the European Council and a High Representative for the Union for Foreign Affairs and Security Policy. Although it does not include any Articles affirming the supremacy of EU law over national legislation, this principle is enshrined in Declaration 17, attached to the Treaty. It led to a transition from minimum standards to a common system comprising a uniform status and uniform procedures, to the adoption of Regulations: a set of rules in the EU that must be implemented in every member state. And finally, through Article 6(1) of the Treaty on European Union (TEU), the Treaty made the Charter of Fundamental Rights legally

[10] UN., *Convention relating to the Status of Refugees* (1951), Arts. 32-33
[11] UN. *Convention against torture and other cruel, inhuman or degrading treatment or punishment* (1984).

binding on EU member states and institutions, protecting inalienable human rights. Therefore, every member state implementing EU law must respect the fundamental rights enshrined in the Charter. [12] Article 6(1): "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.
The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.
The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions." [13]

The Treaty of Lisbon introduced a common system of migration policies, including Articles concerning the right to asylum and human dignity, primarily through the Charter of Fundamental Rights of the European Union and the Treaty on the Functioning of the European Union (TFEU).

1.3.5 The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union outlines inalienable human rights and freedoms to be respected within the EU through its provisions. It entered into force in 2000, since it was necessary to consolidate fundamental rights in a Charter to make them more visible. Only after the adoption of the Treaty of Lisbon, it was granted binding force.[14] The Charter is divided into seven chapters, respectively entitled: dignity, freedoms, equality, solidarity, citizens' rights, justice, and general provisions. Among its 54 Articles, three provisions related to migration are of foremost importance: Article 4 on the prohibition of torture, Article 18 on the right to asylum, and Article 19 on the protection in the event of removal, expulsion, or extradition. [15]

Article 4 - Prohibition of torture and inhuman or degrading treatment or punishment
"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."[16]

Article 18 - Right to asylum

[12]European Parliament, *The Treaty of Lisbon* | Fact sheets on the European Union https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon
[13] Art. 6, Treaty on European Union
[14] Sy, S. *The Charter of Fundamental Rights*. European Parliament. https://www.europarl.europa.eu/factsheets/en/sheet/146/the-charter-of-fundamental-rights
[15] European Union. *Charter of Fundamental Rights of the European Union*. EUR-LEX. https://eur-lex.europa.eu/EN/legal-content/summary/charter-of-fundamental-rights-of-the-european-union.html
[16] Art. 4, Charter of Fundamental Rights of the European Union

"The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union".

Article 19 - Protection in the event of removal, expulsion or extradition

"1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment." [17]

1.3.6 The Treaty on the Functioning of the European Union (TFEU)

The European Union established a common asylum, immigration and external borders policy, in the following Articles enshrined in the Treaty on the Functioning of the European Union. The TFEU is a primary treaty, ratified by 27 European countries in 2007 and entered into force two years later. While previously the goal of the European community was mainly only economic (i.e. the creation of a single market), its objective became European integration, including a political perspective. As a matter of fact, this document aims to encourage cooperation and solidarity between EU states. It outlines the principles and objectives of the Union and describes the organisation and functions of the EU institutions. It is composed of seven parts. Part three is dedicated to union policies and internal actions, and Title V, entitled 'area of freedom, security and justice', includes some relevant provisions:

Article 67 (2): "(the Union) shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals". [18]

This Article claims that the Union is engaged to guarantee the implementation of fair and common measures applicable to any individual, regardless of their nationality. It reaffirms a general attitude of solidarity without any specific juridical binding consequences for the state that refuses this solidarity. The Union acts shall indicate appropriate measures to apply this principle. Even if the solidarity principle is not juridically binding for states, it must be a landmark for the EU's general policies towards immigration and asylum policies.

Article 77

[17] Arts. 18 & 19, Charter of Fundamental Rights of the European Union

[18] Art. 67, Treaty on the Functioning of the European Union

“1. The Union shall develop a policy with a view to:
(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
(c) the gradual introduction of an integrated management system for external borders."
This Article aims to regulate border control and identification by introducing an appropriate system.

“2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:
(a) the common policy on visas and other short-stay residence permits;
(b) the checks to which persons crossing external borders are subject;
(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
(d) any measure necessary for the gradual establishment of an integrated management system for external borders;
(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament." [19]

This provision delineates the institutions that are conferred legislative powers: the European Parliament and the Council. Together they must promulgate measures concerning the release of visas, residence permits, passports, the identification of persons, as well as to regulate freedom to travel for third-country nationals. These individuals are subject to checks in order to be identified. This is a particularly delicate procedure, during which sensitive data are disclosed; therefore, there is a necessity to protect their privacy and dignity and ensure their fair treatment.

Article 78:
"1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring

[19] Art. 77, ibid

international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
c) a common system of temporary protection for displaced persons in the event of a massive inflow;
d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection."[20]

By creating a common policy on asylum, subsidiary and temporary protection, the European Union intends to homogenise the actions and measures adopted by member States when handling the migration crisis.

Article 79:

"1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

[20] Art. 77, Consolidated version of the Treaty on the Functioning of the European Union (2025)

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.
4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.
5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed."[21]

The objective of these provisions is to regulate migration, fighting against illegal immigration and trafficking, to establish under what conditions people can enter and reside within the EU, and what rights they have to be granted to facilitate their integration into society. Member states should adopt common regulations; however, they are free to decide how many migrant workers to admit. Moreover, the Union could cooperate with third countries in cases of the repatriation of individuals.

Article 83 (1) - Harmonisation of criminal offences and penalties against transnational serious crime

1. "The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
2. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

[21] Art. 78, ibid

3. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament."[22]

Article 83 aims to harmonise criminal offences and penalties at a European level. This means that member States shall cooperate and adopt harmonised laws to handle transnational crimes efficiently.

1.4 The Common European Asylum System

The Common European Asylum System (CEAS) is a legal and policy framework that aims at harmonising asylum policies within the EU. The EU countries are supposed to adopt a common set of rules and procedures when managing asylum demands, which should be fair and transparent. The main objective is to determine which country is responsible for the examination of the application. While asylum is granted to refugees, subsidiary protection and temporary protection are granted to people who require international protection even if they are not refugees, as their lives might be threatened in their country of residence. To determine whether an individual can be classified as a refugee under international, regional or national law, it is necessary to follow a legal or administrative process. Every state should conduct the refugee status determination process (RSD); however, if this latter is not a party to the 1951 Refugee Convention or if it does not implement an efficient national asylum procedure in place, then it is the UNHCR that conducts it under its mandate.[23] The European Asylum Support Office (EASO) assists EU states in fulfilling their European and international obligations in the field of asylum.

The CEAS comprises several points and measures, listed in the aforementioned Art. 78 (2) and in pivotal European Directives.

The Directive 2011/95/EU (Qualification Directive) in its Article 2(f) explains who is eligible for subsidiary protection: "a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country".[24]

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[22] Art. 83, ibid

[23] UNHCR, *Refugee status determination*. UNHCR. https://www.unhcr.org/what-we-do/protect-human-rights/protection/refugee-status-determination

[24] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, OJ L 337, pp. 9–26

Article 4 of the Directive defines the assessment of facts and circumstances, particularly what elements need to be scrutinised in order to grant international protection to applicants. Such elements include their photograph, data (name, age, gender, background, identity, nationality, place of residence, address, travel routes, travel documents), as well as their statements. A person's name constitutes an important aspect of one's identity; therefore, it must be protected against any unlawful interference that undermines the right to privacy. The competent authorities must ensure the respect of the principles of human dignity and of physical and psychological integrity during the process.
As is evident, this process underscores the tension between necessary scrutiny and the individual's need for privacy, as applicants are required to provide personal details and tell their stories during application interviews, making them inherently exposed to persecution and serious harm. For this reason, personal files must be handled fairly, according to a policy of confidentiality, due to the applicant's vulnerability. As a matter of fact, the personnel examining the application, as well as those working in accommodation centres, with unaccompanied minors or victims of torture and violence, are obliged to respect the confidentiality rules established by the State, regarding the information obtained during their work. Moreover, Member States, authorities, legal advisers and counsellors must carefully ensure that the collection, processing and dissemination of information concerning this category of persons is undertaken on a confidential basis, to ensure their safety.[25] Such data cannot be disclosed if not under specific circumstances, requiring media to respect these obligations, even if they might interfere with their right to inform the public. This conflict between these two pivotal rights is at the core of this analysis. Applicants should cooperate with the competent authorities and, while they wait for a verdict, are required to remain in the region indicated by them. Normally, the application is examined within six months, while in emergency cases, the process might be accelerated, and a decision might be made within three months. The procedure must be fair.

The Dublin Regulation (Regulation (EU) No 604/2013) is a document [26], signed by European countries, among them Italy, which obliges its signatories to respect certain rules concerning asylum, and aims at determining which country is responsible for the examination of the application. According to this legal text, it is the country where individuals ask for asylum for the first time or where the police identify them when entering a country irregularly. The refugee determination process usually consists of three stages:

[25] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, pp. 96–116.
[26] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (Dublin III Regulation), OJ L 180, pp. 31–59.

1. An application is made. The asylum applicant undergoes a screening process, during which biographical and biometrical and other relevant data are collected for legitimate purposes, such as identification, public safety and national security. As soon as they arrive, immigration authorities take their fingerprints, palmprints, scan their faces and iris, take their DNA samples, register name and surname. All this data will be entered into the European system EURODAC, a computer database which stores information about all the asylum seekers who have arrived in Europe. EURODAC was introduced with the Regulation (EU) 603/2013 for the effective application of the Dublin Regulation and is used to help identify the country responsible for the asylum application. Authorities can access this database in specific cases, when public security concerns exist, for example when dealing with terrorist or serious criminal offences.[27]Therefore, the police of every European state can access their fingerprints and data and know from where they have come from. This means that if they move to another European state, the police can see that they have already claimed asylum elsewhere and can be required to leave that country. Once sent back to the previous country, they have the right to appeal against this decision through a lawyer and, while waiting for a verdict, they are allowed to reside in a centre for asylum seekers and must be provided with food, other fundamental material goods, and healthcare assistance, as established by the Reception Conditions Directive. This information is collected for national security and law enforcement reasons, administrative purposes such as applicant identification, background checks, fraud detection, grant of benefits, as employment authorisation, and numerous services. Migrants should be fully informed of these purposes and actively participate in decisions in order to be aware of the outcomes of the exposure of their data. Additionally, instead of implementing such data-intensive system, more responsible data practices, that ensures transparency, data minimisation, security and integrity should be promoted.
2. A personal interview, to determine whether the applicants' reasons for demanding asylum are valid and whether they meet the established criteria for admission, enshrined in the Qualification Directive. The interrogation is necessary to adjudicate whether the person can be considered a refugee or not. They are questioned about the reasons why they fled home and how. It is a stage that requires particular care and sensitivity, as the applicant is forced to relive his painful and traumatic experiences, persecution, war or previous torture. In this desperate and overwhelming moment, due to their diminished agency, they tend to surrender extensive personal information in exchange for safety and assistance, instead of making

[27] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac', OJ L 180, pp. 1–30.

informed choices. They decide to comply with invasive data collection also due to their fear of negative consequences in their claim and the denial of protection and benefits. They often end up providing additional data that may be irrelevant, unnecessary for assessing the claim and for purposes of national security, that include familial relationships, sexual orientation, medical information or religious beliefs. Other contextual and behavioural data are obtained by electronically monitoring and tracking their social media and location, through devices and technologies, as smartphone apps. Their social media and online activity may be reviewed during the evaluation process. Moreover, the interview could be complicated due to the language barrier. Therefore, as affirmed in the Asylum Procedures Directive, they can be assisted by interpreters and cultural mediators who are able to realise a competent linguistic and cultural translation and facilitate communication and access to the asylum procedure, to ensure they fully understand what they are consenting to. They have the responsibility to counsel and inform them about their rights and obligations, about the management and disclosure of their data, and on the consequences of not cooperating, as established by Article 22 of the Qualification Directive on the right to information.[28] And if requested, they can have access to specific legal assistance and organisations that help or inform them about the reception conditions set forth in Article 5 of the Reception Conditions Directive. Unaccompanied minors and vulnerable people are granted heightened protection and must be assisted by a representative. Every interview is transcribed or recorded; therefore, it is mandatory to inform the applicant of this and of the content of the report so that he/she can confirm that the transcript is accurate, as set forth in Article 17 of the Asylum Procedures Directive. All his/her personal details and stories are collected in this report, underlining once more the imperative of protecting their dignity and reputation when dealing with such sensitive data.[29] Moreover, this cache of personal data is retained, regardless of the outcome of the application, which means even if they are not granted asylum or refugee status. [30]

3. A decision-making stage, where the Commission must assess the claim and decide to grant or deny refugee status or subsidiary protection.[31] If the outcome is positive, the applicant is legally recognised as a refugee, and therefore allowed to remain in the EU, and is granted certain rights, like a residence permit, access to the labour market, to education, social welfare and healthcare (Qualification Directive); if negative, the applicant can appeal to the court. The

[28] Art. 22, Directive 2011/95/EU, cited above
[29] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Art. 17, OJ L 180, pp. 60–95.
[30] C. Muhawe, *The (in)visible immigrant's privacy*, Georgetown Law Technology Review, 2025
[31] UNHCR. *Asylum and refugee status.* UNHCR https://help.unhcr.org/global/asylum-and-refugee-status/

Court can confirm the previous decision; therefore the applicant must be sent back to his/her country of origin or transit. But, if both the country of origin and the country of transit are dangerous, the person cannot be sent back, as affirmed in art. 3 of the Geneva Convention on the principle of "non-refoulement". Or the Court can overturn the negative decision, and the applicant can be granted asylum.

In conclusion, the extensive collection of personal information during asylum procedures increases the risk of exposure through media reporting, and therefore can enter the public sphere, compromising applicants' anonymity and safety and leading to their public identification.

1.5 Italian legal framework

The Italian legal framework includes several texts that regulate migration and asylum. Primarily, the Italian Constitution determines in Article 10 the legal status of foreigners. Additionally, other legislative decrees and laws have come into force, setting forth the rights and obligations of foreigners in our nation, as well as economic and social measures implemented by the government to facilitate their integration. Lastly, they determine the criteria for their entry, stay and expulsion and describe the asylum procedure.

1.5.1 The Italian Constitution

The Italian Constitution came into force on 1 January 1948, and it is considered the supreme law of Italy. In its 129 Articles, it outlines principles, values and regulations implemented by the Italian institutions within the territory. This document aims to guarantee freedoms, equality and solidarity to every individual residing in the country. The first part of the text concerns the rights and obligations of Italian citizens. Within the Italian legal system, the legal status of foreigners is disciplined both by the Constitution and by ordinary law.

Article 10

"The Italian legal system shall conform to the generally recognised principles of international law.

The legal status of foreigners shall be regulated by law in compliance with international provisions and treaties.

A foreign national, who is denied – in his or her country – the enjoyment of the democratic freedoms established by this Constitution shall be entitled to the right of asylum in the Republic under such conditions as shall be established by law.

A foreign national may not be extradited for a political offence."[32]

[32] Senato della Repubblica. *Constitution of the Italian Republic*, Senate Parliamentary Information, Archives and Publications Office, 2018

The Italian legal system complies with other provisions and treaties recognised at the international level. Foreign citizens must be protected and granted the right to asylum by the Italian Republic, in cases where they cannot return to their countries of origin due to the violation of their rights and freedoms. Furthermore, foreigners cannot be expelled if they commit political crimes.
A distinction can therefore be made between:
- political refugees, who fear persecution on grounds of race, religion, nationality or membership of a particular group;
- asylum seekers, who are not only seeking residence but also protection, having fled from the justice system of their country of origin;
- refugees, who have fled due to war, persecution or natural disasters.

The legal status of foreign nationals residing in Italy is protected by a reinforced legal provision. The legal treatment to which they are subjected can only be determined by law and cannot be less favourable than that provided for in international law. This does not prevent the Italian legislator from going beyond international law and providing more favourable treatment, thus setting an example for the international community.
Currently, there are two categories of foreigners in our legal system: European Union citizens, who enjoy particularly qualified protection that is comparable to that granted to Italians, and non-European Union citizens (so-called non-EU citizens), who may, on the other hand, be subject to restrictions on their right of entry, residence, and stay in our territory. [33]

1.5.2 Legislative Decree 286/1998

The Legislative Decree 286/1998 is a consolidated text on immigration regulations and regulations of the condition of foreigners (*Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*). The present text seeks to implement Article 10 of the Italian Constitution, enforced on non-EU citizens and stateless persons. It is composed of six parts, ranging from general principles, access to the labour market, to health and education, to final provisions.

To begin with, Article 2 outlines the rights and obligations of foreigners in our nation, which are recognised globally and comply with international treaties and legislation. In general, foreigners

[33] M. C. L. La Grassa, *La Costituzione della Repubblica Italiana.* Altalex. https://www.altalex.com/guide/costituzione-della-repubblica-italiana

legally residing in Italy are granted the same civil rights as Italian citizens and equal treatment to foreign workers. They are allowed to take part in the public life of our country and access public services. When possible, relevant documents concerning their entry, stay and expulsion are translated into a comprehensible language. Furthermore, foreign citizens can seek diplomatic protection when needed.

Article 3 mentions a programmatic text concerning migration policies in our territory, approved by the Government and submitted to the Parliament, that indicates economic and social measures and interventions that must be implemented by the Italian Republic, to facilitate family reunification and cultural integration, as well as to safeguard and respect diversity. This Article further establishes the criteria concerning the entry and the release of work permits and visas and indicates what local and national institutions are entitled to the protection and assistance towards immigrants.

Moving on to the second section of the text, it discusses the entry, stay and expulsion of foreign citizens within the Italian territory.

Article 4 concerns entry into our territory. Except in force majeure cases, third country citizens can enter through designated border crossings, if in possession of a valid passport, visa, or other equivalent travel documentation and authorization released by the ETIAS (European travel information and authorisation system). Visas usually expire after 90 days; however, in some cases their validity may be extended. Normally, individuals are required to provide biometric data and other documentation concerning the reasons of their stay (i.e., tourism, education, work, family reunification), as established in the Schengen Borders Code (SBC), which are entered into the Entry-Exit System (EES). The competent authorities must inform them of the duration of their stay. Foreign citizens must prove to have sufficient economic resources to stay and travel back. Their entry may be denied if grounds of public order and national security exist or if the individual is responsible for serious crimes. Furthermore, individuals who had already been expelled or reported as dangerous cannot enter.

Article 5 concerns the residence permit, how to apply for it and renew it, its duration depending on the purpose of stay in Italy and establishes in what cases it can be revoked. Moreover, it mentions other EU-related provisions, defines the official document format, and the sanctions in cases of forgery.

Article 10 concerns the principle of refoulement: non-EU nationals may be expelled if they do not meet the entry criteria set by Italian law or by the SBC. People can be rejected in case of evasion of border controls, temporary admission for public rescue reasons, rescue at sea, or interception at external borders. Every rejection must be entered and shared with the Schengen Information System

(SIS). This provision does not apply to asylum seekers, refugees, or other individuals who are granted international protection.

Article 10-bis states that illegal entry or stay in Italy can be punished with a fine, since deemed a criminal offence. If a migrant applies for international protection, the criminal procedure is suspended. In case of a positive decision, the case can be closed. Article 10-ter indicates measures in case of irregular migrants or rescued at sea. They must be hosted in hotspots and provided first aid and relevant information about their rights and obligations in a comprehensible language. There, they undergo identification procedures, and they are fingerprinted and identified. They have the obligation to cooperate with the authorities. If they refuse to, the authorities are allowed to access the electronic devices possessed by the individual and search for relevant documentation, videos, or photographs. Foreigners should be guaranteed the possibility of being assisted by an intercultural mediator to make the procedure fair.

Article 18 grants a special form of protection and a residence permit to victims of human trafficking, exploitation, or abuse. They are assisted and helped through specific integration programs to guarantee them access to adequate housing and healthcare services. This special residence permit usually lasts six months but can be renewed, if necessary, for instance for work or educational purposes, or revoked if the individual misbehaves or the program is suspended.

Article 19 explicitly states that it is forbidden to send back individuals who may face persecution, torture, or degrading treatment in their countries of origin, due to their race, religion, sexual orientation, gender, political opinions, and so on. Unaccompanied minors, pregnant women, as well as foreigners with a valid residence permit, married to or related to an Italian citizen, or seriously ill, under no circumstances can be rejected at the border. While disabled, elderly, minors, or victims of violence may be expelled following a peculiar procedure.

Article 20 sets out particular measures and protection granted to victims of conflicts, natural disasters, or other serious events, allowed to enter the country through a special residence permit. [34]

1.5.3 Legislative Decree 25/2008

The Legislative Decree 25/2008 is a legal text on asylum procedures that implements the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, regulating how applications for international protection are examined.

The decree starts by providing several definitions in Article 2, then proceeds to set out relevant rights (art.6 on the right to remain; the right to legal aid, to an interpreter, to medical and psychological

[34] Altalex, *Testo unico sull'immigrazione - Titolo IV*. Altalex. https://www.altalex.com/documents/news/2014/04/09/testo-unico-sull-immigrazione-titolo-iv#titolo4

assistance) and obligations (asylum seekers must be informed and must cooperate), especially for vulnerable categories; in addition to that, it explains the procedures for the applicants and the possibility to appeal against negative decisions. Throughout the procedure, sensitive data may be revealed; for this reason, the decree underscores the confidentiality of the process to ensure that such information is not accessible to unauthorised third parties.

Article 2:

- An asylum seeker is a foreign citizen who applies for international protection and is waiting for a verdict.
- A refugee is a non-EU national (or stateless person) who refuses to or cannot go back to his/her country of origin, as he/she fears being persecuted due to his/her race, religion, nationality, or political opinions. They could be expelled only in some cases described by the legislative decree 251/2007.
- Refugee status is the recognition on behalf of the State, after the examination of the application; therefore, the individual is officially a refugee.
- Person eligible for subsidiary protection: a non-EU national or stateless person who does not meet the criteria for being recognised as a refugee, but whose life is threatened in their country of origin.
- Subsidiary protection status: official recognition by the State of the right to subsidiary protection, after evaluating the application for international protection following specific procedures outlined in the present decree.
- Unaccompanied minor: a foreign child under 18 living in a territory without assistance or legal representation:
- Vulnerable individuals: include minors, the elderly, women, single parents with minor children, disabled, victims of human trafficking, torture, violence or genital mutilation, unaccompanied minors, seriously ill persons or those who suffer from mental disorders.[35]

1.6 Legal Framework on the right to privacy

The complex regulatory framework outlined in the previous paragraphs does not merely define the status and procedural rights of refugees and asylum seekers; it underscores the vulnerability of these subjects that requires the protection of their dignity and privacy. Migrants and asylum seekers are particularly vulnerable as, due to their condition, they undergo scrutiny by authorities, sharing sensitive data and private details that constitute their identity. This pervasive surveillance and extensive data collection raise concerns about privacy, autonomy and the long-term consequences of ongoing monitoring. In this context, the right to privacy is understood as control over personal data

[35] Legislative Decree of 28 January 2008, No. 25, *Gazzetta Ufficiale della Repubblica Italiana*

but also as protection of the intimate sphere from intrusion by authorities and media actors. Privacy is pivotal for the full enjoyment of human dignity, autonomy and agency, which should be upheld regardless of citizenship, immigration status or socioeconomic condition, especially when over-surveillance and disclosure of personal information can expose the subject to stigma, discrimination, or endanger their safety. Their data are often stored and retained for years for no valid reasons. Additionally, despite existing privacy norms, some authorities operate as if these do not apply, disregarding the privacy rights of these subjects who are not considered deserving of the same rights granted to citizens. The pervasive and exclusionary surveillance targeting them could represent a violation of the International Convention on the Elimination of All Forms of Racial Discrimination, which considers discriminatory any exclusion based on race, colour, national or ethnic origin that undermines human rights. [36]Therefore, this necessity for robust privacy laws and specific protection derives from their precarious status and the increasingly digitised world, as they become hyper-visible, exposed to data exploitation by government and private entities, identity theft, discrimination and transnational repression, as such data could be accessed by authoritarian regimes that target dissidents abroad. Migrants, refugees, and their stories are often at the centre of public and political debate. However, the application of this protection might interfere with national security interests; therefore, it is essential to safeguard citizens' safety and, at the same time, ensure privacy protections through a careful balance. Moreover, the right to privacy may clash with the right to information, a pillar of a democratic society, that requires transparency and the circulation of news on issues of general interest. The tension arises if identifying details, images, routes, or traumatic elements of the migrant's life are disclosed by media actors. This is in direct conflict with the obligation of confidentiality imposed by the sources (Geneva, ECHR, national laws) examined in this chapter. Chapter 1, therefore, lays the groundwork for asserting that the protection of vulnerable persons is not an option but a legal imperative, making the analysis of the limits of freedom of expression in Chapter 2 necessary. These instruments include Article 1 of the Charter of Fundamental Rights of the EU, which reaffirms the right to the dignity of every individual, while Articles 7 and 8 safeguard private life and data protection. Moreover, Article 8 of the European Convention on Human Rights protects private and family life. In Italy, these standards are implemented through the Data Protection Code and the GDPR. However, this might come into conflict with the right to freedom of expression granted to the media. For this reason, it is important to analyse the conflict between the right to privacy and the freedom of the press, hereinafter, to identify its limits.

[36] Art. 1, International Convention on the Elimination of All Forms of Racial Discrimination, 1969

1.6.1 Universal Declaration of Human Rights: Article 12

International legal tools are pivotal in protecting individual autonomy and civil rights, complementing national legislation. The Declaration underlines that privacy is a universal and fundamental human right in Article 12:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks." [37]

1.6.2 The International Covenant on Civil and Political Rights: Articles 17 and 19 (3)

Article 17

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

The aforementioned Article aims at protecting the privacy and dignity of every individual. In this regard, it prohibits any interference by the State or other individuals with one's private life, and any unjustified attack on one's reputation. Any interference must be lawful and proportionate to a legitimate aim. Moreover, it affirms that every individual must be granted legal protection against violations, which means they must have the possibility to resort to legal tools to defend themselves. This article reinforces privacy as a crucial human right alongside other core protections, underlining the need for the protection of the private information and life of individuals, and for the safeguarding of their dignity and reputation. Even if asylum seekers, migrants and refugees have not acquired citizenship, they are entitled to the same rights and therefore can appeal in case of their infringement."

Article 19 (3)

"The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a)For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals".[38]

[37] Art. 12, Universal Declaration of Human Rights

[38] Arts. 17 & 19(3), International Covenant on Civil and Political Rights, 1976

This Article underlines the responsibilities of individuals when exercising their right to freedom of expression. As stated in paragraph 3, the right to freedom of expression may be infringed in some cases. Any restriction must be lawful and necessary to safeguard other rights or maintain national security, public order, public health or morals. These requirements need to be met to prevent governments from abusing their authority and silencing dissenting voices. Media actors must act responsibly and ethically when disseminating information, which must be comprehensive and objective but not harmful towards any individual, including migrants. Respect for their rights and reputation is pivotal, highly protected and might prevail over freedom of expression.

1.6.3 The EU Charter of Fundamental Rights

Article 7 - Respect for private and family life

"Everyone has the right to respect for his or her private and family life, home and communications."[39]
According to this Article, one's private life, embedding one's identity, health and personal data, needs to be safeguarded, as well as one's family, relationships and home, which is considered a protected space where authorities cannot enter, if not legally authorised. The Article further ensures the privacy of correspondence, including calls, messages, and prevents unlawful interception or disclosure. When interviewing migrants, they might tell intimate stories that involve other relatives, private details on their health, home or relationships. It is the duty of the media to ensure this confidential information is not disclosed, as it does not usually pursue a public interest; on the contrary, it might put these individuals in danger.

Article 8 - Protection of personal data

"1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned, or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority". [40]

The main goal of this Article is to ensure to every individual the right to privacy and control over their own personal data, which cannot be collected, stored or shared freely, unless explicit consent is given. Migrants must be informed of their rights and of the consequences of the collection of their data, and must consent to further use and transfer of their data to third parties. Such information can

[39] Art.7, Charter of Fundamental Rights of the European Union, 2000
[40] Art. 8, ibid

be used only for specific purposes, such as legal reasons. In addition to that, citizens have the right of access, which means that they are allowed to see what data an organisation holds about them and to amend it if it is incorrect. In order to ensure the respect of these rights and that one's data is handled fairly and lawfully, there must be an independent authority, such as a data protection agency.

1.6.4 The European Convention on Human Rights

The European Convention includes the right to privacy and provisions concerning the restraint of freedom of expression in the following two Articles:

Article 8

"(1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[41]

The Article above, in complementarity with the aforementioned legal texts, reaffirms that the private and family life, home and correspondence of citizens must be respected. It highlights the paramount importance of the rights and freedoms of others, and it prohibits any unlawful interference, if not on serious grounds.

Article 10 (2)

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." [42]

As previously mentioned, Article 10 of the European Convention protects even expressions and ideas that are deemed disturbing, shocking or offensive towards others, to guarantee pluralism and tolerance, which are vital in democracies. Some statements, although offensive, do not threaten the

[41] Art. 8, European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950
[42] Art. 10, ECHR

values of the Convention; even so, they might be subject to restrictions in specific circumstances. While expressions that incite hatred and undermine the values of the Convention cannot be protected, even if the Convention does not explicitly prohibit hate speech.

The Court addressed the balance between freedom of the press and the right to privacy in paragraph 2, where it indicates particular cases that justify a limitation on freedom of expression. Contracting States may legitimately impose restrictions on the right to freedom of expression, only if meeting all three requirements outlined in this paragraph: the interference must be prescribed by law, deemed necessary in a democracy, and aimed at protecting other rights or overriding interests (national security, territorial integrity, public safety; prevention of disorder, crime or of the disclosure of confidential information; protection of health, morals or one's reputation; the maintenance of the authority and impartiality of the judiciary). However, often national security concerns are invoked to justify the denial of citizenship and family reunification, as well as the excessive and arbitrary collection, misuse and retention of personal data by authorities and governments that abuse their powers. This unnecessary collection and media exposure of personal information may result in the detriment of individuals, in their targeting, surveillance, exclusion, discrimination, detention and deportation. The general tendency to consider any immigrant as dangerous and a criminal is based on groundless suspicions and erodes his/her vital rights. Therefore, it is necessary to balance the government's national security interests with human rights, which cannot be compromised.[43]

1.6.5 Legislative Decree 196/2003: Italian Personal Data Protection Code

Legislative Decree 196/2003, in force since 2004 in Italy, is the reference legislation that embeds previous and new regulations on the processing of personal data. This Privacy Code specifies obligations and duties to ensure their protection. According to this text, personal or sensitive data by private individuals or public bodies must be managed in manners that comply with citizens' rights and freedoms. Article 1 of the legislative decree reaffirms the importance of the right to the protection of one's personal data, while Article 3 concerns the principle of necessity, which requires information systems to minimise the use of personal data, favouring the use of anonymous data. Moreover, in relation to the processing of personal data, the legislation sets limits on the use of personal data, especially sensitive data. These provisions obviously apply not only to citizens but to anyone living within the Italian territory, including stateless persons, migrants, refugees and asylum seekers. The Code grants significant rights: they must be informed about the existence of personal data concerning them and about the purpose of its use; their data can be updated, corrected, or deleted if it violates the

[43] J. Jiang, E. Erez, Immigrants *as symbolic assailants: Crimmigration and its discontents*. International Criminal Justice Review, *28*(1), 2017, pp. 5–11.

law or if there is no need to store it. Under Article 13, it also requires the signing, in specified cases, of a privacy policy. The law requires that the data subject must be informed (orally or in writing) of the purposes of the processing and subjects to whom the personal data may be communicated, and of whether its processing is mandatory or optional. [44]

1.6.6 The Italian Criminal Code: Article 595

The Italian Criminal Code indicates sanctions punishing defamation under Article 595. It establishes that perpetrators who knowingly offend and harm others' reputation, by communicating with other people, shall be punished with imprisonment or shall pay a fine. The crime is aggravated if the offence consists of attributing a specific fact, if it is committed through the press, other media or in a public act. In these cases, the subject is punished with more severe penalties or higher fines. Such penalties might be increased in case the subject offended is a political, administrative or judicial body, or its representative, or a collegiate authority. [45]

1.6.7 General Data Protection Regulation

The General Data Protection Regulation (GDPR) is the EU's new data protection law, which came into force in 2016. Despite the fact that it was drafted and passed by the European Union, it sets out requirements for organisations all around the world that collect and process the data of EU citizens or residents. Its main purpose is to ensure the safe exchange, storage, and treatment of personal data. The GDPR imposes harsh fines in cases of violations of privacy and security standards. Its principles become extremely relevant when journalists and digital platforms manage photos, biometric data, and personal stories concerning migrants, who find themselves in vulnerable conditions and can hardly express their explicit consent. Personal data that reveals racial or ethnic origin is particularly sensitive. For this reason, it is highly protected as its processing could infringe other fundamental rights and freedoms, and often at the expense of public safety. They cannot be processed unless the subject gives his or her explicit consent, for reasons of public interest, or to carry out legitimate activities.
It represents an update of the 1995 Directive, which was deemed necessary following the invention of the Internet and of the main social media platforms. Big Tech companies, including Meta, Google, and Microsoft, thanks to their concentration of power, significantly influence how people access and interact on the internet, how they search and share information, and participate in society. As reported by the briefing, 'Breaking up with Big Tech' by Amnesty International, Meta and Google extract private data from their users so that they can provide them with highly personalised content. This

[44] Legislative Decree of 30 June 2003, No. 196, *Codice in Materia di Protezione dei Dati Personali*, *Gazzetta Ufficiale della Repubblica Italiana*, No. 174.
[45] Art. 595, Codice penale, 1930

intrusive practice, known as *profiling,* might interfere with their right to privacy and their right to information integrity, due to content takedowns and algorithm bias. Thus, human rights are negatively affected.[46]

According to the protection and accountability principles set forth in Article 5, the processing of data must be:

1. lawful, transparent and fair to the data subject
2. justified by legitimate purposes made known to the data subject
3. adequate, which means only a limited quantity of data can be collected
4. accurate and updated, otherwise personal data must be erased or promptly rectified;
5. stored for no longer than is necessary for the specified purpose (public interest, scientific or historical research purposes, or statistical purposes)
6. processed in a way that ensures the security, integrity, and confidentiality of personal data, protecting it against unlawful processing, accidental loss, destruction, or damage, through end-to-end encryption, for example.

Article 9 of the Regulation concerns the processing of specific categories of personal data that can be profiled only under specific circumstances and for specific purposes: carrying out employment law obligations, requesting social security and social protection, for legitimate activities, the exercise or defence of legal claims, and reasons of substantial public interest. Individuals should be given a privacy notice if their information is collected, that justifies the reasons for processing their data. Otherwise, it could cause physical, material or non-material damage, including discrimination, identity theft, fraud, pecuniary loss, damage to reputation, or other serious disadvantages, especially when it concerns vulnerable individuals, such as migrants or minors. Thus, the processing of genetic data, biometric data solely aimed at identifying a person, data concerning health or a person's sexual orientation is prohibited, to prevent the violation of other rights and discriminatory consequences on the person due to his/her racial or ethnic origin, sexual orientation, political opinion, or religious belief.

Controllers must ensure that data is corrected, handled fairly, and comply with such obligations.

Article 17 regulates the 'right to be forgotten'. Personal information that is accessible online should be deleted if no legitimate grounds justify its retention. In the Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González case, the Court of Justice of the European Union held that search engine operators are required to remove personal data

[46] Amnesty International, *Breaking up with Big Tech*, Amnesty International Ltd, 2025

found on third-party websites, if this is found to be 'inaccurate, inadequate, irrelevant or excessive for the purposes of the data processing". [47] The Court ruled that individuals can request search engines to remove personal data from search results in the aforementioned circumstances. The case involved the citizen Mario Costeja González, who requested the removal of old Articles about a past debt from Google search results.[48] In the context of migration, migrants can request to erase irrelevant or outdated personal data from online searches, databases, and directories, for example, the removal of old criminal records or minor convictions, though balancing privacy with public interest and freedom of information. They often escape wars, persecutions, and disclose their stories of survival to authorities. The visibility of this information online could infringe their possibility to find employment and housing, that is why it is important to grant them the option to set it aside, to enhance their integration into the society and the access to social services and opportunities. Such sensitive information should not be stored if inappropriate, irrelevant or no longer needed for the original purpose, if consent has been withdrawn or if other legal reasons justify its removal from public visibility. Data retention should not extend beyond what it is relevant to assess the refugee or asylum status. This possibility allows them to gain control over the dissemination of sensitive and damaging information, shape their personal narrative, move on from past issues and start a new life in a new community. Moreover, it helps them to restore their dignity, self-esteem and self-determination. The GDPR has implications for media professionals and platforms, as it constrains them to process this data lawfully and ethically.

1.7 EU AI ACT (Regulation 2024/1689)

The EU AI Act is part of the global legal framework on the use of systems of artificial intelligence. This Act grants different degrees of protection, depending on the situation, and focuses on the subjects responsible for the protection, namely, providers and deployers. Artificial intelligence systems are classified according to their risk degree. According to Article 5, some systems are totally prohibited and cannot be implemented by anybody. These AI systems manipulate people's decisions, exploit their vulnerabilities (age, disability, socio-economic vulnerabilities) to distort behaviour significantly, categorise, evaluate them, and predict their risk of committing a crime through biometric categorisation (interfering with sensitive attributes like race) and facial recognition. These systems, unless they are used for law enforcement purposes, such as looking for a missing person or preventing terrorist attacks, can put at risk individuals' safety, health and rights, and encourage discrimination

[47] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data (GDPR), Art. 5, OJ L 119, pp. 1–88
[48] Court of Justice of the European Union, *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos* (AEPD), Case C-131/12, 13 May 2014

towards them. Annexe III outlines high-risk systems used in migration and border control that threaten migrants' dignity and privacy, deprive them of liberty and may lead to their pervasive surveillance or arrest. It proves the significant power imbalance between immigration authorities and migrants. Competent public authorities, Union institutions, bodies, offices or agencies may employ AI systems such as polygraphs to determine the truthfulness of applicants' statements, forcing these individuals to undergo assessments of their pain. In other case, they evaluate security or irregular migration risks or health risks posed by the individual who wants to enter into the country on the basis of his/her personality traits, characteristics or past criminal behaviours, Such analysis is based on statistical patterns and automated data, unjust and discriminatory, that once more erode their personal identity and right to a fair evaluation and to an effective remedy, as they cannot easily challenge decisions based on non-transparent AI processing. However, these tools are used to examine applications for asylum, visa or residence permits and complaints on the eligibility of the applicants and the reliability of the evidence provided. Moreover, AI is used to detect or identify persons at the border by analysing their biometric data. This is directly connected to the Eurodac system, as migrants' features are digitally recorded and stored even without their full consent.[49] Therefore, the protection of migrants' personal data is a legal imperative to prevent their dehumanisation.

1.8 Conclusion

In conclusion, this first introductory chapter aimed at delineating the juridical framework necessary to understand the migration phenomenon and asylum as well. It mentioned fundamental legal tools that collectively intend to protect both migrants and asylum seekers worldwide, safeguarding their rights and reaffirming the principles of human dignity, equality and non-refoulement: from the Universal Declaration of Human Rights to European Treaties and Italian legislative decrees. However, migrants' rights are increasingly threatened by the new digital systems, as the EURODAC database and other border control technologies are classified as "high-risk" under the EU AI Act. The pervasive collection of their sensitive data makes them hyper-visible and hampers their fundamental human rights, in particular their right to privacy and anonymity.

Moreover, the implementation of such rights that preserve the human dignity and privacy of this group of people may clash with other rights, such as the right to expression and information, leading to an "opposite dynamic", due to the exposure of their personal data, images, and private stories that may compromise their reputation. In this regard, the following chapters intend to explore how

[49] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (EU AI Act), OJ L 1689.

migration and asylum are covered and represented in the media to adjudicate whether they are protected in the public sphere. This tension between the right to inform and the right to privacy is at the core of the second chapter, dedicated to freedom of expression and on the assessment of restrictions, to determine if media comply with the legal obligation to safeguard the dignity and privacy of asylum seekers, refugees and migrants.

CHAPTER 2 - THE RIGHT TO FREEDOM OF EXPRESSION AND ITS LIMITS

2.1 Introduction

Chapter 1 outlined a general overview of migration, exploring relevant definitions, as well as its regulatory framework on the entry and admission of immigrants and underscoring the imperative of protecting their dignity and privacy, often undermined in public debate and media narratives. The present chapter intends to focus on the importance of freedom of expression and on the necessity of restrictions when the exercise of this right interferes with other human rights.

The first part illustrates the reasons why freedom of expression represents a pillar of democratic societies, by mentioning the thought of well-known philosophers such as John Stuart Mill and Karl Popper. And then it provides an overview of several legal tools safeguarding it. At the global level, through the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, while within Europe, some instruments include the European Convention on Human Rights, the EU Charter of Fundamental Rights. Additionally, the emerging European Media Freedom Act is one of the most advanced systems for protecting freedom of expression and media independence. Then, the analysis turns to the Italian legal framework, with particular reference to the Italian Constitution.

Moving on to the second part, it illustrates how, due to the development of the Internet, new challenges have emerged, since it seems particularly difficult to regulate freedom of expression in the online environment where everybody can express themselves, and quickly and easily share any opinion, even if offensive. As will be further discussed, this freedom may be limited only in a few legitimate instances, such as when interfering with other fundamental rights, for example, the right to privacy and the protection of reputation. The persistent tension between these rights lies at the core of the present work: when covering migration-related issues, the media invoke their right to inform the public, even if that implies harming the dignity, image and private life of the subjects involved. Migrants, refugees and asylum seekers frequently find themselves in a vulnerable condition that requires enhanced protection. Their personal data, images, and stories might be exposed through several channels and media, even if such information should not always be disclosed. In this context, the chapter addresses the consequences of rights violations, such as defamation and the proliferation of hateful content. Hate speech is regulated through key documents that underline that any form of discrimination is strictly prohibited, disproportionately affecting vulnerable groups, such as migrants and asylum seekers. Moreover, the dissemination of false or misleading statements easily fosters social hostility, discrimination and exclusion, especially when these negative narratives are amplified by the media and legitimised by political figures. Due to Artificial Intelligence technology, it has

become increasingly challenging to recognise and distinguish between false and truthful content. For this reason, it is essential to develop new provisions to regulate online communication and interactions. Therefore, the challenge lies in understanding, on the one hand, how to safeguard the right of expression and, on the other, when and how to impose proportionate limitations.

Finally, the chapter concludes by examining the pivotal role of the media, precisely digital platforms, and of political actors in affecting how facts and news are perceived, discussed and represented in the public sphere. Through strategic communication practices, linguistic choices and discursive frames, migration is not merely described, but framed through specific narratives, influencing public perception of migrants in our societies and the implementation of related policies. This chapter provides the regulatory framework and theoretical basis for the analysis of journalistic coverage of migration in the next conclusive chapter.

2.2 The importance of freedom of expression

The right to freedom of expression is a cornerstone right that must be granted to every human being, anywhere in the world. Speech freedom, aside from contributing to the self-fulfilment of the individual, constitutes the basic pillar of a democracy, where citizens should have the possibility to form and freely express their own thoughts and opinions on any matter, to vote and actively participate in the decision-making process, without being constrained by authorities. As the Court held, *freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man*. [50] As a matter of fact, a fair and effective democracy is based on confrontation, which means exchanging opinions and information to facilitate its progress and development and to establish the truth by listening to other sides of a story and competing ideas. The paramount importance of intellectual confrontation and of the 'marketplace of ideas' is emphasized in John Stuart Mill in his most influential work *On Liberty.* He claimed that silencing an opinion represents a "peculiar evil" as it robs individuals of a potential truth. In the instance in which this opinion is correct, then "they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error." However, even true opinions should be frequently challenged, otherwise they risk degenerating into "dead dogmas".[51] As argued by Bakircioglu, people need to challenge their own beliefs, instead of believing only dominant messages within a society, or those that serve unconscious, irrational needs.[52]

[50] ECtHR, *Handyside v. United Kingdom*, 7 December 1976, No. 5493/72, §49

[51] J. S. Mill, *On Liberty*, Batoche Books. Kitchener. 2001.

[52] O. Bakircioglu, *Freedom of Expression and Hate Speech*, 16 Tulsa J. Comp. & Int'l L. 1, 2008

Freedom of expression is necessary to allow public debates to take place, allow people to criticise something or somebody, share information and news. In independent countries people have the opportunity to vote, there are opposition parties and the press is free, therefore government actions can be questioned. Democratic pluralism allows people to express themselves and propose measures to face catastrophes. On the contrary, as argued by Amartya Sen, free speech is not normally granted in authoritarian regimes, primitive tribal communities, technocratic dictatorships, colonial economies run by imperialists, in newly independent countries run by despotic national leaders or by intolerant single parties, where people are silenced, and political opponents are suppressed. Repression underpins other vital rights, such as the right to freedom of religion, conscience and thought, and prevents citizens from reaching better conclusions, harming society as a whole. In this regard, freedom of expression plays a leading role in protecting other human rights, as they are interdependent and indivisible, proving this by stating that "no famine has ever taken place in the history of the world in a functioning democracy". [53] Hence the fulfilment of one affects the other. [54] Individuals should always have the opportunity to voice their concerns, especially when expressing their dissent, dissatisfaction, anger, and striking prejudices and preconceptions. And thereby, they might induce societal and political changes. In this regard, Mill highlights in Chapter 3 of his work that individuality is one of the essential elements of well-being and personal growth. Freedom of expression is extremely important, specifically for vulnerable categories, including women, homosexuals, and migrants, who appear to be the main targets of hateful and discriminatory speech and behaviours. For Mill, every voice and every individual counts and contributes to the progress and flourishment of a society: "the worth of a State, in the long run, is the worth of the individuals composing it". [55]

The right to freedom of expression applies also to words that shock, offend or disturb. Only an extremely limited number of expressions can be banned from the political and social debate, according to specific criteria that will be discussed later. In this context, Mill introduces the so-called "harm principle", based on the belief that the only legitimate reason for restricting liberty by exercising power over another member of a society, against their will, is to prevent harm to others. Then the government is allowed to interfere with an individual's expression when their opinions or actions harm others and constitute a "positive instigation to some mischievous act", therefore they lose their immunity.[56] In this context, Karl Popper formulated two remarkable paradoxes in his work

[53] A. Sen, *Development as Freedom*, Alfred A. Knopf, Inc, 1999, pp. 152-53,
[54] D. Gomien, *Short Guide to the European Convention on Human* Rights. Council of Europe, Strasbourg, 1998
[55] J., S. Mill, *On Liberty*, Batoche Books. Kitchener. 2001
[56] *Ibid*

The Open Society and its Enemies: the paradox of freedom and the paradox of tolerance. The so-called "paradox of freedom" questions whether freedom should be absolute or not, claiming that, if unrestrained, it might lead individuals to cause damage to others (*it makes the bully free to enslave the meek*). While the "paradox of tolerance" is based on the idea that unlimited tolerance inevitably would lead to the disappearance of tolerance itself. He argues that a tolerant society must be tolerant towards everyone except towards intolerants, as the diffusion of certain ideas can hinder the democratic system and violate the rights of others. Consequently, they cannot be tolerated and justify legal restrictions. In his views, incitement to intolerance should be prosecuted as criminal. Thus, Popper warns against the dangers of unlimited tolerance and the necessity of responsibly exercising the right to freedom of expression to safeguard the very democratic values that enable it.[57]

2.3 International legal framework

The main global human rights instrument protecting freedom of expression is the Universal Declaration of Human Rights (UDHR). It sets forth fundamental human rights and freedoms to which all individuals are entitled. Within the global legal framework, the International Court of Justice (ICJ) and the International Criminal Court (ICC) are two international judicial institutions. They embody the commitment to the legal resolution of disputes and account for human rights violations through advisory opinions and judgments. Both play a pivotal role in interpreting and applying international human rights law. Many other human rights treaties and declarations grant such a right. In Europe, these include the European Convention on Human Rights and the EU Charter of Fundamental Rights. In Africa, the African Charter of Human and Peoples' Rights; in the Americas, the American Convention on Human Rights; and in the Asia-Pacific region, the ASEAN Human Rights Declaration. In each region, tailored protection mechanisms, more or less advanced, offer individuals and groups the possibility to seek remedies for human rights violations by bringing their cases before regional courts. For instance, the Human Rights Council is a UN intergovernmental body that protects human rights worldwide. The Inter-American Court of Human Rights serves the Americas; the African Court on Human and Peoples' Rights serves the African continent; and the European Court of Human Rights operates in Europe. All these courts are entitled to hear and adjudicate cases. They issue binding decisions and can award reparations to victims. These instruments are efficient, as they adapt to their regional contexts by complementing the global human rights framework and reinforcing universal principles. This demonstrates that human rights tools evolve to address new challenges. [58]

[57] K. R. Popper, *The Open Society and its Enemies*, Note 4 to Chapter 7. George Routledge & Sons, 1945
[58] European Parliament, *The role of regional human rights mechanisms*. European Parliament, 2010

Regional human rights instruments complement the universal framework by addressing the needs and contexts of their regions, by establishing specific courts and treaties to safeguard human rights, reflecting the historical, legal and cultural peculiarities of their states. In fact, despite the existence of the UDHR and of the ICCPR, it was deemed necessary to create other regional instruments which could be more effective towards the protection of human rights within Europe, as the UN seems to be quite far from the specificity of the European situation. Hence, in this region, the main tool protecting freedom of expression is the European Convention of Human Rights (ECHR). Within this context, the European Court of Human Rights (ECtHR) is a tribunal which has the competence to condemn a single state for violating a fundamental right expressed in the Convention. This international court was established in 1959 through Article 19 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("*to ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols*"). This judicial order assesses whether a certain state is responsible for committing a violation towards citizens (Art. 34 on individual applications), NGOs, groups or other states (Art. 33 on Inter-State cases). [59] Its judgments are binding on member states. [60]

Within the European legal framework, this right is protected through two main instruments: the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights.

2.3.1 Universal Declaration of Human Rights: Article 19

The Universal Declaration of Human Rights (UDHR) is considered the cornerstone of modern human rights law. As clarified by Brown, it was originally formulated as "soft law", therefore it was not legally binding. However, it has since been complemented by two covenants that have binding value on the States that ratify them: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Moreover, many of its provisions have become part of customary international law. As a matter of fact, it should not be understood as a static document, but as an enduring instrument whose principles continue to shape contemporary human rights law and respond to new global challenges, including the transformation of communication in the digital era.[61] It broadly protects the right to freedom of expression, specifically in Article 19:

[59] European Convention on Human Rights, 1950
[60] European Parliament, *id.,* 2010
[61] G. Brown, *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*, Open Book Publishers, 2016, pp. 29-38,

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." [62]

This Article underlines the possibility for every individual to speak up, search and receive information thanks to different channels and beyond territorial borders. It also highlights that any illegitimate interference is prohibited. Although the UDHR sets an inspiring universal standard, its real enforcement depends on state compliance, which may remain inconsistent.

2.3.2 The International Covenant on Civil and Political Rights: Article 19

The International Covenant on Civil and Political Rights (ICCPR) is one of nine UN Human Rights Treaties. It builds on the UDHR and provides a legally binding framework for the protection of the rights enshrined in the Declaration. This treaty further develops the civil and political rights and freedoms set forth in the Declaration. It was adopted by the United Nations General Assembly in 1966 and then entered into force in 1976. To this day, it has been ratified by 174 states that are bound to safeguard the civil and political rights included within and comply with specific obligations.[63] It encompasses several crucial rights, ranging from the right to life to the prohibition of torture and slavery, from the right to liberty of movement to the right to freedom of expression, herein mentioned. Every State party is required to implement the Covenant and its provisions through concrete action, domestic legal rules, administrative practices and judicial decisions in a consistent manner with the guidance provided by the Committee. However, they may derogate from their obligations in case of public emergency, as set forth in Article 4.[64] Even if this latter does not explicitly state that freedom of opinion cannot be derogated, according to the Committee's opinion it shall not be subject to lawful derogation.[65] The Human Rights Committee is the body that monitors compliance with the ICCPR, which assesses complaints from individuals alleging rights violations within States that have ratified the Covenant, only after exhausting every domestic remedy. [66]

The right to freedom of expression is enshrined precisely in Article 19 of the Covenant:

"1. Everyone shall have the right to hold opinions without interference.

[62] UN, Universal Declaration of Human Rights, 1948
[63] UN, *International Covenant on Civil and Political Rights*. United Nations Treaty Series, vol. 999, p. 171 & vol. 1057, 1966, p. 407
[64] I. Bogdanova, *Unilateral Sanctions in International Law and the Enforcement of Human Rights*, Brill | Nijhoff, 2022, chapter 3
[65] UN Human Rights Committee, *General comment No. 29*, *States of emergency (article 4): International Covenant on Civil and Political Right,* Geneva, 2001
[66] International Covenant on Civil and Political Rights (ICCPR), 1966

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
(a) For respect of the rights or reputations of others;
(b) For the protection of national security or of public order (ordre public), or of public health or morals." [67]

To provide an accurate analysis of the aforementioned Article, it would be necessary to consult the General comment No. 34 elaborated by the UN Human Rights Committee in 2011. Paragraph 1 underlines that the right to hold opinions, that is absolute and cannot be infringed and it implies that one can freely and whenever change their opinion. Any opinion is protected, be it political, scientific, historical, moral or religious. The holding of an opinion cannot be criminalised, this means that nobody can be arrested, imprisoned, harassed, intimidated for it, as it would be incompatible with this paragraph. Therefore, any form of coercion is prohibited, and no one can be forced to express or not express their thoughts. Additionally, it indicates that freedom of expression, embedding the right to be informed, must be guaranteed in any case and territory, and that it can be exercised through any media. It comprises a wide range of forms of expressive activity, either written or oral, sign language, non-verbal expression. That embeds political discourse, canvassing, journalism, cultural and artistic expression, teaching, religious discourse, commercial advertising. While means of expression would include books, newspapers, pamphlets, posters, banners, clothes, as well as audio-visual and digital modes. The right to information is of paramount importance, as it provides people with the tools to engage in a democratic society and efficiently control public administration. In this regard, the media shall not be censured, its freedom to report and impart information must be guaranteed in order to fully enjoy the Covenant rights. It shall be allowed to comment on political and public issues. While the public has the right to receive such information, including ethnic or linguistic minorities, that requires the media to be independent and diverse. This right applies not only to traditional means of communication, but also to new emergent technologies that have created a global network and revolutionised communication practices. Internet and electronic information dissemination systems

[67] *Ibid*

too should be free to impart information, while its users must be granted access to it. Public broadcasting services should operate in an independent manner, free of State impositions. [68]

Paragraph 3 concerns cases in which freedom of expression could be restrained. As established by the UN Human Rights Committee, restrictions must be carefully considered and are permitted only if they comply with these strict requirements. They are aimed at protecting the rights or reputation of others (individuals or members of a religious or ethnic community), public order, national security, public health or morals. A restriction must be lawful; this means that it must be provided by laws of parliamentary privilege or laws of contempt of court. This does not include those enshrined in religious, traditional or customary law. Laws must be precise, to correctly guide who must execute them and help them recognise what type of expression can be limited. The rights and freedoms contained in this Covenant cannot be destroyed or further limited, therefore limitations are not allowed on grounds not specified in this paragraph. This paragraph cannot be invoked for justifying the suppression of information of public interest that does not put the nation in danger or the prosecution of journalists, human rights activists, or researchers responsible for its dissemination. In this regard, States parties should introduce measures to prevent attacks or attempts to suppress this freedom. Moreover, any restriction must be "necessary", conform to the principle of proportionality and legitimate; therefore, States are required to demonstrate the existence of a potential threat caused by the expression. [69]

2.4 The European Convention on Human Rights (ECHR)

Originally, human rights were not included in the European Union system, mainly created to promote the free economic exchange of goods in Europe. However, later, thanks to the Convention, their protection became pivotal for every EU member state. The European Convention on Human Rights is an instrument in conformity with the body of international law that contributes to the enforcement of human rights and is particularly significant within the EU legal order. As a matter of fact, its importance has been codified in EU primary law, becoming the most influential instrument, a 'living instrument', interpreted by the European Court of Human Rights. [70]The Convention provides a broad definition of freedom of expression, to which the Court attaches particular importance, regarded as essential in a democracy: "*freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention*". [71] Its articles can be applied even

[68] Centre for Civil and Political Rights, *Simple Guide on the International Covenant on Civil and Political Rights (ICCPR)* 2021
[69] UN Human Rights Committee, *General comment No. 34; Article 19 — Freedoms of Opinion and Expression,* 2011.
[70] J. Wouters & M. Ovádek, *The European Union and Human Rights*, Oxford University Press, 2021
[71] ECtHR, *Lingens v. Austria*, 8 July 1986, No. 9815/82, § 42.

against the will of single states. Every Contracting State is obliged to secure the rights enshrined in the Convention but enjoys a certain margin of appreciation since it is free to choose the modalities through which to meet its obligations, considering its domestic legal systems as well as the cultural, political and economic situation of its territory. Nonetheless, they must comply with specific minimum standards set by the Convention, aimed at making sure they effectively protect these rights.

2.4.1 Article 9

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."[72]

Freedom of thought, conscience and religion is one of the cornerstone rights of an effective and pluralistic democratic system, as underscored by the Strasbourg Court, since it allows believers to freely express their identity. Religion is regulated by several provisions of EU primary law, with the objective to fight discrimination. They also reflect the concerns of the Member states where religion occupies a prominent place in society. EU primary law therefore protects both religious freedom (under Article 10 of the Charter) and religious diversity (under Article 22). [73]

Some experts recognised three dimensions of the right to freedom of thought, conscience and religion, since it implies the freedom to hold an idea or adopt a belief (*internal dimension*), to practise and manifest it through symbols or specific clothes (an *external dimension*) and to create religious entities where to gather with other believers (a *collective dimension.*). One can manifest a religion or belief either in private and in public, through certain acts such as rituals, ceremonies, formulae and symbolic objects, or clothes such as headscarves (that have been at the centre of many contemporary debates). But also, by customs that include observing the holidays, days of rest, dietary restrictions. Therefore, there are endless ways to manifest it. Unlike the first dimension which is absolute, the other two may be restrained since it is not possible to protect any act inspired by a religion or belief. Moreover, as observed by the UN Human Rights Committee, commenting on article 18 ICCPR on religious

[72] Art. 9, ECHR
[73] J. Wouters & M. Ovádek, *The European Union and Human Rights*, cited above

freedom, both traditional religions and newly established religions or minority religions deserve equal protection and, therefore, any discrimination against them is not allowed. [74]

Religion is one of the essential elements that distinguish a community from another, in particular religious minorities whose right to manifest their beliefs needs to be safeguarded. Any restriction, as stated in paragraph 9 (2), must be prescribed by law and necessary in a democratic society to safeguard public interest, such as safety, public order, health or morals or protect other rights and freedoms. However, this provision does not mention national security, unlike others enshrined in the Convention. In a pluralistic society, characterized by multiple religions, it may be necessary to impose restrictions to "reconcile the interests of the various groups and ensure that everyone's beliefs are respected". [75] For instance, anti-abortion activists cannot invoke religious reasons to justify their right to protest in front of a clinic. Moreover, according to the Court, some security measures are justifiable and, therefore, rejected the alleged violation of freedom of religion reported by a Sikh who was required to take off his turban at the airport to pass a security check. [76] Neither can any regime or political movement based on religious fundamentalism be accepted by the Convention, as it diverges with its core values. Furthermore, this article imposes some 'positive obligations' on authorities who must guarantee the peaceful enjoyment of these rights to believers and act if some extreme measures may inhibit them. The exercise of religion within a community is based on the principle of autonomy, guaranteed by this Article, free from any arbitrary interference by the State. Authorities are allowed to intervene only when tensions arise involving different communities, but they must do so by ensuring tolerance between them, and not by suppressing pluralism. Additionally, according to the principle of neutrality, they are expected to be neutral, and this implies forbidding religious advertising and ensuring that broadcasting media are objective, otherwise this would benefit a religion over another. [77] Limitations may be imposed also on the so-called "sects" and "cults", that may carry out dangerous or illegal activities or engage in proselytism, through coercion, manipulation or brainwashing. Here the challenge resides in the fact that on the one hand, their freedom of thought, conscience and religion must be preserved, whereas on the other their possible illicit or criminal activities need to be fought.[78]

[74] EU Network of Independent Experts on Fundamental Rights, *Commentary of the Charter of Fundamental Rights of the European Union,* 2006
[75] ECtHR, *Kokkinakis v. Greece,* 25 May 1993, No. 14307/88, §33.
[76] ECtHR, *Phull v. France*, 11 January 2005, No. 35753/03
[77] ECtHR, *Murphy v. Ireland*. No. 44179/98, 10 July 2003, §67.
[78] EU Network of Independent Experts on Fundamental Rights, *Commentary of the Charter of Fundamental Rights of the European Union,* cited above

2.4.2 Article 10

Article 10 of the Convention protects the right to freedom of expression:

"1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises."[79]

It is deemed important to highlight keywords implemented in this Article. [80] Firstly, the fact that the word "everyone" is used is important because it stresses that everybody is granted this right (even an asylum seeker, a refugee): citizenship is not required to be under the protection of this Article, hence even non-EU nationals are granted this right. It is rooted in the dignity of every single person. It protects both individuals and legal entities. Secondly, this right is granted "regardless of frontiers", without territorial limits. Thirdly, the clause "without interference by public authority" indicates that this right cannot be restricted by authorities if such interference is not justifiable. In debates on migration, freedom of expression is a right of paramount importance since the media often invoke this Article to justify the publication of images or information on migrants that, however, may compromise their dignity and right to privacy.

Other rights are directly connected to freedom of expression, as implicitly the right to remain silent, to refuse to speak, and others as stated in the first paragraph. For instance, the freedom to receive and to impart information and ideas needs to be safeguarded as well, as it might risk being limited by governments in some countries. This means that, on the one hand, the media must have the freedom to report information: the radio, television and other means of broadcasting must have the freedom to communicate to their audience, produce and distribute information and ideas through several forms, that can be visual (images, videos, films), auditory (radio broadcasts, podcasts) or non-verbal means (gestures, facial expressions). In this regard, the Court has recognised that this Article protects "means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information". [81] Moreover, it protects both substance (the content) and form of the ideas and information expressed[82]: political speech, discussions on matters of public importance, artistic expression, information of a commercial nature, and entertainment. All these forms are granted different degrees of protection. According to this hierarchical structure, for instance, discussions on matters of public importance must be granted the highest protection. As the

[79] Art. 10, ECHR
[80] ECtHR, *Guide to Article 10 of the Convention – Freedom of expression*. Council of Europe, 2022
[81] ECtHR, *Autronic AG v. Switzerland*, 22 May 1990, No. 12726/87, §47.
[82] ECtHR, *Oberschlick v. Austria (No. 1),* 23 May 1991, No. 11662/85, §57.

Court has developed its jurisprudence, it has made it clear that an elevated level of protection is afforded to discussion of all matters of public interest – not just 'purely' political speech. Everyone is free to choose how and through what style to express themselves and convey information or ideas. On the other hand, the public must have the possibility to access accurate information referring to several sources. This Article guarantees pluralism of voices and expressions as it aims not only to protect mainstream ideas but, in particular, dissenting ideas that ensure that a democratic society continues to thrive. In this regard, the European Court of Human Rights has recognised that freedom of expression also implies employing offensive, shocking or disturbing terms, although to a certain extent, from its earliest judgements:

Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". [83]

However, the right to criticise and offend must be defined and expressed clearly, otherwise it may lead to negative outcomes: to the violation of the rights of others, to hatred, discrimination and violence; thus, it could be restricted, particularly when covering sensitive issues such as migration and asylum. Hateful speech will be discussed later on in this chapter.

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

Whereas under the ICCPR the right to hold opinion appears to be absolute, under the Convention it is not, since this paragraph claims that all the freedoms enshrined in paragraph 1 can be restrained. The Convention grants permission to States to impose a restriction on freedom of expression only if it complies with the three-part test herein established: it must be prescribed by law (including both statutory law and judge-made "law"), aims at protecting overriding interests listed above, and must be "necessary in a democratic society". All three parts of the test must be met, as if even only one is not met, then the restriction cannot be justified. Although the test seems objective, courts often interpret these requirements differently, leading to inconsistent ruling and totalitarian tendencies to

[83] ECtHR, *Handyside v. the United Kingdom*, cited above, §49.

arbitrarily restrict speech. As a matter of fact, domestic legislators and bodies enjoy a certain margin of appreciation that grants them the possibility to assess whether or not they must intervene to limit free speech. This discretion is not unlimited, underlines Mendel, as the Court must supervise States, to ensure they observe its requirements and then it gives the final ruling. [84] The Convention does not contain explicit provisions prohibiting hate speech, nor can victims appeal to the non-discrimination clause contained in Article 14. Further to this, Protocol 12 to the Convention does not prohibit discrimination by private individuals. As a consequence, in several cases, the European Commission invoked Articles 17 and 14 to condemn people who abused their rights with the aim of harming others.

2.4.3 Restrictions on the protection afforded by article 10

As discussed above, when examining a case, the Strasbourg Court can either restrict or completely exclude an objectionable statement from the protection afforded by Article 10. In the first case, the Court limits itself to restrict speech as the comment at issue does not threaten the fundamental values of the Convention. Therefore, its role consists of assessing whether an interference is prescribed by law, necessary in a democratic society and pursues a legitimate aim. As clarified by Bychawska-Siniarska, an interference is any measure, penalty, condition or restriction imposed by national authorities (including courts, prosecutors' offices, police, any law enforcement body, intelligence services etc.) that could limit the exercise of freedom of expression. In any circumstance, it is the national government that must respond before the Strasbourg Court. First of all, a restriction must be prescribed by law: this means that there must be a written and public law adopted by parliament. Moreover, freedom of expression can be limited only for the specific grounds indicated in paragraph 2. Domestic courts must apply the principle of proportionality by assessing whether the aim is proportional to the means used to reach that aim. The term "means" here indicates the interference, that is to say a measure adopted or enforced, as a criminal conviction, an order to pay civil damages, a seizure etc. The "aim" is a specific interest that the state may invoke. Any other aim that falls outside the aforementioned list is not considered legitimate. Finally, only if necessary in a democratic society can a restriction be applied; in other words, a "pressing social need" must exist. [85]

Jersild v. Denmark is an emblematic case dealt with by the Strasbourg Court in 1994. It concerned a documentary made by a journalist (the applicant). He had interviewed young members of the “Greenjackets” who employed a derogatory and abusive language to describe immigrants and ethnic groups in Denmark. Initially, the applicant was convicted by national courts for contributing to the

[84] T. Mendel, *A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights,* Council of Europe, Strasbourg, 2012

[85] D. Bychawska-Siniarska, *Protecting the Right to Freedom of Expression under the European Convention on Human Rights. A handbook for legal practitioners*. Council of Europe, Strasbourg, 2017

dissemination of these racist remarks that incite hatred against some individuals on account of their race. In this context, it is important to remark that the press plays the crucial role of "public watchdog", and when exercising it, it must comply with certain duties and responsibilities. The applicant invoked his right to Article 10 of the Convention claiming that his only purpose was to make a documentary to inform the public about this social issue. The Court, when examining his application, clearly distinguished between the "Greenjackets", responsible for the racist assertions, and the applicant, who had exposed them and sought to explain an issue of great public concern. It concluded that there had been a breach of Article 10, since he did not make the objectionable statements and dissociated himself from the persons interviewed. Therefore, there was no sufficient evidence to prove that the restriction was "necessary in a democratic society and did not comply with the strict three-part test":

the reasons adduced in support of the applicant's conviction and sentence were not sufficient to establish convincingly that the interference thereby occasioned with the enjoyment of his right to freedom of expression was "necessary in a democratic society"; in particular the means employed were disproportionate to the aim of protecting "the reputation or rights of others". Accordingly the measures gave rise to a breach of Article 10 (art. 10) of the Convention. [86]

This case illustrates the complex interplay between individual rights and societal protection, especially when dealing with sensitive issues such as ethnicities.

2.4.4 Exclusion from the protection afforded by Article 10

By looking at some cases, it is possible to remark that the Strasbourg Court tends to apply Article 17 predominantly in cases of extremely violent offences, when freedom of expression is indeed abused and the comments amount to hate speech and are excluded from the protection of the Convention, since they seriously undermine its very core values.

Article 17 - Prohibition of abuse of rights

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."[87]

Article 17 is negative in scope, since it negates the exercise of the rights enshrined in the Convention that the applicant vindicates before the Court. The goal is to prevent the exploitation of the provisions contained in this text, through actions or behaviours that undermine the freedoms and rights of human

[86] ECtHR, *Jersild v. Denmark*, 23 September 1994, No. 15890/89, §37
[87] Art. 17, ECHR

beings, that are incompatible with the Convention and with democracy and other fundamental values, and as a result they are not protected. These values include justice and peace, effective political democracy and free elections, peaceful settlement of international conflicts and sanctity of human life, tolerance, non-discrimination, gender equality and coexistence of members of society free from racial segregation. These core values would be destroyed if these actions were allowed. It is considered "abuse" when one harmfully exercises a right in a consistent manner or contrary to the purpose for which such right is granted. State parties retain certain discretion to determine whether a conduct constitutes an abuse by analysing the aims pursued by the applicant that must be compatible with those enshrined in the Convention. Article 17 prohibits acts that amount to hatred, violence, xenophobia and racial discrimination, anti-Semitism, islamophobia, terrorism and war crimes, negation and revision of established historical facts, contempt for victims of the Holocaust, of a war and/or of a totalitarian regime, totalitarian ideology and other political ideas incompatible with democracy. To assess whether an applicant pursues one of the aims inhere prohibited, the Court needs to consider the "main content", as well as the "general tone" or "general tenor" of his/her acts (M'Bala M'bala v. France). The "immediate and wider context", including location and timing of the act, is also extremely relevant in order to distinguish between shocking and offensive actions or words that are protected by the Convention and those that undermine the right to tolerance in a democracy. Furthermore, the Court must consider whether this act targets a particular group that requires enhanced protection, such as racial or gender minorities, due to its marginalisation and victimisation. And finally, whether the impugned act relates to critical issues in today's society, namely the preservation of people's dignity, and its impact. [88]

Hence, it is crucial to act against potential abuses by individuals that justify them by claiming to exercise their rights and relying on the Convention, despite being clearly at odds with the core principles underpinning the document.

2.5 The EU Charter of Fundamental Rights: Articles 10 and 11

The EU Charter is another legal instrument that comprises a wide range of political, social, economic and civil rights found in the case law of the Court of Justice of EU, as well as in the Convention and in other international instruments. Drawn up in 2000, initially it was not legally binding, then in 2009 with the Lisbon Treaty it acquired legal status. It was created to consolidate fundamental rights that are applicable at the EU level into a single text, encompassing some provisions that cannot be found in the Convention, and it provides guidance on their scope; hence, it is considered more comprehensive. The normative status of the Charter is higher than all EU legislation and national

[88] ECtHR, *Guide on Article 17 of the Convention – Prohibition of abuse of rights*. Council of Europe, updated 2025

laws. The Charter is interpreted by the Court of Justice of the European Union (CJEU) and is a modern instrument, updated throughout the decades to keep up with technological and social developments. As a matter of fact, it comprises the so-called "third generation fundamental rights", such as the right to data protection, guarantees on bioethics, and the right to good administration. [89] It protects freedom of thought, conscience and religion under Article 10 and freedom of expression and information under Article 11.

Article 10

1. "Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance."[90]

The aforementioned right is identical to Article 9(1) of the ECHR and strictly linked to the right to freedom of speech, since freedom of religion also implies the possibility of manifesting and communicating one's beliefs, which is a form of expression. Thus, these two rights are clearly interdependent. To fully guarantee the enjoyment of this right, any sort of discrimination based on religion or belief should be dealt with. In this regard, Directive 2000/78/EC was adopted to prohibit discrimination. [91] The right to freedom of expression is also connected to freedom of assembly and association (Article 12 of the Charter) that refers to the possibility of forming clubs, trade unions or political parties formed by individuals who share the same beliefs, interests or ideas, as well as to freedom to peaceful assembly, encompassing the right to protest and take part in a public demonstration or meeting.

Article 11

"1 - Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2 - The freedom and pluralism of the media shall be respected". [92]

This Article corresponds to Article 10 of the European Convention; however, it does not prevent Member states from requiring the licensing of broadcasting or television. Through this statement, the EU Charter seeks to protect the broader dimension of communication, which means the possibility of expressing basically any opinion or idea. No authority should attempt to restrain this right. The

[89] M.E. Bartoloni, *The Charter of Fundamental Rights within the EU Legal Order,* European University Institute, 2022
[90] Art. 10, Charter of Fundamental Rights of the European Union
[91] Council Directive 2000/78/EC
[92] Art. 11, Charter of Fundamental Rights of the European Union

Charter further recognises the importance of the pluralism of the media, highly protected by the following European Act.

2.6 European Media Freedom Act

In May 2024, the European Media Freedom Act, formerly known as *Regulation (EU) 2024/1083 of the European Parliament and of the Council*, entered into force. It established a new set of rules defending media pluralism and editorial independence within the EU's internal market, guaranteeing a healthy democracy, based on well-informed opinions (Art.5). Its crucial aim is to protect journalists from political, governmental or economic external pressures and interference, in order to make sure that they share reliable and unbiased information and news. In this regard, it is severely prohibited the employment of intrusive surveillance software, commonly called 'spyware' or other invasive tools that track their activities and sources and collect their data (Art. 4.3). Moreover, media service providers are required to disclose transparent information on their ownership and funding to demonstrate that they are not being corrupted through financial means (Art.6.1). Lastly, this act affirms that it is mandatory for providers of exceptionally large online platforms to notify the media service providers before the removal or restriction of the content produced by this latter, that must have the possibility to reply or appeal (Art. 18). To guarantee the implementation of the EU media law and access to pluralism of information, the European Board for Media Services was established under Article 8. [93]

2.7 The Italian Constitution: Article 21

The Italian legal system complies with the existing raft of international and regional treaties safeguarding human rights. As a matter of fact, it aims to do so by enshrining such rights in local legal texts, as the Italian Constitution, the main document of reference within the Italian legal system, which has a higher value than other legal texts. Freedom of expression is considered one of the “inviolable rights of man” by the Italian Constitutional Court, [94] strictly linked to the democratic regime. Indeed, it claimed that it is the “cornerstone of democratic order”. [95] The Court considers that this freedom is not a consequence of democracy, but its foundation: it is the circulation of ideas that leads to the affirmation of the democratic state. In fact, as Nicastro argues, the interpretation predominantly adopted by the Court was "individualistic", according to which the right to express one's thoughts is attributed to man as such and for his benefit (almost as a complement to freedom of thought), not to man as a member of a community and for the benefit of that community and its

[93] Regulation (EU) 2024/1083
[94] Corte Costituzionale italiana, Judgement No. 126/1985, 1985
[95] Corte Costituzionale italiana. Judgement No. 84/1969, 1969

values. The right to freedom of expression guaranteed by Article 21 includes both the right to inform (active) and the right to be informed (passive), as further states Nicastro. The right to information must be characterized by pluralism of sources, objectivity, impartiality, and completeness of the data provided. [96]

"Everyone has the right to freely express their ideas through speech, in writing and by any other means of communication.

The press shall not be subjected to authorization or censorship.
Seizure shall be permitted only by a measure for which reasons must be stated issued by the judicial authority, in the case of offences for which the law governing the press grants express authorisation, or in the case of violation of its provisions concerning the disclosure of the identity of those responsible for such offences.
In such cases, when it is a matter of extreme urgency and when prompt intervention of the judicial authority is not possible, periodical publications may be seized by officers of the judicial police, who shall immediately, and in any case within twenty-four hours, report the matter to the judicial authority. If the latter does not confirm the seizure order within the following twenty-four hours, the seizure shall be deemed to be withdrawn and null and void.

The law may introduce general provisions for the disclosure of the financial sources of the periodical publications.

Printed publications, public performances and any other events contrary to public decency are forbidden. The law shall provide for appropriate measures for the prevention and repression of all violations. "[97]

To begin with, this Article protects both oral and written forms of expression, as well as other means of communication. By virtue of the principle of equality expressed in Article 3, this right is guaranteed to everyone, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is recognised for citizens and foreigners alike, for individuals and social groups, and it can be exercised through any means of communication. This was made clear through the use of the inclusive and generic formula in the first paragraph, as highlighted by Bucalo.[98] To enhance this principle, the Constitutional jurisprudence is constantly evolving, gradually broadening the scope of protection to include all new means of communication, not only the press. Then, it proceeds to

[96] G. Nicastro *Libertà di manifestazione del pensiero e tutela della personalità nella giurisprudenza della Corte costituzionale*, Corte Costituzionale, 2015, p. 2
[97] General Secretariat and Research Department, *Constitution of the Italian Republic*, 2023
[98] M.E. Bucalo, *I volti della libertà di manifestazione del pensiero nell'era digitale*, Giappichelli, Turin, 2023, p.13

regulate freedom of the press, stating that press censorship is prohibited unless substantial grounds exist. Newspapers should be free to report and question the government. However, according to the Constitutional Court, any statement that incites action, apologia or propaganda is not entitled to this protection. Certain forms are considered incompatible with the constitutional order: incitement to commit a crime, justification of a crime, and subversive and anti-national propaganda. A seizure may be allowed only after the release of a statement by a judicial authority, in the case of offences explicitly authorised by the press or of violation of the norms regulating the disclosure of the identity of the individual responsible for a crime. This usually happens when covering serious crimes committed by foreigners, as migrants. Journalists tend to highlight their national or ethnic origin and publish their sensitive data, such as their name and photo, compromising their image and dignity and violating their rights to privacy. Moreover, if an emergency exists, the police authorities can act, seize the publications and warn the judicial authority within 24 hours. Article 21 of the Constitution is not an absolute and unlimited right. As a matter of fact, in the last paragraph, it expressly prohibits publications, performances and forms of expression that are contrary to public decency and constitute an offence to modesty and personal dignity. Restrictions must be imposed only by law and must be based on constitutional precepts and principles. The restriction of "public decency" is the only one expressly mentioned in the sixth paragraph. This limit does not only concern sexual morality, as the Court has interpreted it extensively with the aim to safeguard human dignity and mutual respect between individuals. Further limitations derive from the protection of rights also guaranteed by the Constitution, such as honour, reputation, personal identity, and privacy. [99] As Pace points out, privacy is the exact opposite of the expression of thought: the extension of the protection of private life entails a corresponding and legitimate restriction of freedom of expression.[100] For a restriction to be legitimate, it must be subject to a rigorous balancing exercise by the legislator.

2.8 Freedom of expression online

More than 65% of the world's population uses the Internet, a source of entertainment and platform to enhance social interactions worldwide. More importantly, it has become the main tool through which individuals exercise their right to freedom to receive and impart information and ideas, participating in discussions concerning issues of general interest. The Court has acknowledged the "public-service value of the Internet"; hence, effective measures must be taken to attain universal access to the

[99] G. Nicastro G., *Libertà di manifestazione del pensiero e tutela della personalità nella giurisprudenza della Corte costituzionale*, cited above, p. 6
[100] A. Pace in Nicastro G., *Libertà di manifestazione del pensiero e tutela della personalità nella giurisprudenza della Corte costituzionale*, cited above, p. 11

Internet and overcome the 'digital divide'[101]. The Court emphasises that "in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general".[102] For this reason, in 2014, the Council of Europe adopted the Committee of Ministers Recommendation (2014) on a *Guide to human rights for Internet users*. This provision states that Internet access must be affordable and non-discriminatory to allow everybody to read content and enjoy applications and other services. To make this possible, public authorities should implement policies to facilitate its access to citizens living in rural and geographically remote areas and low-income or disabled individuals,[103] since citizens do not enjoy free internet access anywhere in the world. Any restriction on access to the Internet represents an interference with the right to freedom of expression; hence, it must be justified and comply with the strict three-part test as established in Article 10(2) of the ECHR. Any blocking of websites or filtering must be based on a clear legal framework that ensures tight control over the scope of the ban and effective judicial review to prevent any abuse of power. The wholesale blocking of internet domains is deemed disproportionate. When assessing the necessity of bans on the Internet, the authorities must consider all the interests at stake and how its users will be affected.[104]

The case of Ahmet Yıldırım v. Turkey represents a milestone in the case law of the European Court of Human Rights regarding freedom of expression in the digital age. It concerns a Turkish academic who was unable to access his own website, hosted on Google Sites, due to a national court order blocking the entire Google domain to prevent access to another site accused of insulting the memory of Atatürk. The Court found that the block was not targeted at a single illegal content, but affected the entire hosting service, thus preventing the dissemination of entirely lawful content of public interest. The ECHR ruled that this measure constituted a violation of freedom of expression, as the total blocking of internet domains is considered disproportionate. The measure did not meet the requirement of legality (prescribed by law), as Turkish legislation did not provide a sufficiently clear legal framework to foresee and limit such an extensive and indiscriminate block. The judgment emphasized the crucial role of the internet in facilitating access to news and the dissemination of information, defining access to the internet as an essential tool for the exercise of the rights guaranteed

[101] ECtHR, *Kalda v. Estonia*, 19 January 2016, No. 17429/10, §25
[102] European Court of Human Rights Press Unit, *New Technologies*, Council of Europe, 2024
[103] Committee of Ministers of the Council of Europe, *Recommendation CM/Rec (2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users*, 2014
[104] W. Benedek, M.C. Kettemann, *Freedom of Expression and the Internet,* Council of Europe, Strasbourg, 2020

by the Convention. This case established the principle that national authorities must consider the impact of blocking orders on innocent users and cannot arbitrarily restrict access to entire domains.[105]

2.9 Balancing Rights: Freedom of expression vs the right to privacy

As previously claimed, freedom of expression is not absolute. On the contrary, it may be subject to constraints when its irresponsible practice hinders other rights, incites violence, hate or discrimination. Yet, the main challenge is how to balance the competing interests, since freedom of expression cannot always be preferred over other values, such as non-discrimination and equality. [106] In every individual case, through a contextual approach, the Court must assess what right should be protected over the other: on the one hand, to preserve people's dignity and privacy as well as social harmony, on the other, to let individuals speak up and grant media the right to inform the public. As established by the European Convention under Article 10, an interference with the right to speech freedom must be justified, and pass the three-part test, otherwise it represents a violation of such right.

Above all, the exercise of the right to freedom of expression can affect the right to privacy. According to the Court, private life is an extremely broad notion that embeds aspects relating to personal identity, such as a person's name, photograph, and physical and moral integrity. It can embrace multiple aspects of a person's physical and social identity. Elements such as gender identification, name and sexual orientation and sexual life fall within the personal sphere.[107] Private life may even include activities of a professional or business nature. The Court has also held that there is a zone of interaction of a person with others, even in a public context, which may fall within the scope of 'private life'. [108]

Privacy can be considered a necessary precondition for the exercise of freedom of expression, as it allows individuals to think independently and form their own opinions, proving the deep connection between these two rights. Privacy is also important in the context of journalism, where journalists need to protect their confidential sources of information. The Court engages in a balancing exercise between the right to freedom of expression and the right to respect for private life, both protected under the Convention and given due weight:

"The Court (verifies) whether the authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in this type of case,

[105] ECtHR, *Ahmet Yıldırım v. Turkey*, 18 December 2012, No. 3111/10.
[106] K. Boyle, 'Overview of a Dilemma: Censorship Versus Racism', in S. Coliver et al., *Striking a Balance: Hate Speech, Freedom of Expression and Non-Discrimination*, ARTICLE 19, London and Human Rights Centre, University of Essex, London, 1992
[107] ECtHR, *Axel Springer AG v. Germany*, 7 February 2012, No. 39954/08, § 83.
[108] ECtHR, *Magyar v. Hungary* [GC]), 8 November 2016, No. 18030/11

namely, on the one hand, the freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8." [109]

The aim is to achieve a balance between the two rights, and the outcome should not differ whether cases are considered through the lens of Article 8 (on the right to respect for private life) or Article 10 (on the right to freedom of expression) of the Convention.

"The Court considers that the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 10 of the Convention by the publisher who has published the offending Article or under Article 8 of the Convention by the person who was the subject of that Article. Indeed, as a matter of principle these rights deserve equal respect." [110]

The balance between the right to freedom of expression and the right to privacy is crucial, especially within the migration context. Migrants' personal names, photos, national origin and stories are considered sensitive elements that cannot be freely disclosed by the press and other media. They deserve a high degree of protection since their exposure might lead to their stigmatisation, discrimination and threats by the public. That is why it is important to impose restrictions on freedom of expression and assess whether the exercise of the right to inform hinders other rights and individuals.

2.9.1 The assessment of restrictions on the right to freedom of expression

Attaining a fair balance between the right to freedom of expression and the right to respect for private life remains a complex judicial task. In their balancing exercise, jurists must apply a set of criteria established by the European Court of Human Rights in the landmark case Axel Springer AG v. Germany in order to assess whether a restriction is justified and to take a position. The aforementioned case concerned the publication of some articles accompanied by some photos in the applicant company' daily newspaper, the *Bild*, concerning the arrest and conviction of a famous actor in possession of cocaine. The Great Chamber concluded that in this case Article 10 of the Convention had been violated and established the following six criteria that since then have become the universal standards for assessing the legitimacy of any interference with private life. To begin with, they must question whether the publication contributes to a debate of general interest. The press exercises its role of 'public watchdog' when reporting a fact that contributes to a debate in a democratic society and imparts information on matters of public interest. Statements that expose a crime or serious misdemeanour, aim to protect public health and safety, prevent the public from misleading

[109] ECtHR, *Hachette-Filipacchi Associés v. France*, 14 June 2007, No. 71111/01, § 43.
[110] ECtHR, *Axel Springer AG v. Germany*, cited above, §87

statements, or intend to expose misuse of public funds or corruption, corporate greed, report conflicts of interest [111]are strongly protected by the Court that expressed that:

The public do, in principle, have an interest in being informed – and in being able to inform themselves – about criminal proceedings, whilst strictly observing the presumption of innocence. That interest will vary in degree, however, as it may evolve during the course of the proceedings – from the time of the arrest – according to a number of different factors, such as the degree to which the person concerned is known, the circumstances of the case and any further developments arising during the proceedings. [112]

While this definition is broad enough to also include sporting issues and performing arts, the press should not overstep certain bounds when dealing with sensitive issues such as migration and asylum, that require a careful evaluation of their public interest, as stated by the Court. This evaluation also depends on the degree of notoriety of the person concerned, as private individuals, unlike public figures, enjoy the highest protection; as a result, their right to private life must be granted at all costs. Whereas public figures (as politicians, government entities) act in the public arena and thus must tolerate criticism due to their position. Migrants and asylum seekers do not voluntarily participate in the media sphere; they are not public figures and thus should not be treated as such. The subject of the report also plays a crucial role. In peculiar cases, the disclosure of details relating to the private life of public figures may be meaningful when they contribute to a debate of general interest. However, according to the *Axel Springer* jurisprudence, if the photograph or fact at issue concerning the private life of a public figure merely satisfies public curiosity, then they are irrelevant and should not be disclosed. Especially when reporting news on migrants, who are extremely vulnerable individuals, the report should not include their private details that might facilitate their identification and lead to harmful consequences.

[T]he publication of the photographs and articles, the sole purpose of which is to satisfy the curiosity of a particular readership regarding the details of a public figure's private life, cannot be deemed to contribute to any debate of general interest to society despite the person being known to the public…. Photographs appearing in the tabloid press are often taken in a climate of continual harassment which induces in the person concerned a very strong sense of intrusion into their private life or even of persecution. [113]

[111] National Union of Journalists, *Definition of the public interest.* Circular 55 to all branch secretaries from NUJ Ethics Council, London: National Union of Journalists, 2002
[112] ECtHR, Axel Springer AG v. Germany, cited above, §96.
[113] *MGN Limited v. United Kingdom*, 18 January 2011, No. 39401/04, § 143

Furthermore, the conduct of the person concerned prior to the publication is weighed: one must evaluate whether the individual had previously collaborated with the press or if such information had already been disclosed on other occasions. The integrity of the reporting is judged by the method of obtaining information and its veracity. Under the *Axel Springer* standards, journalists must act in good faith and adhere to their ethics, resorting to non-invasive methods and accountable sources to report accurate facts. Jurists also examine the content, form and consequences of the publication, considering how the person is depicted in the photograph or report, as well as the extent of its dissemination, which could be on local or even national platforms and thus reach a wider audience. In the case of migrants and asylum seekers, the publication of their name or image might potentially expose them to harm, lead to reprisals from the authorities in their country of origin or negatively affect their application for protection. Finally, the severity of the sanction imposed is another factor to consider when assessing whether the interference with freedom of expression is proportionate. [114]

2.9.2 Defamation

As mentioned earlier, the right to freedom of expression also applies to offensive, shocking or disturbing statements. Even unpopular or annoying opinions are protected, although it is crucial to clearly establish whether they are offensive or defamatory. Criticism may be allowed, unlike insults that cross the line and hence justify sanctions. Similarly to the approach taken in the balance of freedom of expression and the right to privacy, in defamation cases, the Court assesses the value of speech against another protected interest: the preservation of one's reputation. The Court attaches the two values equal weight, therefore the outcome of the case should be the same, irrespective of whether the application was brought by the plaintiff alleging a violation of his/her right to protection against attacks on reputation, or by the alleged offender. Since its first defamation case in 1986, *Lingens v. Austria*, the Court has laid down some guiding principles to establish whether an interference with freedom of expression, imposed by national courts, was 'necessary in a democratic society'. Contracting States are granted a certain margin of appreciation through Article 10 of the ECHR, since they know best the needs and characteristics of their territory, yet that does not imply their power is uncontrolled, as they are supervised by the Court. This underscores the role and strength of supranational institutions, as their task is to assess whether national courts struck a proper balance between the two rights and to give the final ruling on the restriction imposed. The Court does not always apply all the criteria, but only the most relevant for the case at issue. When evaluating a case, the Court applies specific context-related and content-related criteria. Contextual elements include first of all the position of the applicant (the person making the contested statement). Journalists and

[114] ECtHR, Axel Springer AG v. Germany [GC], cited above, §89-95.

media outlets seem to be often accused of defamation, therefore, to safeguard their freedom, any limitation must be established convincingly. The position of the plaintiff in the defamation claim (the person whose reputation is affected) is also relevant: as the Court held, ordinary individuals enjoy the highest degree of protection against defamatory statements, especially vulnerable ones; unlike public figures, including public officials, politicians and government entities that must tolerate greater criticism, as they have a public duty. This is because the Court attaches high value to political speech and to the protection of debate on issues of public interest. As a matter of fact, within a democracy, the actions or words of politicians can be scrutinised and exposed by the press and the public, as argued by the Court:

The limits of acceptable criticism are ... wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and must consequently display a greater degree of tolerance. [115]

Whereas governments must tolerate even more criticism:

The limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. [116]

Likewise, debate about officials is also entitled to heightened protection, since the Court held that:

Civil servants acting in an official capacity are, like politicians, subject to wider limits of acceptable criticism than private individuals [117]

The Court not only protects political debate, but also all matters of public interest, meaning any statement exposing wrongdoing or corruption, observing that:

while paragraph 2 of Article 10 of the Convention recognises that freedom of speech may be restricted in order to protect the reputation of others, defamation laws or proceedings cannot be justified if their purpose or effect is to prevent legitimate criticism of public officials or the exposure of official wrongdoing or corruption. [118]

[115] ECtHR, *Lingens v. Austria*, cited above, § 42.
[116] ECtHR, *Castells v. Spain*, 23 April 1992, No. 11798/85, § 46
[117] ECtHR, *Thoma v. Luxembourg*, 29 March 2001, No. 38432/97, § 47.
[118] ECtHR, *Cihan Öztürk v. Turkey*, No. 17095/03, 2009, § 32.

Moreover, large corporations expose themselves to criticism. Consequently, the limits of acceptable criticism are wider in these cases:

[L]arge public companies inevitably and knowingly lay themselves open to close scrutiny of their acts and, as in the case of the businessmen and women who manage them, the limits of acceptable criticism are wider in the case of such companies.[119]

Lastly, there are no special laws conferring the Head of State special protection against criticism, insults or other negative statements as it would be incompatible with the right to freedom of expression:

in the Court's view, could not serve as justification for affording the Head of State privileged status or special protection vis-à-vis the right to convey information and opinions concerning him. [120]

Content-related elements also play a crucial role in the Court's assessment. These include forms and means of expression, including artistic expression, like works of art or satire that may be permitted as long as they serve a legitimate purpose and encourage the exchange of ideas and opinions that is vital in a democratic society. Satire aims to provoke, by exaggerating or distorting reality. In every case, the Court must examine whether there was an interference with the right of an artist. In Bodrožić and Vujin v. Serbia, 2009, the Court stated that the article under examination was indeed humorous and not insulting:
The entirety of the second applicant's text being humorous in content and published under the newspaper's 'Amusement' column, cannot, in the Court's view, but be understood as a joke rather than a direct statement maliciously aimed at offending S.K.'s dignity. [121]

Moreover, the veracity of a statement is crucial, therefore a distinction must be made between statements of fact and statements of opinions, or value judgements. The existence of facts can be proved, unlike the truth of value judgements. Every statement should be supported by a factual basis; otherwise, it may be considered fake or defamatory. If the veracity of an opinion cannot be demonstrated, then it is considered a pure value judgement. For example, when describing the arrival of migrants as an *invasion*, if this statement is not supported by statistical data and reliable facts, it is a mere opinion. In this regard, the Court held that:

[119] ECtHR, *Steel and Morris v. United Kingdom*, 15 February 2005, No. 68416/01, § 94.
[120] ECtHR, *Otegi Mondragón v. Spain*, 15 March 2011, No. 2034/07, §55
[121] ECtHR, *Bodrožić and Vujin v. Serbia*, 23 June 2009, No. 38435/05, § 33.

a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof.

Under paragraph 3 of Article 111 of the Criminal Code, read in conjunction with paragraph 2, journalists in a case such as this cannot escape conviction for the matters specified in paragraph 1 unless they can prove the truth of their statements.

As regards value-judgments this requirement is impossible of fulfilment and it infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (art. 10) of the Convention. [122]

Journalists who cannot prove the truth of a value judgement cannot be prevented from expressing it, as this would infringe their right to freedom of expression:

It would be unacceptable for a journalist to be debarred from expressing critical value judgments unless he or she could prove their truth. [123]

The Court often must assess whether national courts handled a matter in conformity with the standards by reviewing the contested statements and the nature and severity of the penalty imposed by the domestic courts to establish whether it is proportionate.[124] On several occasions, domestic courts failed to correctly distinguish between facts and opinions, or they required defendants to prove the veracity of their opinions, being an indiscriminate approach to the assessment of speech and incompatible with article 10 of the Convention. In Gorelishvili v. Georgia, 2007, local courts violated the right to freedom of expression because "*made no distinction between value-judgments and statements of fact, referring uniformly to 'information' (cnobebi), and required that the truth of any such 'information' be proved by the respondent party."* [125]

In Karman v. Russia, a newspaper editor was found guilty of defamation by domestic courts for calling a rally organiser "neo-fascist", claiming he was a member of a neo-fascist party. However, the Court considered the contested statement as a value judgement, contrary to the Russian courts, and concluded that such statement did not exceed the acceptable limits of criticism since documentary evidence was provided by the applicant proving the plaintiff's known affiliation with anti-Semitism.[126]

[122] ECtHR, *Lingens v. Austria*, cited above, § 46
[123] ECtHR, *Dalban v. Romania*, 28 September 1999, No. 28114/95, §49.
[124] ECtHR, *Guide to Article 10 of the Convention*, cited above.
[125] ECtHR, *Gorelishvili v. Georgia*, 5 June 2007, No. 12979/04, §38
[126] ECtHR, *Karman v. Russia*, 14 December 2006, No. 29372/02, §35

Migrants are targets of many defamatory claims by both the media and ordinary individuals, as proved by a recent episode. An Italian citizen posted on Facebook a photograph portraying an immigrant family waiting in the emergency room of a hospital, accompanied/framed by a caption where he accused them of being illegal and tax evaders. First of all, the photograph was published without their consent and even portrayed minors. Secondly, the man was accused and condemned for defamation since these people were regular migrants. He defended himself invoking his right to freedom of expression and justified his caption by claiming that he only meant to criticise the government's migration policies. However, according to the Court, his statements were not truthful, and the fact reported was not of public interest. Moreover, they were harmful as they could encourage racist behaviours and compromise the dignity and reputation of these subjects, leading to their marginalisation and social exclusion. As a result, the family's children were forced to leave their school as they were constantly bullied by other students calling them *sbarcati* (boat people). [127]

2.10 Hate speech: legal framework

Hate speech is an evasive concept that embeds any statement intended to denigrate, harass or target a specific individual or group due to their gender, racial, ethnic, national, or religious identity. There is no universally accepted definition of hate speech, making it difficult to assess whether an expression should be considered hateful. Sometimes, even if words do not seem to constitute hate speech, they may still reinforce existing prejudices and encourage discrimination and attacks against minorities, damaging their reputation. Hate speech can be conveyed orally or in writing, but also, especially today, through digital means and other forms such as a flag, a monument or a logo. Migrants, asylum seekers and refugees are one of the main targets. Similarly, the media may spread stereotyped images or news about them that could be deemed offensive yet not hateful. The devastating psychological and physical consequences of hateful statements on victims include fear, loss of self-esteem and dignity, violence and lethal outcomes. As argued by Delgado, they may not always be immediate, as the harm is rather long-term: for example, as a response, society may implement immigration rules to keep the targeted group of the country. Furthermore, hate speech also negatively affects society, which becomes more intolerant and aggressive, creating a culture that targets and silences minority groups, preventing them from participating and contributing to public debates.[128] Through words and images, it fosters inequality as it leads to the demonisation, denigration and oppression of the weakest, including migrants, homosexuals, and women, who cannot always access channels of communication or seek remedies. Through communicative acts, meanings are

[127] https://www.ilsole24ore.com/art/diffamazione-dare-clandestino-e-evasore-immigrato-AFUtS5UC
[128] R. Delgado and J. Stefancic, *Understanding Words That Wound*, Westview Press, Boulder, 2004.

created and conveyed, creating a social hierarchy. As a matter of fact, MacKinnon argued that *segregation cannot happen without someone saying "get out" or "you don't belong here".* This statement proves that words are powerful, they can divide, damage and even kill, [129]they contribute to the construction of a specific social reality and are exploited to animate and control masses, as history proves, in the Holocaust and in the Rwandan genocide in 1994. The press and the radio were manipulated and strictly controlled by the ruling governments, to stir hatred against specific ethnic groups.[130] That is the reason communication must be subject to regulation on every channel, and why individuals should weigh the effects of their statements before pronouncing them. All these harmful effects, both on the individual and on society as a whole, should be considered when evaluating the necessity of restricting freedom of expression.

Hate speech is restrained and regulated through important legal tools and codes of conduct worldwide. The underlying causes, such as financial factors, historical facts, and racial origin, that lead to inequality, injustice and discrimination, should be addressed through significant economic, social, cultural, educational and democratic reforms, to create a civil society and prevent racism and hate crimes. Even if the existing legislation does not directly extinguish its roots, it might discourage hateful behaviours and manifestations by imposing sanctions on responsible individuals and preventing their destructive effects.

2.10.1 International Convention on the Elimination of All Forms of Racial Discrimination

At the international level, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), based on the belief of the inherent dignity and equality of human beings, prohibits hate speech and aims at eradicating any form and manifestation of racial discrimination that hinders the enjoyment of rights. This is essential in order to establish peaceful and friendly relationships between nations and create a climate of harmony between their citizens. This document was formulated to ban foremost colonialism, apartheid and segregation, and condemn any doctrine or policy based on racial superiority as well as racist manifestations. Its scope has been further clarified by the General Recommendation No. 35, which provides specific guidance on combating racist hate speech. According to this recommendation, racist hate speech is an elusive concept that covers not only explicit remarks, but also indirect language designed to disguise its targets. As the present recommendation underlines, it manifests through various forms, including electronic media, social networking sites, and non-verbal symbols. The Committee emphasizes that such speech disproportionately affects vulnerable groups, specifically mentioning immigrants, refugees, and

[129] C. A. MacKinnon, *Only Words*, Harvard University Press, Cambridge, 1993, pp. 12–13
[130] O. Bakircioglu, *Freedom of Expression and Hate Speech*, cited above

asylum seekers. A crucial legal point raised by the Recommendation is the complementary nature of human rights, as racist hate speech effectively seeks to silence the free speech of its victims.

Article 1 defines racial discrimination as: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." As underlined by Shirane, it sets out five grounds of discrimination, that should all be addressed comprehensively, affecting all persons who belong to different races, national or ethnic groups or to indigenous peoples. [131]Under Article 2, States Parties are required to implement effective measures and take actions in pursuance of common purposes, namely universal respect, tolerance and understanding among persons, and the observance of fundamental rights and freedoms for all, regardless of sex, race, language or religion. States must supervise public authorities and institutions to ensure they comply with such obligations and do not abuse their power or encourage discriminatory behaviours. Moreover, they should amend or nullify national policies that support racial discrimination and contribute to the elimination of racial barriers and social division. In the pursuit of this goal, it is crucial to condemn any form of propaganda and the conveyance of ideas that encourage hatred by sanctioning responsible organisations or individuals. As stressed in article 4, "immediate and positive measures" must be taken, including "legislative, executive, administrative, budgetary and regulatory instruments…as well as plans, policies, programmes and…regimes"[132], with the aim to eradicate incitement and discrimination. This article has clearly a mandatory nature, as observed by the Committee, but it is not self-executing, therefore States parties must implement legislation to fight racist hate speech and sanctions to punish these offences. The first paragraph of article 4 forbids any remark based on racial superiority or hatred and any violent conduct against racial groups, as well as racist activities and their financing. While the second paragraph declares illegal any racist organisation and propaganda activities. The third one concerns public authorities or public institutions that make racist comments, regarded by the Committee as of particular concern, and that may be punished through disciplinary sanctions. Article 5 highlights that states must guarantee all citizens fundamental civil rights, such as the right to equal treatment before judicial organs, the right to security and protection of person, to participate and vote, as well as other cultural, economic and social rights, for instance the right to work, to associate, to access public health,

[131] D. Shirane, *ICERD and CERD: A Guide for Civil Society Actors*, International Movement Against All Forms of Discrimination and Racism (IMADR), 2011.
[132] Committee on the Elimination of Racial Discrimination (CERD), *General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination,* 24 September 2009, §13

education and public services. In addition to that, States should grant the possibility to appeal to courts and other institutions to denounce discrimination and violence and seek reparation in case of damages suffered, as established in Article 6. Furthermore, the Committee highlights the 'special duties and responsibilities' of politicians and public opinion-formers. Their status requires them to avoid creating a negative climate towards protected groups, as discourses that might be innocuous in one context may have dangerous effects in an environment marked by economic or social tension. To counter these root causes, the Committee advocates for Article 7 of the Convention, promoting 'counter-speech' and education as essential to indoctrination. In order to evaluate whether the speech was hateful, the Committee must consider several contextual factors, comprehending its content, form and style, the economic, political and social climate at the time of its deliverance, its reach, objectives and the position of the speaker and the audience to which it was directed. In particular, the intention of the speaker is extremely significant as usually hate speech seeks to incite, to influence others to commit a crime or to adopt a violent conduct. [133]

2.10.2 The International Covenant on Civil and Political Rights

Article 20 is compatible with Article 19 (3), that means that a restriction must comply with both. Under article 20, other scenarios allowing a restriction are listed:

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. [134]

Thus, paragraph 1 forbids any form of propaganda that may compromise peace or result in aggression, contrary to the Charter of the United Nations. While paragraph 2 prohibits any advocacy of national, racial or religious hatred that incites discrimination, hostility or violence prohibited by law. It obliges states to restrain through legislative measures discriminatory and hateful statements against individuals due to their national origin, race or religious beliefs. The difference between Article 19(3) and Article 20 lies in the fact that the latter precisely indicates States that they must prohibit certain acts through laws and fulfil their obligations inhere contained.[135] The Committee considers these prohibitions as compatible with the right to freedom of expression enshrined in article 19, that must be exercised responsibly. [136]

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[133] CERD, *General recommendation No. 35: Combating racist hate speech*, 26 September 2013
[134] Art. 20, ICCPR
[135] UN Human Rights Committee, *General Comment No. 34*, cited above, pp. 6-13
[136] UN Human Rights Committee, *General Comment No. 11 Prohibition of propaganda for war and inciting national, racial or religious hatred (Art 20)*, 29 July 1983.

2.10.3 The European Convention

The Recommendation No. R (97)20 was adopted by the Committee of Ministers in 1997, to fight the resurgence of racist, xenophobic and antisemitic ideologies that foster a climate of intolerance and fear between people and countries. Any discriminatory practice, action or statement towards a specific ethnic, racial, or religious group has to be sanctioned, as it hinders democracy and cultural cohesion. Through the guidelines set forth in its seven principles, member states are required to implement the Convention by national legislation and take measures against hateful expressions, especially when conveyed through the media, seeking simultaneously to address their root causes. When necessary, they should amend their domestic legislation to incorporate the principles enshrined in the appendix to this recommendation. As stated in this legal tool, *the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.*

According to these principles, national governments, public authorities and institutions must prevent the circulation of hate speech in all its forms and discourage such endeavours, through penal sanctions and civil law actions and effective and updated legislation that also applies to new media. Moreover, governments are allowed to impose restrictions, if objective, lawful and non-arbitrary and respect the principle of proportionality, when they believe that an expression is in contrast with Article 10 of the Convention. Principle 6 also recognises the role of the media in disseminating information and ideas that might incite hatred and discrimination; however, a distinction must be made between the responsibility of the author of such statements and the responsibility of the media platform. And finally, principle 7 underscores the importance of journalistic freedom, claiming that journalists should be free to choose how to report and through what techniques; therefore, courts or public authorities cannot impose their views. [137]

2.10.4 The Italian Legislation

The Italian legal framework does not provide an official definition of hate speech, nor do specific norms exist that concretely address it, although they seek to regulate it.

For example, Article 604bis of the Criminal Code sanctions any form of propaganda and behaviour that denigrates an individual or group on ethnic, religious or racial grounds. The offender, responsible for the dissemination of denigratory statements based on racial superiority or of acts that incite

[137] Committee of Ministers of the Council of Europe, *Recommendation No. R (97)20 on Hate Speech*, 30 October 1997.

violence against specific targeted groups, may be forced to pay a fine or may be imprisoned. Furthermore, this Article prohibits the constitution of any association or organisation whose aim is to foment hatred, and sanctions individuals who join it. If such behaviours or speech involve the denial, minimisation or justifications of the Holocaust, of genocides, serious crimes against humanity or war crimes, then offenders may be imprisoned for longer.[138]

Additionally, Legge Mancino was designed in 1993 to fight racism. It comprises a set of urgent measures that punish racial, ethnic, national or religious discrimination. In this regard, referring to Law 654/1975 that ratified the CEDR, it orders the imprisonment of individuals who disseminate, through any channel and form, ideas based on racial or ethnic superiority or hatred, or incite to commit discriminatory or violent acts. Just as the aforementioned Article, it prohibits the establishment of any organisation, movement or association aimed at fostering a climate of intolerance and hatred, hindering social cohesion and security, and punishes their administrators and participants. Such punishments also affect people who, during public manifestations or meetings, display hate symbols, emblems or gestures. Moreover, they are not allowed to access venues where competitive events are held. [139]

2.10.5 Religious intolerance: Belkacem v. Belgium

Article 17 covers rights which, if vindicated, would allow people to perform acts that destroy the rights and freedoms set forth in the Convention. These rights include among others Article 10 on freedom of expression, invoked in the present case where Article 17 was applied. This latter involves the applicant Fouad Belkacem, leader and spokesperson of the organisation “Sharia4Belgium" that was dissolved in 2012. He was convicted by domestic courts and then by the European Court of Human Rights due to his hateful remarks propagated through YouTube videos. In these videos, he deliberately targeted non-Muslim groups, inciting violence and discrimination against them. Precisely, he invited his viewers to act to teach them a lesson and fight them. Additionally, he also advocated jihad and Sharia. The domestic courts had sentenced him to a two-year prison term and to a fine of 550 euros. However, Mr Belkacem decided to lodge an application with the European Court of Human Rights in 2014 as, according to him, he was simply sharing his opinions and ideas and did not intend to stir up hatred and discrimination or threaten public order. The Strasbourg Court, agreeing with the local courts, found that he had indeed abused his right to freedom of expression and undermined the values enshrined in the Convention, namely peace, tolerance and respect. Therefore, he deflected Article 10 since his statements are excluded from its protection. His application was

[138] Art. 604-bis, Codice Penale
[139] L. 25 giugno 1993, No. 205 (Legge Mancino)

declared inadmissible and rejected, according to the criteria enshrined in Article 34(3) and (4). Contracting States are required to oppose political movements that are based on religious fundamentalism, as in this case where Mr Beckham might have attempted to establish a political regime based on Sharia. [140]

2.10.6 Negationism and revisionism: M'Bala M'Bala v. France

The European Court of Human Rights has had to deal with several cases involving the denial of historical atrocities. In particular, the Court acknowledged that the negation of the Holocaust instigates anti-Semitism, other than offending the memory of its victims. Such denial contrasts with the democratic ideology and threatens peace, as it incites hatred and intolerance towards Jews. Article 17 was also applied in the M'Bala M'Bala v. France case, that revolved around the performance orchestrated by the French comedian Dieudonné M'Bala M'Bala in 2008, which was deemed quite controversial and, consequently, led to legal persecution. The comedian invited Robert Faurisson, a figure known for his anti-Semitic stance and negationists and revisionist opinions, to award him a prize. Faurisson had, for instance, denied the existence of gas chambers in concentration camps. The show evoked images that recalled the tragedies of the Holocaust. As a matter of fact, the prize consisted of a three-branched candlestick with an apple on each branch by an actor playing a deportee, wearing a striped pyjamas on which a yellow star was stitched and the word “Jew”. Consequently, M'Bala M'Bala was charged by the French courts with public insults against Jews, since his show constituted an abuse of Article 10. Nonetheless, to defend himself, he appealed to the ECtHR to demand protection under Article 10 of the Convention as he was 'merely' exercising his right to freedom of expression, which also comprehends satire. Nonetheless, after scrutinising the content, intent and context of such performance, the Court decided that his application was inadmissible (with Article 35) and invoked Article 17 and found that M'Bala M'Bala's statements crossed the line; they could not be justified as they were deliberately insulting, harming the dignity and reputation of individuals of Jewish faith. It was not therefore considered a performance aimed at entertaining. In conclusion, the Court condemns actions promoting revisionist and discriminatory theories and reaffirms that satire can be protected as long as it does not transgress the core values of the Convention. In this pursuit, it is important to balance the right to freedom of expression with other fundamental rights. The Court underscores that the right to freedom of expression is not absolute and must not interfere with other rights, in order to respect the dignity and freedom of others, and that hate speech can never be justified. [141]

[140] ECtHR, *Belkacem v. Belgium*, No. 34367/14, 27 June 2017.
[141] ECtHR, *M'Bala M'Bala v. France*, No. 25239/13, 20 October 2015

2.10.7 Hate speech in the media

Platforms hosting user-generated content contribute to the dissemination of hatred online, through posts or images, threatening fundamental human rights, such as the right to privacy, reputation and dignity. Among these, Meta is one of the most responsible due to its worldwide dominance and algorithms that amplify inflammatory content on this platform. In some countries, Facebook was used to perpetrate discrimination and violence against targeted groups, playing a crucial role in the cleansing of the Rohingya in Myanmar in 2017 and in the Tigray war in Ethiopia between 2020 and 2022. Facebook aims to maximise user engagement, keep users online longer in order to collect their data and generate advertising revenue. To pursue this goal, the platform has adopted recommender systems that, through algorithms, show users content that is likely to provoke strong emotional reactions such as fear and anger. Such mechanisms amplify hate speech. Facebook is not merely a social media platform, but it is often considered a reliable source of information, affordable and accessible, employed even by the government. In Myanmar, military officials and nationalist groups exploited it to propagate a dehumanising rhetoric, attacking the Rohingya by calling them “invaders” and “vermin”, and supporting their extermination. Within this context, Meta was accused of not intervening to prevent the publication of such dangerous posts; on the contrary, it contributed to the ethnic cleansing. Similarly, in the Tigray war, Meta boosted harmful narratives portraying Tigray forces as “weeds” and “cancer”. These tragic events prove once more the dominant role that social media plays, notably in countries affected by wars or crises, where often there are no alternative sources of information and people tend to believe any news posted on them. For this reason, within the online environment, it is easy to promote hatred and discrimination, especially since Big Tech companies do not always implement measures to moderate such content, resulting in human rights violations. It should be the government's duty to implement a legal framework that prioritises human rights fulfilment by introducing obligations for new media. [142]

Media organisations are required to follow specific principles, rules and procedures set forth in legally binding instruments (laws and regulations), but also in self-regulatory codes of conduct or ethics. Such regulations pursue public interests, notably promotion of freedom of expression, pluralism, diversity of content, fair competition and the efficiency of the communication systems. They extend to areas such as competition law and media concentration, access to broadcast infrastructure (licensing, frequencies) and rules regarding content. Thus, these entities must fulfil certain duties and responsibilities, included in the concept of "responsible journalism", commit themselves to accuracy, fairness, and pursue lawful conduct. This means they must verify the veracity of facts before sharing

[142] Amnesty International*, Breaking Up with Big Tech,* cited above

them and present them in an impartial way, protecting people's reputation and privacy. Therefore, the aim is, on the one hand, to guarantee freedom of expression and, on the other hand, to exercise it responsibly, respecting legal and ethical standards. Since some measures might constitute an 'interference' with the right to freedom of expression, they must pass the 'three-part test' previously discussed.

However, within the online environment, it is more difficult to identify the author of a post due to the possibility of creating anonymous accounts or using false usernames. These accounts are most responsible for the spread of hateful content and of fake and disparaging news against specific individuals. Social media is not obliged to check and verify the legality of content before its publication. Despite this, Quintarelli states that the main tech companies are starting to implement services that employ *machine learning*, which is a key tool in automatic hate speech detection, assisting humans who have the final say on its removal. The most widely used model appears to be Perspective API, developed by Google.[143] Even so, self-regulation by tech companies may raise concerns about transparency and accountability, since profit interests may lead to the infringement of human rights.

2.10.8 European regulation

Within the European legal framework, one of the most significant documents of reference is the European Directive on electronic commerce of 8 June 2000, transposed in Italy by Legislative Decree 70/2003, setting forth standard rules for signatory countries.[144] Concerning service providers, such as Facebook, the Directive states they are not liable when they perform mere conduit, caching and hosting activities in two cases: if they are not actually aware of the illegal content; if, as soon as they notice it, they act immediately, following an order from the competent authorities to remove the information or prevent access to it. Yet, in some cases, action should be taken immediately following a request for removal by the injured party, without waiting for orders from the authorities. The platform operator becomes liable in the event of inaction and if it creates and illegally disseminates the content itself. Meanwhile, the author of a post is clearly liable and punished under the criminal code for defamation and insult. It might be challenging to assess whether a removal request is well-founded and violates freedom of expression. In such cases, the intervention of third parties is essential to resolve the conflict between the two parties, as indicated in the E-commerce Directive. Furthermore, the EU Commission introduced the Code of Conduct on Countering Illegal Hate Speech

[143] G. Pitruzzella, O. Pollicino and S. Quintarelli, *Parole e Potere: Libertà d'Espressione, Hate Speech e Fake News*, Egea, Milan, 2017, pp. 99-131

[144] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178

Online + in 2016, in collaboration with major IT companies such as Google, Facebook and Microsoft. Between 2018 and 2022, other platforms, including Instagram and TikTok, subscribed to it. A revised "Code of Conduct+" was integrated into the Digital Services Act framework by the European Commission in 2025. This code aims to fight hatred online, setting some obligations and requiring the engagement of every signatory to counter this challenging phenomenon. One of its objectives is to facilitate the review and removal of offensive or hateful content through a process of mutual learning and cooperation between companies and stakeholders, civil society organisations and public authorities, to jointly exchange useful insights, discuss trends and future developments. Signatories commit to safeguarding fundamental human rights online and preventing illegal hate speech online. The Code builds on Regulation (EU) 2022/2065 (Digital Services Act) in order to efficiently deal with the propagation of hateful content. Under this Act, the Code becomes a voluntary code of conduct that imposes obligations on the Signatories, who must develop more efficient and proportionate measures to address the recent challenges and threats.[145] The European Commission ensures that the Signatories comply with the Code. Firstly, they are required to inform their users about their terms and conditions, clearly indicating that the publication of hateful content is illegal, and the consequent sanctions in case of breach of such policies. Secondly, the Code sets out specific procedures to report and request the removal of illegal and hateful content. Each platform must allow users to report it through designated notice-and-action mechanisms. Moreover, they commit to reviewing at least 50% of the notices within 24 hours, although they aim to go beyond this goal and examine up to 67% of those notices. Thirdly, this Code requires them to be transparent and responsible when moderating content online. Signatories must comply with their obligations and provide reports on their outcomes, including details on notices and consequent measures. Moreover, companies should collaborate with Monitoring Reporters to implement policies addressing illegal hate speech and participate in forums to exchange best practices and contributions to joint initiatives. Signatories are also expected to support educational programmes and awareness campaigns to promote critical thinking and civility online among users. The European Commission and IT companies will meet in case of a significant increase in hateful content online to discuss how to tackle it in a more efficient manner. [146]

2.10.9 Case of online hate speech: Sanchez v. France

In the Sanchez v. France case, the European Court of Human Rights had to examine user-generated comments on social media and assess their potential consequences. The case concerned the French

[145] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services (Digital Services Act), OJ L 277

[146] European Commission, *The Code of Conduct on Countering Illegal Hate Speech Online+*, 2025.

applicant Mr Sanchez, a local councillor who was standing for election to Parliament. His political opponent was F.P., member of the European Parliament and first deputy to the mayor of Nîmes. In October 2011 Mr Sanchez had posted a message about F.P on his Facebook wall, used during his campaign. Since his post was public, other users wrote a series of racist comments, targeting Leila T., the partner of F.P. She decided to file a complaint against Mr Sanchez and the third parties responsible for these statements, who had to appear before the Nîmes Criminal Court to answer charges of incitement to hatred or violence against her. on account of her Muslim faith. They were all held liable and had to pay a fine and the Court found Mr Snachez "guilty as principal offender" because he did not promptly intervene to delete his public post and prevent the dissemination of insulting remarks against a specific group, namely Muslims, associating them to criminality and insecurity. That led him to invoke his right to freedom of expression and lodge an application with the European Court of Human Rights in 2015, that confirmed the previous decisions, as the contested comments indeed incited hatred and hostility towards a specific group. Mr Sanchez later presented the case to the Grand Chamber in 2021 that declared that there had been no breach of Article 10 of the Convention and agreed with the judgements issued by the domestic courts. Therefore, he was held liable as the owner of the Facebook account, who deliberately made his wall publicly accessible and authorized other users to comment. But also, because he should have been more vigilant due to his status as a politician. According to the Court, the interference was deemed "necessary in a democratic society", lawful and pursued a legitimate aim, as it aimed at protecting both the reputation and rights of others but also at preventing public disorder, considering that the post had been published during a period marked by local tensions due to the election campaigns. The Court classified the comments under his post as hateful and unlawful and might have led to negative outcomes. Moreover, as enshrined in Article 10 (2) of the Convention, Mr Sanchez did not comply with his duties and responsibilities when exercising his right to freedom of expression, especially since he was not a private individual. He was a politician who used this social media for political purposes during the electoral campaign but failed to regulate his conduct. He was expected to be aware of the fact that, through digital platforms such as Facebook, one could reach a wide audience that easily and quickly might react and comment on content. In conclusion, the present case well illustrates the importance of regulating hate speech in online platforms and the necessity to prevent the abuse of the right to freedom of expression.[147]

[147] ECtHR, *Sanchez v. France,* 15 May 2023, No. 45581/15.

2.11 Post-truth era and fake news

According to the Oxford Dictionaries, *post-truth* is "relating to circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief". Thus, it is the expression used to refer to the current age, where it appears that truth is no longer relevant, that fact-based news is less influential than appeals to emotions and personal beliefs. It seems that only news which supports one's own beliefs is accepted as true, even if not backed up by facts. Thus, objective facts are rejected, supplanted by subjective views of the world. At the core of the concept of post-truth there is fake news. Fake news is not something recent, underlines Pitruzzella, by mentioning that as early as 1835, for example, *The New York Times* published articles declaring the discovery of life on the Moon. Although lately, the border between a lie and a fact has become blurred, due to the pluralism of sources of information and means of communication, to which citizens have access. Fake news is not an opinion; it is a lie. Facts are based on something that actually happened, not on groundless judgements or beliefs. People lie to manipulate others into believing in something that they know is untrue. As defined by Hunt Allcott and Matthew Gentzkow, fake news is news that is intentionally and verifiably false and misleads readers. In this respect, it violates the right to be correctly informed and to not be deceived. McIntyre explains that it is purposely spread around to get more "clickbaits", have an economic gain or generate disinformation and confusion, especially in political domains. For instance, President Donald Trump during the US presidential election claimed that within the country the murder rate was on the rise, although the FBI proved otherwise[148]. Journalists may spread false stories in order to attract more and more readers, being more interested in financial gains than in telling the truth.[149] Today, it is propagated much more easily and quickly because of the decentralisation of information, the lack of control and accountability mechanisms, meaning that anyone can produce and disseminate it. Furthermore, social networks contribute to its spreading through likes, shares and algorithms. Thus, even a lie can go viral. In addition, due to the so-called *echo chamber* effect discussed by Pitruzzella, readers tend to accept some news as true, because it is consistent with their views, without subjecting it to critical analysis. The danger of post-truth is that people may let their feelings and opinions prevail over objectivity and shape what they think of facts and truth. As a consequence, they might end up being estranged from reality itself. This is also caused by the fall in trust in traditional media, no longer considered reliable, so readers do not compare anymore what they read with what is reported on television or newspapers. In addition, people have become increasingly polarised and fragmented, shutting themselves off in their own

[148] J. P. Pfiffner, 'The Lies of Donald Trump: A Taxonomy', in C. Lamb and J. Neiheisel (eds), *Presidential Leadership and the Trump Presidency*, Palgrave Macmillan, Cham, 2020, pp. 17–40.
[149] L. McIntyre, *Fake News vs Facts—Living in A Post-Truth World* https://www.youtube.com/watch?v=FtoIOmppFFE

groups, and more likely to display negative feelings towards who is not part of them. To counter this phenomenon, it would be important to introduce criteria, mechanisms or procedures for reviewing and checking content. One option would be to consult fact-checking websites. Notwithstanding, the most effective method is critical thinking: people should take a certain amount of responsibility for discernment, look for copyright, verify from multiple sources and question their reliability, the objectivity of facts, as well as assess the author's expertise. [150]

2.11.1 Italian legislation: Law 132/2025 against deepfake

Italy seems to be one of the first countries within the European Union to implement ambitious measures to address and regulate the use of artificial intelligence and the risks it poses to fundamental rights. In compliance with the European AI Act, this law aims to further safeguard citizens' rights and guarantee transparency online, by imposing the obligation to label deepfake and inform users that it is an artificial content, through visible marks or warnings. Furthermore, it introduces new penal sanctions to punish illegal use of artificial intelligence, the publication of deepfake and the violation of copyright. By doing so, the law intends to strengthen the right to reliable information, as it requires AI systems to respect the integrity and pluralism of information. Whoever harms others and damages their reputation, by producing and publishing without their consent images or videos that have been falsified or altered through AI, and therefore that are misleading or deceiving, may be imprisoned (Art. 162-quater). [151]

2.12 Political discourse

Political discourse is defined by van Dijk as the text and talk of several actors, ranging from professional politicians to political institutions, such as members of the government, of the parliament or political parties. Moreover, as discourse is interactional, it involves some recipients, i.e. citizens, voters, other organisations. They all may actively participate in the political process through their actions. Discourse is political only if such participants are acting as political actors, by governing, ruling, legislating, protesting, voting. Therefore, in these instances, it has political functions and implications. In order to correctly frame political discourse, it is necessary to define its functions and consider relevant categories, such as political systems, values, ideologies and institutions, as well as contextual elements. The context is crucial in order to establish whether a discourse can be classified as political: consider the time, place and circumstances where it takes place, as well as its goals and implications. Its objectives are normally making or influencing political decisions that lead to the

[150] G. Pitruzzella, O. Pollicino and S. Quintarelli, *Parole e Potere*, cited above, pp. 55-94

[151] Legge 23 settembre 2025, n. 132. *Disposizioni e deleghe al Governo in materia di intelligenza artificiale.* Gazzetta Ufficiale della Repubblica Italiana

amendment of laws or to the introduction of new ones. Still, sometimes even off-the-record talk could be considered political, depending on the role, goals of its actors, on the topics and circumstances. As a result, the discursive-political process might encompass both the official 'administration' (governing, legislating, ruling) and propaganda, campaigning, media interviews.

Political discourse is considered a form of political action and thus part of the political process itself. As a matter of fact, discourse is both a social and political action, whether spoken or written, as it has an impact on decision-making and as, by speaking or writing, goals can be accomplished. Through political discourse, power, abuse or domination is reproduced. It can cover a wide range of topics, related mainly to politics itself. As a matter of fact, in van Dijk's view, most political discourse seems to be reflexive, since it involves discussions concerning political systems, ideologies, institutions, events. Political actors often mention their own actions or policies. Moreover, it can also embed other topics from societal domains, such as immigration, education, healthcare, the economy. [152]

2.12.1 Linguistic structures and strategies

Language reflects a broader political reality and is exploited by politicians to efficiently convey their ideologies and reach their own purposes. Political discourse is characterised by specific structures, stylistic conventions and formulaic expressions, mentioned by van Dijk.

In regard to macrostructures of political discourse, they are generally future-oriented, as it refers to upcoming developments, threats, promises or actions, aimed to guarantee a better life or prevent further issues. When referring to the future, such statements are usually positive, unlike the ones describing the present, tending to be negative. In rare instances, references to the past are made, usually to recall the 'good old times', or the 'unspoiled' nature.

Topics may also feature evaluations. Descriptions and references to politicians, public figures, organisations, and their actions are a function of politically and ideologically based opinions and attitudes. Such evaluations are polarized: *we* (*our*) vs *they* (*their*). This semantic and ideological polarization is realized through the use of pronouns, to describe positively *us* and *our* actions and negatively *them* and *their* actions. Moreover, it is manifested through the strategic emphasis on *our good actions* and on *their bad actions* and, on the contrary, the de-emphasis of *our bad actions* or properties and of *their good ones*. This strategy is effective in the political process, when competing during elections to get more votes, support, or legitimation. Such polarization is particularly evident when covering migration-related topics, where "we" are presented as the defenders of our nation while "they" (migrants) are represented as a threat or a problem.

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[152] T. A. van Dijk, *What is Political Discourse Analysis?* Universiteit van Amsterdam, Amsterdam, 1998.

Furthermore, from a semantic perspective, a strategy frequently employed consists of making explicit and direct propositions that describe in positive terms our group, nation, party, or ideology. On the contrary, our bad actions or features would remain implicit, vague. Politicians tend to emphasise negative meanings about the Others, especially in ethnocentric majority discourse about minorities. These discursive strategies of positive self-presentation and negative presentation of the Others are common. Another semantic move could be that of the disclaimer, to avoid giving a bad impression of oneself when negatively describing Others. When discussing racism, such disclaimers are frequent, through the Apparent Negation (*I have nothing against Blacks, but…*) or the Apparent Concession (*There are also smart Blacks, but…*). Similar moves are employed when talking about political opponents and outgroups (communists, fundamentalists, terrorists).

Concerning lexical choices, opponents, enemies and their actions tend to be delineated through terms with negative connotation, as in the instance of *terrorists vs. freedom fighters.* On the contrary, euphemisms are employed when referring to our bad actions, habits, properties, as in the case of defining our bombs as 'peacemakers*'* or the killing of civilians as 'collateral damage'. Euphemisms are often employed when describing our restrictive policies or when talking about the arrival of migrants, defined as an *invasion* or *emergency*, to demonise them and justify the introduction of restrictive measures.

Moving on to syntax moves, political actors manipulate their audience by employing pronouns, nominalizations, specific syntax categories, passive or active constructions, or by reversing the word order. The most frequently used moves seem to be the deictic pronouns: *us* vs *them.* The plural pronoun *we (*or possessive *our)* has many implications for the political position, alliances, solidarity and the socio-political position of the speaker, depending on the relevant ingroup constructed in the present context. Through such pronouns, political actors perform actions of exclusion or inclusion. By reversing the word order, the aim is to either emphasize or mitigate a specific word or phrase, in most cases to draw attention to a term referring to our good qualities, actions, and vice versa. Through the active form, the subject of an action is underlined, while the passive form stresses its object and defocuses responsible agency by placing the subject at the end of the proposition or omitting it.

Concluding with rhetoric, the art aimed at persuading the audience, is crucial, especially within political settings. Rhetorical operations are relevant and significant in political communication. These may include *repetition* of sounds (alliterations, rhymes), of sentence forms (parallelism) and meanings (semantic repetition) that underline specific meanings and contribute to the construction and memorization of such meanings on behalf of the audience that is influenced by them. False information, if often repeated, may end up being considered true. As a matter of fact, according to

data, US President Trump repeated eighty-three times that his administration had delivered the largest tax cut in the history of his country. Even if this was found to be incorrect and inaccurate, it was accepted as true by some Americans.

Some *additions* may be made by politicians, when describing in detail their own beneficial actions or those of their party or, contrarily, when talking about their opponents in negative terms. They employ figures of style as hyperboles and euphemisms. In racist discourse, politicians and the media tend to underline irrelevant information that highlights that the subject responsible is part of a minority group to stir up discrimination and hatred against it. For example, when adding details such as the nationality or immigration status of a criminal, even if irrelevant.

Or on the contrary, they might make *omissions* of details or deletion of information related to our negative actions or characteristics, or to the positive features of enemies. For instance, they avoid mentioning instances of successful integration of migrants or reporting stories on important achievements accomplished by these latter.

Another subtle operation is *substitution,* that consists of expressing a different concept from the one expected through irony, metonymy or metaphors. For example, our politicians tend to be associated with good, strong, brave animals (lions, tigers), unlike the Others, as migrants, who are dehumanised and considered dirty (rats, cockroaches), unintelligent (apes) or evil (snakes). As a matter of fact, throughout history, several animal metaphors have been used in racist propaganda: from the comparison between Jews and rats in the anti-Semitic German cartoons in 1927 to the depiction of the Japanese as a snake attacking Pearl Harbour in 1941 and to the description of Blacks as apes in the present.[153] In other cases, they are described with terms related to mental illnesses. Moreover, often the arrival of migrants is described as a *flood* or an *earthquake*, to highlight that it will destabilise our lives and threaten our territory. [154]

2.12.2 Online political speech

The Internet is a powerful tool employed by politicians to encourage political mobilisation and persuade citizens to actively engage in a country's political life and gain their support and vote. However, Pitruzzella believes that with the consolidation of the Internet as the main channel for receiving and imparting information, many citizens have shut themselves in the so-called *bubble democracy*, a sphere where fake news and hateful statements proliferate. This phenomenon fosters the polarisation and radicalisation of politics, which in this context reacts to the hostile and negative

[153] C. Newkey-Burden, 'The History of Animal Metaphors in Propaganda', *The Week UK*, 2025.
[154] T. A. van Dijk, *What is Political Discourse Analysis?* cited above.

feelings on the web by endorsing them. Today's politicians seem to take advantage of this situation and win over the electorate by leveraging the emotions of the people, rather than proposing concrete political programmes. People are enraged and radicalised by political actors. [155] Even the established political parties have been undermining freedom of expression and information and disrupting democracies, through content manipulation or coercion, suppressing political participation and dissenting groups. Many countries seem to be moving towards so-called *digital authoritarianism*. Among these, China is the country that most abuses internet freedom: for years its government has attempted to control the Internet through strict regulations and systems of censorship and surveillance.[156]According to a report by the Oxford Internet Institute, in 2020 in 81 countries manipulated campaigns were run on social media. Through such platforms, all over the world, political actors have been contributing to the spread of disinformation and conspiracy theories, now common in political communication. Social media is also exploited for digital campaigning. As a matter of fact, governments and political parties have started using the tools and techniques of computational propaganda and hired private 'cyber troops' and firms to disseminate manipulated messages and political propaganda, through bots, hacked accounts, and other amplification strategies. Cyber troops employ several communication strategies to manipulate the audience, data-driven strategies to influence specific users through political advertisements, or state-sponsored trolls to attack opponents or activists. Furthermore, influencers, volunteers, youth groups and civil society organisations play a pivotal role if they support and share their ideologies.

To tackle the manipulation of social media, firms such as Facebook have been deleting fake accounts and flagging misinformation, with the aim of ensuring that digital media serve the public good. Moreover, governments seem to interfere with the right to privacy too, as they abusively collect personal data through the Internet to influence public opinion and election outcomes. This happened in 2016, when Russian hackers targeted voter rolls in the United States during the Presidential elections. These events testify how, through the web, citizens can be pushed into polarized echo chambers, and this negatively affects society, as it undermines social harmony by encouraging hostile behaviours and violence towards specific communities, including migrants. [157]

A study on the drivers of hate speech in political discourse on X during the Italian election in 2022 shows that politicians who often use toxic and hostile language are the main targets of hateful messages, as a consequence. Moreover, they encourage their followers to adopt a similar

[155] G. Pitruzzella, O. Pollicino and S. Quintarelli, *Parole e Potere*, cited above, pp-55-90
[156] Freedom House, *Freedom on the Net 2018,* Freedom House, Washington D.C., 2018.
[157] Oxford Internet Institute, *Social Media Manipulation by Political Actors: An Industrial Scale Problem*, University of Oxford, Oxford, 2021.

confrontational behaviour and language. As a matter of fact, after the assessment of the toxicity of over eight million tweets, replies written by their supporters were found to be the most aggressive statements. This tendency could be explained by the fact that replies tend to be impulsive, therefore heated, emotionally charged and less rational. Another factor leading people to interact aggressively is the anonymity provided by platforms. [158]

Politicians should discourage hate speech, instead of inciting it, and never abuse channels of communication. As a consequence, collaboration between authorities and platforms is necessary, to safeguard the integrity of online conversation and address hate speech.

2.12.3 Hate speech and fake news in political discourse

The deterioration of political discourse in contemporary societies is due to the escalation of hate speech and hateful rhetoric and to the "truth decay". Especially following the COVID-19 pandemic, there has been a significant increase in harmful content and in the dissemination of conspiracy theories and misleading information. On the one hand, it hurts its victims on an individual level; on the other, it affects society, undermining cohesion within communities and affecting the quality of public debate, which is essential in a democracy. If hate speech is justified and boosted by political figures, the risk is that it will cease to be marginalised within society. When hate speech emerges within public administration, it might be adopted as policy. Expressions of hatred and prejudice have become mainstream within political communication, targeting specific individuals or groups, particularly in times of crisis. Politicians seem to increasingly adopt abusive language that incites inflammatory speech by their supporters. Above all, the main instigators are anti-establishment parties, commonly far-right wing parties, who adopt a populist and nationalist rhetoric. Furthermore, political leaders have been supporting disinformation. In doing so, they have exploited the power of social media, characterized by an abundance of information and sources. They subvert the truth to manipulate their electorate, bend reality to their will, provide exaggerations or approximations of something that might have occurred. Fake news is deliberately false for ideological reasons behind it. For example, the Italian Deputy Prime Minister Matteo Salvini, also leader of Lega, a right-wing populist political party, has for long promoted his anti-immigration campaign and defended the Italian "identity". To do so, for years he has frequently reposted stories about foreigners accused of crimes or violence and lately he has been exploiting Artificial Intelligence to create images representing foreigners, in particular Muslim immigrants, attacking police officers, threatening and abusing girls and children with weapons or perpetrating other serious crimes. These fake images are posted on the

[158] F. Pierri, 'Drivers of Hate Speech in Political Conversations on Twitter: The Case of the 2022 Italian General Election', *EPJ Data Science*, Vol. 13, No. 63, 2024 https://doi.org/10.1140/epjds/s13688-024-00501-1

official social media pages of Lega, on Facebook, X and Instagram, accompanied by striking and hateful headlines such as "*Islam says so". Iranian man abuses his wife and beats up his son*.

These images look realistic, also since the faces of the people depicted are often blurred, covered with pixels, as if to protect their privacy, even though they do not exist. This specific communication strategy is similar to that of other European right-wing or far-right parties, such as Alternative für Deutschland (AfD) in Germany, that employs AI to produce social media content and manipulated videos showing scenes of unrest due to immigration. These false and misleading statements and posts seek to convey messages of racial hatred and gain voters' support.[159] They contradict established facts and deceive the public, by distorting reality. Despite their claims not being based on evidence, on data, their supporters tend to not question their accuracy and believe them.

Political discourse should be based on logical arguments, on concrete evidence. However, today politicians seem to impose their own version of reality and opinions and, therefore, they discredit other narratives. False statements corrode democracies and confuse citizens, who can no longer distinguish between fiction and fact, and consequently will unlikely challenge claims made by their government. Once false myths and rumours are encoded and accepted as true, attempts to change people's minds may be unsuccessful, on the contrary, they may even reinforce them due to their repetition and to cognitive factors. For this reason, it is important to tackle hate speech and misinformation through tools, actions, or policies that enhance the quality of debate by bringing back political discussion to concrete and verifiable grounds.

2.13 The essential role of the media

In democratic societies, the media play a crucial role of 'public watchdog', as defined by the European Court of Human Rights. Through monitoring, reporting and criticising the actions of public officials and institutions, they ensure accountability and transparency. The press has the right and duty to disseminate information on matters of public interest, while the public has the right to receive it, allowing it to scrutinise facts and political actions. Indeed, in the last couple of years, in many countries journalists and activists have driven demonstrations and uprisings against oppressive regimes, wars and reforms. Besides traditional means such as the radio, the television and the press, with the Internet, new platforms have been developed and are at the disposal of users worldwide. Through social media most people receive news and information on issues of public interest and political debate takes place. As argued by Pitruzzella, along with search engines, social media play an essential role as information *gatekeepers*, since they act as intermediaries by connecting

[159] https://pagellapolitica.it/articoli/lega-salvini-migranti-immagini-intelligenza-artificiale

information producers and users through algorithms and sorting information. People can produce information, react to events, ideas and opinions, and share videos and photos, taking on an active role. On the one hand, this expands their freedom and strengthens democratic participation; on the other hand, it poses challenges to freedom of information. In the publishing industry and the broadcast industry, editors normally discuss what content to cover and how to spread it. Hence, Pitruzzella argues, it seems to be a more regulated and disciplined system, although more selective, possibly resulting in the exclusion of minority, non-conformist ideas in favour of those satisfying the public interest. While today, a decentralised information production system is emerging. Control of access to information on the internet is in the hands of a few powerful tech companies, such as Google, Facebook, X, YouTube and Instagram, leading to a sort of oligopolistic or even monopolistic market. For example, Google holds between 70% and 90% of the information on the global network. The Internet makes information available to everyone, while search engines, such as Google, filter and select it, guiding users towards the most useful and relevant information for them, arranged in a hierarchical structure. It seems like users are manipulated to a certain extent, since algorithms play a fundamental role in the story selection process, i.e. they select certain content to be made visible to certain users and customise their feed. This is based on their preferences and inferred from data obtained by analysing their behaviour and online searches. When browsing online, data is collected and used to predict the future behaviour of each user. Facebook selects and orders the content that appears on its users' homepages. Still, users are not always aware of that, since they claim that the news that appears on their homepages is objective and neutral, though it has been personalised and chosen specifically for them. Algorithms can build a world tailored to each user. Search engines significantly determine users' choices and orientation on the web. Pitruzzella talks about the so-called *filter bubble*, a sphere within which individuals are isolated, built on their tastes, preferences and prejudices. In the era of web personalisation, each individual accesses news and posts perfectly in line with his/her interests, opinions and views. Inevitably, the filter bubble leads to closure rather than confrontation, creating communities made up solely of individuals who already share the same ideas and ways of thinking, thereby reinforcing their pre-existing judgments, instead of challenging and questioning them. They tend to consider their own truth to be the only legitimate one and consider as wrong anything that does not fit into this community. Shut in their *echo chamber*, users might no longer be exposed to a plurality of ideas. The Internet has brought enormous benefits, yet also consequences for the right to freedom of expression and information, as all this influences public debate and the formation of public opinion. In a democracy, there must be room for different ideas,

even unpopular or conflicting. This is why dissent and debate must be protected, to ensure pluralism of sources in democracies and allow the expression of the most diverse ideas. [160]

2.13.1 Who are media actors?

The Committee of Ministers, that is the Council of Europe's decision-making body, provided a broader definition of media "which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents".[161] This definition includes both traditional means, such as the television, the radio and the press, but also new digital platforms and actors. In this regard, the Court has acknowledged that: "given the important role played by the Internet in enhancing the public's access to news and facilitating the dissemination of information[162], the function of bloggers and popular users of the social media may be also assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned".[163] Through this statement, it has recognised that bloggers might provide reliable information just like official sources. In addition to that, "the function of creating forums for public debate is not limited to the press. That function may also be exercised by non-governmental organisations, the activities of which are an essential element of informed public debate. On account of that, the Court has accepted that even non-governmental organisations may be considered public "watchdogs" since they report irregularities and warn people on issues of public interest. Their activities warrant similar Convention protection to that afforded to the press[164]. This means that any action against NGOs represents a violation of Article 10 of the Convention. In conclusion, NGOs, human rights defenders, bloggers and social media influencers are recognised as 'public watchdogs', who contribute to the promotion of transparency and accountability.

2.14 Conclusion

To conclude, freedom of expression is considered the foundational pillar of democratic societies, as it allows public debate to take place and safeguards media pluralism. Nonetheless, as discussed in

[160] G. Pitruzzella, O. Pollicino and S. Quintarelli, *Parole e Potere*, cited above,
[161] Committee of Ministers of the Council of Europe, *Recommendation CM/Rec (2011)7 on a New Notion of Media*, 2011.
[162] ECtHR, *Delfi AS v. Estonia* [GC], 16 June 2015, No. 64569/09, § 133.
[163] ECtHR, *Magyar Helsinki Bizottság v. Hungary* [GC], 8 November 2016, No. 18030/11, §§ 167–168.
[164] ECtHR, *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria*, 28 November 2013, App. No. 39534/07, § 34

this chapter, freedom of expression is not absolute. Consequently, limitations may be necessary, as this right should be exercised within specific boundaries, aiming to simultaneously protect other vital human rights and principles, such as human dignity, non-discrimination, public security and personal data, especially when concerning fragile individuals like migrants.

Crucial players within this complex framework are media, both traditional and digital media, thanks to which information has become more accessible. They have the duty to safeguard democracy by informing the public in an accurate and independent manner, exposing the wrongdoing of both private entities and public entities. However, the risk is that they may be exploited and coerced by a few powerful actors to serve their interests instead of objectively reporting facts. As a consequence, such tools could disseminate distorted narratives and contribute to the amplification of stereotypes, prejudices or hateful statements, in particular related to sensitive matters, such as migration. Within this context, the respect for legal restrictions is essential to preserve privacy and discourage discrimination, guaranteeing that the rights of the most fragile individuals, as migrants, are not sacrificed in the name of public interest. For this reason, it is deemed necessary to introduce new measures to regulate content online. Without stronger enforcement, freedom of expression risks being a theoretical ideal, as its protection depends on political actors and technological adaptation. In these paragraphs, the foundations for the following chapter have been laid out, which will explain why migration is a symbolically charged issue, at the core of political debates and in the media and will mention legal texts that regulate journalists' communication when covering it.

CHAPTER 3: MEDIA COVERAGE ON MIGRATION AND ASYLUM

3.1 Introduction

This conclusive chapter focuses on how migration and asylum are covered by media, in particular focusing on traditional media such as the press, even though some references to digital platforms are made. It seeks to assess whether information professionals comply with their ethical standards and legal obligations when reporting on this complex phenomenon. In particular, whether they respect the inalienable human rights of migrants, refugees and asylum seekers, if they protect their dignity and privacy or undermine them. Their communicative practices are not neutral; on the contrary, they could significantly affect the rights of the individuals portrayed, especially since the media play a crucial role in informing and influencing the public perception. In this regard, media narratives and public discourse may not always reflect empirical evidence, resulting misleading and inaccurate. Instead, they seem to be more driven by perceptions of hostility or threat rather than by a factual analysis based on data, as proven by the increasing ethnicisation of news. In order to fully understand this phenomenon, it is necessary to approach it through a multidimensional perspective, taking into account demographic elements, as well as political, economic and juridical factors. Moreover, it is important to mention its cultural and social implications given that migration issues are a source of many contemporary debates. For this reason, this chapter starts by referring to statistical data to illustrate the actual scale of migration and describe the main flows. Then it proceeds to delve into several key definitions and categories, distinguishing between regular and irregular migration. This contextual overview seeks to delineate the social environment in which journalistic communication takes place. At the core of the analysis lie the linguistic practices employed by journalists and the modalities through which they frame and represent migrants and asylum seekers. Furthermore, it is important to discuss compliance with deontological codes and documents, in particular with the Charter of Rome whose guidelines establish what practices should be preferred. By referring to these provisions, this work seeks to analyse media coverage not merely as a communicative phenomenon, but as a conduct subject to legal obligations, particularly when it fails to respect basic human rights and deontological principles of accuracy, necessity and proportionality.

3.2 Migration: a global overview

Human migration is an old activity touching several societies around the world, that is evolving from a range of different perspectives, including those entailing economic, social and security dimensions due to long-term trends and recent events. Due to globalisation, technological revolution and increasing interdependence between countries, people seem more likely to move and settle beyond

their national borders, also as a consequence of several economic, social and environmental issues. The present paragraph aims at providing an overview of migration globally, to illustrate key trends, migration patterns and recent changes.

In 2023, the net migration rate in Europe was about two migrants per 1,000 inhabitants.[165] It means that more people have arrived than left. Overall, the general tendency is to stay in one's region of birth: in 2024, nearly half (45%) of all international migrants worldwide were living in their territory of origin. For example, Europe experienced a form of intra-regional migration, as 74% of Europeans moved to another area within the region. In the same way, migrants from Oceania (73%) and from sub-Saharan Africa (64%) settled elsewhere within the region, as shown in figure 1. [166]

According to the Human Development Report (HDR) published by the UN in 2009[167], the majority of people migrate internally, mainly due to the increasing urbanization[168], instead of across borders. Regarding international migrants, most of them moved from a developing country to another or between developed countries.[169] According to the UN definition, an international migrant would be "a person who moves to a country other than that of his or her usual residence for at least a year, so that the country of destination effectively becomes his or her new country of usual residence". Often, even if they acquire citizenship in the country of destination, they are still considered as migrants.[170]

From 1990 to 2024, according to the *International Migrant Stock 2024* dataset, the number of international migrants has doubled, from 154 million to 304 million. However, the share of the world's population has not increased significatively (+0.8): in 2024 only 3.7 per cent of the global population were international migrants, while in 1990 it was about 2.9 per cent.

People tend to move to safe locations nearby, easier to reach and maybe more familiar. The regions hosting more international migrants in 2024 were respectively Europe (94 million), Northern America (61 million), Northern Africa and Western Asia (54 million). As evident, Europe experienced the largest increase: more than 43 million international migrants between 1990 and 2024, especially due to the invasion of Ukraine by Russia which made many Ukrainians flee their country, seeking refuge elsewhere.

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[165] UN Department of Economic and Social Affairs, *World Population Prospects 2024*, processed by Our World in Data, available at https://ourworldindata.org

[166] UN Department of Economic and Social Affairs, *International Migrant Stock 2024*, United Nations, 2024.

[167] United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development*, Palgrave Macmillan, 2009

[168] International Organization for Migration (IOM), *World Migration Report 2024*. M. McAuliffe, L.A. Oucho (eds.), Geneva, 2024

[169] UNDP, *Human Development Report 2009*, cited above.

[170] UN Department of Economic and Social Affairs (DESA), *Handbook on Measuring International Migration through Population Censuses*, 2020, p.7

Today, the United States of America is the main country of destination with 52.4 million international migrants, followed by Germany with 16.8 million and Saudi Arabia with 13.7 million.[171]

3.2.1 Regular migration vs irregular migration

To address the topic of migration, it is necessary to provide a clear overview of fundamental definitions and concepts, since they are often used inappropriately in media discourse. These terms may be considered as synonyms, interchanged and confused. The notions, terms and categories that describe the migration phenomenon, indeed, reflect specific juridical, political and social approaches and perceptions that do influence the public opinion and the implementation of related policies. The following paragraphs explain significant distinctions, useful to delineate the terminological and legal framework.

The border between lawful and unlawful migration is nuanced. According to the definition provided by the International Organization for Migration (IOM), regular migration is the "movement of persons in keeping both with the laws and regulations governing exit from, entry and return to and stay in States and with States' international law obligations, in a manner in which the human dignity and well-being of migrants are upheld, their rights are respected, protected and fulfilled and the risks associated with the movement of people are acknowledged and mitigated".

On the contrary, irregular migration is the "movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination". This means that they either irregularly cross borders which are not supervised by any authority or enter by showing forged identification or travelling papers. While in other cases, they enter a country with valid papers or visas, but then they engage in unauthorised work activities or decide to stay longer, exceeding the validity of their visa after its expiration. In the latter case, we can talk about irregular stay: "the presence on the territory of a State, of a non-national who does not fulfil, or no longer fulfils the conditions of entry, stay or residence in the State".[172] Unauthorised migrants may be subject to deportation or rights violations and may lack access to basic services. Some states seem to facilitate irregular migration towards Europe for political ends, and, consequently, the European Commission proposed a Pact on Migration and Asylum in June 2024 to strengthen borders and authorise member states to derogate from their responsibilities in case of "instrumentalization of migration".[173] Nonetheless, even if entering the country through illegal ways, States have the duty to guarantee the rights of migrants and protect them. This also includes refugees,

[171] UN DESA, *International Migrant Stock 2024* cited above

[172] https://emm.iom.int/handbooks/global-context-international-migration/types-movements

[173] European Commission, *Pact on Migration and Asylum*, 2024 https://home-affairs.ec.europa.eu/policies/migration-and-asylum/pact-migration-and-asylum_en

victims of human trafficking and unaccompanied migrant children, usually helped by other family members or by smugglers who transport them illegally across an international border upon the payment of a fee.[174] Irregular migration still represents a significant challenge. In 2022 in Europe, there was an increase of irregular migrants: more than 189,000 persons arrived by land or sea, mostly from Egypt, the Syrian Arab Republic, Tunisia and Afghanistan.[175] Despite this, in general, most migration is regular and driven by work reasons. Irregular migrants seem to represent a small minority in high-income countries, in the time range between 2017 and 2023, like the UK and Italy (7%), Germany (4%), France (3%) and in the Netherlands (2%). [176] In the European Union in 2017 it was estimated that about five million migrants were deemed illegal, which would be about 5% of all immigrants, most of them settled in Germany and the UK. On the contrary, in the United States it is higher, up to 22% of immigrants lack legal status. [177]

3.3 Migration in the media

As considered by Bruno, the media is the arena where phenomena are represented and socially constructed, and specific discourses are expressed and made explicit. Each individual expresses their own beliefs and contributes to the social construction of reality or to social representations of alterity. It is a space where several actors build social problems and offer practical solutions to them, by implementing policies, laws, and sanctions. Collective identities, social issues and specific discursive frames are built and reinforced, through specific linguistic strategies, images or metaphors.[178] Images play a significant role in the social construction of reality[179] and in the negotiation of meanings and opinions on the world by the public. The media's aim is to inform the public but not only: Bruno argues that they play a vital role in the process of "social control", since they reaffirm dominant and common social norms and visions while considering as deviant and threatening any other individual or behaviour that is not aligned with them. They disseminate ideas, values and beliefs that are socially accepted, conveying a specific vision of the world and shaping the audience's perceptions. As a matter of fact, they do not simply narrate facts to the public, but also frame them, therefore their presentation of facts is not objective. A piece of news is selected among others, ranked according to a hierarchical structure: it is the result of a choice made by information professionals. Journalists decide to highlight a specific feature of an event or individual or to employ a specific term over another. When reporting,

[174] UN, *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime*, 2000, Art. 3.
[175] International Organization for Migration (IOM), *World Migration Report 2024*, cited above.
[176] D. Kierans and C. Vargas-Silva, *The Irregular Migrant Population of Europe*, MIrreM Working Paper No. 10, University for Continuing Education Krems (Danube University Krems), Krems, 2024
[177] UN DESA, *International Migrant Stock 2020*, United Nations, 2020.
[178] M. Bruno, *Tracciare Confini: L'Immigrazione nei Media Italiani*, FrancoAngeli, Milan, 2016.
[179] P. L. Berger and T. Luckmann, *The Social Construction of Reality*, Doubleday, New York, 1966

they must comply with strict criteria, related to the internal dynamics of the editorial industry as well as with political, economic and social pressures. Indeed, political interests do influence the media's stances, which then might reinforce dominant visions in our society and prejudices, by disseminating inaccurate data or *bad news* and using derogatory terms to categorise immigrants or asylum seekers, such as *illegal immigrants* or *boat people.* As a matter of fact, policies are strongly influenced by the public discourse on migration.

Within the migration context, concludes Bruno, media may tend to represent the phenomenon as threatening, as something that might hinder social order by reinforcing the idea that migrants are outsiders and deviant, even if they are not. The media carry out the image of them as enemies, responsible for issues of national security, and embody the problems and fears of a society characterised by instability and uncertainty, amplified by journalistic narratives that announce upcoming threats and tragedies. As a consequence, they convey the necessity of defending *our* space that is represented under attack. By doing so, they contribute to the intensification of a symbolic border between *us* (within the norm) and *they* (deviant) and implement a symbolic displacement, shifting the axis of the discussion from the conflict-integration dialectic to that of the Other as a threat.[180]

3.3.1 Main topics

According to the last report published by the Observatory of the Charter of Rome, in Italy in 2025 the most covered migration-related topic by the press continues to be migration flows (40%), although this represents a decline compared to previous years. In particular, the management of migrants, the "Albanian model", and the humanitarian corridors for the transfer and integration in Europe of Palestinians have been at the core of the journalist discourse. Alongside, the Open Arms trial involving the Minister of Infrastructure and Transportation Matteo Salvini, accused of kidnapping 147 migrants in 2019 by denying them landing in Italy.

On the other hand, there has been an increase in the coverage of society and culture-related topics (39%), reporting frequent hateful and racist attacks against Jewish, Muslims and other minorities. Additionally, protests supporting migrants, their detention or expulsion, applications for the acquisition of citizenship have been frequently told by media. While the Observatory reports that more articles compared to the previous year focus on criminality and security (8%), reporting crimes committed by migrants and refugees, detention and electronic wristbands used to monitor them. While only 7% of headlines cover economics and work, precisely the fight against labour exploitation

[180] A. Cerase, *Osservare i confini. Introduzione all'analisi dei media in tempo di migrazioni* in M. Binotto, M. Bruno, V. Lai, *Tracciare Confini: L'Immigrazione nei Media Italiani*, FrancoAngeli, Milano, 2016, pp.17-18.

especially involving migrant farmers, their illegal employment and debates on the Flow Decree. The least covered topics are related to their reception and terrorism (3%). [181]

3.3.2 Predominant frame and tones

The mention or omission of certain details strongly influences the way journalism presents reality or news. Thus, only certain interpretations of facts are proposed. The discursive context in which facts are contextualised is decisive: whether the interpretation used to indicate the cause or solution of the problem is predominantly individual or general, i.e. whether it refers to the personal characteristics of the people involved or the "categories" to which they belong, or whether it concerns a broader social issue of national or local significance. [182] Thus, the behaviour of the media and editorial choices diverge: when the protagonists are Italian or unidentifiable, the fact is associated with individual causes. On the opposite, if the protagonist is foreign, he/she is associated with ethnic-national affiliation or legal status. Therefore, when the news story involves an Italian or an unidentified person, the case stands alone, while in the case of foreigners, the event is interpreted as a symptom of a broader problem, caused by social issues such as immigration or crime. Furthermore, there is another substantial difference between how news is reported based on nationality. If Italian, the reporting is limited to a mere description of the facts and tends to be explained by searching for a logical reason, a triggering factor. An attempt is made to explore the personality, life and habits of the perpetrator, often attributing the crime to psychological problems or trauma suffered, in order to highlight the humanity of the subject. Whereas if the person is a foreigner, the news is reported superficially, focusing on the arrest, trial and sentence. It is interpreted and linked to a broader issue, such as security, immigration and illegal entry. The foreigner is not portrayed as human, but rather as an irrational and dangerous being. By framing the news in this way and reinforcing specific stereotypes, it can easily end up on the front page, becomes the focus of public debate, and leads to political, legal or regulatory repercussions. Italian cases, on the other hand, often remain isolated and are not the subject of public debate.[183] Framing means collocating a certain phenomenon within a particular frame and reinforcing some aspects associated to it. It implies underling certain features while obscuring others and giving centrality to some meanings and narratives instead of others, that influence and determine the public orientation. In Italy and the rest of the world, migration continues to be framed as a negative phenomenon, since the main focus is on its problematic aspects, as

[181] Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto: XIII Rapporto Carta di Roma*, Associazione Carta di Roma, 2025, pp. 16–17

[182] S. Iyengar, *Is Anyone Responsible? How Television Frames Political Issues*, University of Chicago Press, Chicago, 1991

[183] M. Binotto, *Tracciare confini.* Cited above

highlighted by Lai. It is considered a permanent emergency and security threat rather than a humanitarian or socio-economic issue. [184] Foreigners are seen as different and unfamiliar, considered as enemies and responsible for crimes, terrorism, and the spreading of diseases, social disorders and protests. As a matter of fact, between 2013 and 2025 the most employed terms in the journalistic discourse and headlines to describe them emphasise the current emergency: "crisis", "threat" and "invasion", even when there is no data in support of these claims. Moreover, the report underlines the frequency of key words related to particular events that happened during in the last decade. 2015 was the year when the migratory crisis was at the core of the European debate. As a matter of fact, "Europe" was the key lemma, since its Member States did not agree on common policies, generating a political crisis. Moving on to 2016, "walls" was the lexical item that reflected the systematic crisis affecting the European scenario, to refer both to physical barriers and symbolic ones. In that period, walls separating Hungary, Turkey, Greece from their neighbours were initiated and completed. [185] Europe was marked by tensions and contrasts that questioned EU principles, including even freedom of movement. The narrative significantly shifted in 2017 when the word "Ong" marked a drastic turn: ONGs were previously considered as "sea angels", while from that moment on they have been called "sea taxis". This shift in their denomination reflects the ongoing *rejection crisis* towards humanitarian assistance. ONGs are the target of hostile and polarised rhetorics and media narratives, frequently reporting crimes committed by foreigners. Between 2018 and 2019 "Salvini" was the main figure involved in the political debate caused by a moral crisis, revolving around opposite visions of identity. This word was frequent in journalistic discourse, that reflected the strong polarisation in the representation of migration, hospitality and security, undermining social cohesion. In 2020 due to Covid-19, "virus" was the most salient lemma in the press, designating the health crisis and fostering negative representation of migrants in the media, blamed for its spread. In 2021 "UE" was the key word that indicated the crisis in the management of borders and the humanitarian emergency. The Union cohesion was profoundly undermined due to divergent visions by Member States in dealing with a common challenge. Then in 2022 due to the Russian invasion, the term "Ukrainians" was frequently used due to the flee of millions of refugees from Ukraine. During this refugee crisis, the Union opened its borders and quickly granted them temporary protection. "Cutro" characterized the year 2024 when 94 persons died due to a dramatic shipwreck, recalling the tragedy happened in Lampedusa when 368 people lost their lives and the "Mare Nostrum" rescue operations in the Mediterranean Sea. The predominant frame is that of a recurring crisis. The humanitarian crisis has for long been at the core of media discourse and headlines. These dramatic events continue to be

[184] V. Lai, *Tracciare Confini*, cited above.

[185] https://worldpopulationreview.com/country-rankings/countries-with-border-walls

described through a sensationalist language to represent its victims, often inappropriately, that leads to a sort of 'spectacularisation' of news, where their identities are not protected. On the contrary, their right to privacy and dignity is severely infringed. And finally, the word that symbolises 2024 is "Albania", due to the agreement between Italy and Albania on the establishment of extra-EU centres for migrants. However, the compliance of this decree with international and European law has been questioned. Concluding with the 2025-word: "Gaza", symbol of the humanitarian crisis caused by the conflict between Israeli and Palestine, causing mass displacements and millions of refugees from the Gaza Strip. [186]

The contents, register and tones in the press continue to be tragic and alarming, reinforce the equation immigration=criminality and evoke strong negative feelings such as fear in the audience. Media professionals and political actors further emphasise this chaotic representation by spreading pictures of thousands of people arriving by boats and report these events through a biased perspective, instead of an objective and neutral one. These communicative practices contribute to the narrative construction of fear. Therefore, they should not employ alarming tones; nor shall they overdramatise facts with the objective to attract a larger audience, through sensationalist and emotional headlines or images. This tactic may result in the distortion of reality and compromise the quality of information.[187]

3.3.3 Victimisation

Within the migration discourse, the media tend to frame migrants as authors of crimes and in other instances, as the victims. Depending on their role in the event, the linguistic practices adopted to describe them vary. They are often the victims of hate or serious crimes, such as islamophobia, antisemitic manifestations and acts. In these instances, journalists tend to employ violent and dramatic terms: verbs such as *kill, die, stab.* As considered in the report, these crimes usually involve minors, in particular children, sons, and fathers. As a matter of fact, these are frequent lemmas that contribute to underlining the vulnerability of these individuals and the emotionally engaging nature of the news.[188] Lai notices that information professionals tend to adopt colloquial expressions, rhetorical figures, and pitiful tones to evoke sentiments of empathy and compassion towards migrants. This happens especially when reporting on their landing or on migrant deaths at sea, described through terms such as *tragedy, despair,* or metaphors that represent the Mediterranean Sea as a graveyard. Usually, this news is accompanied by photographs representing women or children, while photographs of men are usually associated with the frame of alarm. The 'victim frame' could be

[186] Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto*, cited above, pp. 20–31.
[187] Lai V., *Tracciare confini.* L'immigrazione nei media italiani, p. 51, FrancoAngeli, 2016
[188] Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto*, cited above, pp. 35–40.

considered as a viable alternative to the common practices of representing the issue of landings. However, according to Binotto, it is not a "counter-frame" capable of challenging the prevailing frame of alarm but constitutes a less conformist way of dealing with the issue. These frames are interconnected, constructing and structuring a more general representative and interpretative key.[189]

3.3.4 Spatial metaphor: in and out

In the European media and political scenario, the storytelling continues to be centred on the securitisation of migration: on border controls, the expulsion of migrants and the increasing criminality. Our territory is constantly represented as under assault. The aim is to stop the ongoing *invasion*, a term which clearly evokes the idea that our national sovereignty, that our space is under threat and must be protected by keeping them out as they might hinder and contaminate our society and identity. This symbolic space is defended through legal and administrative measures, implemented by authorities, and reinforced by the media, through metaphors and images of catastrophes and chaos at the border, thousands of people on boats, representing the phenomenon as if it were a show, displaying the feelings, personal stories and faces of these individuals. This seems to be the only way to reassure citizens and guarantee them they are safe in their country, a territory that must be closed and well-delimitated so that nobody can enter. This discourse seeks to underline the cultural differences between *us* and *them* and the necessity of reinforcing this spatial separation and border. Any individual who intrudes in our space is seen as somebody dangerous who brings chaos, violence, crimes and therefore to be excluded. [190]

3.3.5 The ethnicisation of news

When covering crime and justice, it is important to assess whether the portrayal provided by the Italian news media is accurate or balanced and what is the cause of this abundance of news featuring foreigners in the mass media. One may believe it is just because they are likely to commit more crimes. However, one should question whether maybe it is due to the selection and coverage of news by information professionals.

Journalists often explain and justify their behaviour when covering this issue through the metaphor of a "mirror", as reported by Binotto. However, to what extent is their representation faithful, meaning and actually "mirrors" reality, by accurately describing social phenomena? According to a comparative analysis between different newspapers on crime news reports made by Binotto, there are three possible sources of distortion. The first is numerical: it concerns the number and visibility of news items in newspapers. The second compares the type of events described, the details presented

[189] M. Binotto, *Tracciare Confini*, cited above, pp. 174–176.
[190] Ivi, pp. 140-142

and the protagonists. The third concerns journalistic processes of association and "framing"—how news items are interpreted and linked to others.

Indeed, news of crimes, accidents and crime stories occupy a lot of space in the press. But it is also important to emphasise the position that news items occupy within newspapers, how much prominence and visibility they are given. It is clear that news items are treated differently depending on the nationality of the perpetrator of the crime: if foreign, they are found close to or on the front page, and therefore very visible. Particular emphasis is given to news about crimes against the person, such as assault and sexual violence, and crimes against property, such as theft and robbery. The data on homicides seems to be more consistent. Therefore, when the perpetrator is a foreigner, the probability of the news ending up on the front page is much higher.

Furthermore, there is a tendency to over-represent crimes committed by foreigners, which corresponds to an under-representation in the description of the judicial process.

Apart from analysing the space and quantity of facts reported, it is also necessary to consider the descriptive elements of the news, extremely important:[191] the description of the circumstances, the personalities and motives of the protagonists. And how the news is explained, linked to other news items and thematised. The first useful element for interpreting their description is provided by the descriptive traits of the protagonists. When protagonists are not Italian, their legal status and nationality are specified in almost all cases, while their personality (age, profession) is omitted or given little detail. As Binotto claims, nationality, legal status ("illegal immigrant") or professional status ("caregiver") are details frequently repeated in headlines and articles, within a few words of each other. Indeed, states Faso, it is widespread practice to repeat similar terms and adjectives within a few words to identify or define the protagonist[192]. On the contrary, in the case of Italians, personality is the most relevant and detailed element. For example, Binotto's comparison of news reports on victims of different nationalities clearly shows that in the case of Italians, their profession is specified and their lives are described in detail, providing a complete portrait of their personality. Whereas if the victim is a foreigner, the description of their personality, of their age and profession is vaguely described. Sometimes, their criminal records or medical reports are mentioned. The strategy of representing *Us* and *our* characteristics in a positive light and Others in a negative light is recurrent in the discourse on immigration[193].

[191] Ivi, pp. 98-101

[192] G. Faso "La lingua del razzismo: alcune parole chiave" in G. Naletto (a c. di), *Rapporto sul razzismo in Italia*, Manifestolibri, Roma, 2009

[193] T.A. Van Dijk (2003), *Ideologie*, Carocci, Roma, 2004.

The ethnicisation of news is the tendency of the media to support stereotypical representations of the Other based on their ethnicity, as defined by Taguieff. [194] Western media tend to intertwine issues such as religion, ethnicity and economic globalization with immigration and multiculturalism. This leads to generalisation, to associate a criminal or deviant behaviour with the entire national or ethnic group of the perpetrator or victim, fuelling misrepresentations. Immigrants may often become scapegoats, the object of suspects and symbolic pretexts, due to pre-existing fears and feelings of insecurity. They are stigmatized, seen as potentially dangerous for one's physical safety, blamed for any crime, social unrest and economic issues, instead of being considered a resource. In contrast, crime committed by nationals is underrepresented. In Italy, the alleged association between immigration and crime has become particularly consolidated since the 1980s, due to the politicisation of immigration. As a result, the number of news reports on crimes committed by immigrants increased. From then on, the Italian media has persisted in highlighting their involvement in criminal or illegal activities, sometimes interpreted as a consequence of their marginalisation and distress. Binotto states that this trend can be explained by two assumptions: the media's heavy reliance on judicial sources and the effects of internal production routines within journalism. In fact, journalists carry out a selection and research activity that takes on a material and consumerist aspect, aimed at generating sales and catching the audience. An additional hypothesis claims that the media attempts to translate the public's feelings of insecurity and fear of the different and the unknown into political and electoral consensus. [195]Especially in the last decades, the migration issue has been at the forefront of political debate, ideologies and electoral campaigns, all over the world and in Italy too, where populist and xenophobic movements appeal to emotions of fear and anger to incite hatred against specific groups and reinforce border controls. Political actors along with the media highlight that there is an emergency and fuel moral panic, supporting their claims by mentioning specific single events and data on criminality rates, in order to persuade citizens of the necessity of measures to handle these flows, often inefficient and violating basic human rights. Ethnic and religious minorities are as well affected by discriminatory practices, for example Muslims or Roma in Europe. Within the Italian context, the political class and public opinion define migration as a persistent problem, not considering the pluralistic and multicultural reality in our country, as considered by Binotto. Media professionals appear incompetent, as they fail to catch the multidimensional aspect of the phenomenon. They tend to only highlight specific features of migrants, such as their nationality or juridical status, especially when covering crimes, even if such elements are not always relevant. Consequently, the public opinion might deduce that migrants are responsible for criminality and

[194] P.A. Taguieff, *La force du préjugé. Essai sur le racisme et ses doubles*, Editions La Découverte, Paris, 1987
[195] M. Binotto, *Tracciare confini.* cited above, p. 34

public order issues and believe they are naturally prone to deviance and crime. Their choice of underlining such characteristics to explain an event means underestimating this multifaceted phenomenon. The criminalization of foreigners is common in many countries, reproduced through discourses, facts, and practices produced by the police, judicial authorities, but also by local administrations, the media, and citizens who blame immigrants for most crimes. But in reality, the increase in crime rates does not seem to be related to an increase in immigration. Therefore, concludes Binotto, this criminalization of the Other and the "ethnicisation" of crime can be explained mainly by a cultural dynamic; it is just a way of concealing pre-existing prejudices. This criminal portrayal of immigration reflects a profound cultural backwardness, an evident struggle to process and mitigate both economic and cultural conflicts triggered by migration in host societies. [196]

3.3.6 Silenced voices

Migrants and minorities should be adequately represented and given the possibility to speak up since they are directly involved in news and events reported by the media. However, migrants' voices lack in migration-related news. Media continue to silence their voices instead of hearing the experience and points of view who is the subject of their reports. Media rather let external actors such as authorities and politicians intervene and comment on migration issues proving how migration flows continue to be intertwined with geopolitical interests. As today, only 7% of reports on TV on migration includes interviews or statements released by migrants and refugees, while in the press their voices are completely absent, argues Scavo.[197] Thereby, migrants are prevented from actively participating in the hosting society and public debate, likely leading to their marginalisation. As a result, since the plurality of perspectives and voices are not taken into account, it is not possible to provide an exhaustive and clear picture of migration.

3.4 From media practices to legal obligations

The practices illustrated above are not merely editorial or stylistic choices since they have concrete legal implications and raise questions about compliance with the human rights framework discussed in the previous chapters. As a matter of fact, media practices potentially conflict with binding legal instruments. In particular, the unjustifiable publication of confidential data may infringe the principles enshrined in the General Data Protection Regulation as well as the principle of accuracy and truthfulness imposed by Article 2 of the Italian Law 69/63. Moreover, at the constitutional level, the persistent tendency to associate migrants to criminality may lead to an increase in discriminatory attitudes and stances, strictly prohibited under article 3 of the Italian Constitution that safeguards

[196] M. Binotto., *ivi,* p.23

[197] N. Scavo, in Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto*, cited above

human dignity and equality. When media coverage reinforces prejudices and stereotypes and encourage violence or social exclusion, the need to restrict freedom of expression becomes evident, as it infringes the right to dignity and to privacy at the core of European instruments, as the Charter and the Convention. In reason of the specific vulnerability of migrants and asylum seekers, they are entitled to heightened protection by authorities but also by media that must adopt responsible and respectful practices when reporting. Their crucial right to inform and serve the public interest may cause harm to the reputation of others. Despite existing laws punishing defamation and breach of privacy, they are not always enforced and sanctions for violations may not always be applied. Therefore, within the journalistic context, other self-regulatory instruments have been developed, in particular ethical codes and binding norms for journalists that explicitly establish how to cover sensitive topics. One of key documents in Italy is the Charter of Rome that sets forth crucial standards for the exercise of the journalistic profession.

3.4.1 Deontology

Journalistic deontology is understood as a corpus of norms, values and duties that regulate the informative activity. In Italy, the Supreme Court (Corte di Cassazione) provided a specific definition of the journalistic profession, understood as the performance of intellectual work aimed at collecting, commenting and processing news to inform the audience through several channels of communication. Within this perspective, journalists play the role of intellectual mediators between the fact and its dissemination. [198]They must acquire knowledge of the event, assess whether it is relevant for the target audience and then deliver this information with subjectivity and creativity. A crucial feature of the journalistic activity is the continuity or periodicity of their service, program or publication. [199]
Logical methods and a rational approach should guide journalists' activities, so that they can contribute to a public debate based on accurate information, respectful of the dignity of human beings, and aimed at comprehending social phenomena, instead of encouraging artificial conflicts and irrational fears. When covering sensitive topics such as immigration and asylum, journalists should be tactful and comply with ethical standards. Their stylistic, iconographic and narrative choices can affect social perceptions, fuel stereotypes and prejudices or, on the contrary, encourage social inclusion and understanding. Within this context, deontology prevents dangerous narratives, both for the individuals concerned and for the whole society. It aims to monitor the behaviour of media and how they disseminate information, to identify possible distortions.[200] International deontological recommendations by the Ethical Journalism Network, the National Union of Journalists (NUJ) and

[198] Cass., No. 23625/2010
[199] Cass. civ. sez. lav., 29 August 2011, No.17723
[200] M. Binotto, *Tracciare* confini, cited above, pp.26-30

the Press Complaints Commission (PCC) and the Italian Charter of Rome invite journalists to prevent the dissemination of discriminatory information and opinions that incite hatred and racial prejudices.

3.5 The National Council of the Order of Journalists (Consiglio Nazionale dell'Ordine dei Giornalisti)

The National Council is an appeals body against decisions made by regional councils regarding registration in the Register, disciplinary matters, and electoral matters. It also has other powers. First and foremost, it has the power of self-government with regard to its organisation and functioning; it promotes activities for professional improvement, updating, and refinement; it expresses opinions on draft laws and regulations concerning the profession of journalism. Its fundamental task is to review, annul, or revoke decisions taken at first instance by the regional councils. It is a task of guarantee, both in the general interest and in the individual interest of journalists, which is carried out autonomously and in accordance with the principles of self-governance of interests. All measures taken by the regional councils can therefore be challenged before the National Council by the individual journalists concerned or by the public prosecutor. The latter body acts as a guarantor of the interests of the general legal system, within which the measures adopted in the specific sector are also effective. This prevents the decisions of the Order from limiting press freedom or resulting in coercive measures against individual journalists. Both the interested party and the Public Prosecutor may appeal against the decisions of the National Council to the three further levels of ordinary justice: the Court, the Court of Appeal, and the Court of Cassation. The latter, like the National Council, may annul, revoke, or reform decisions. The Court or Court of Appeal is composed of a professional and a publicist. At the end of their term of office, journalists cannot be reappointed. This is a further safeguard of the principle of self-protection of the profession, balancing the power of the ordinary judge to influence the merits of professional decisions. This system protects both the rights and interests of the individual and the independence and prestige of the profession. [201]

3.6 Law No. 69/1963

Law No. 69/1963 regulates the profession of journalism in Italy. It defines journalism as a professional, creative, intellectual activity, making journalists not mere executors but professionals. The law also emphasises the social importance of journalism and requires those who practise it professionally to register in a professional association (*Albo*), subject to certain conditions and

[201] https://www.odg.it/consiglio-nazionale

procedures. The main aim of this law is to safeguard public opinion and the audience for whom the information is intended. The law also establishes self-governance for the profession, with management of the Register entrusted directly to journalists. Certain measures, relating to professional ethics, are therefore the responsibility of professional bodies, whether professional associations, trade unions, or other associations.

The 1963 law came about after almost a century of discussions on journalism as a professional intellectual activity, with the establishment of the Italian Periodical Press Association. In 1908, Law No. 406 recognised the profession of journalist for the first time from a legal point of view, as someone who makes journalism their usual, sole and paid profession, and the first register was created. Law No. 69/63 provides for a specific regime for access to and practice of journalism on the one hand and defines the structure of the professional association on the other, assigning powers of active administration, litigation, etc., to its constituent bodies.

The regulations governing the profession stipulate, under Article 1, that anyone wishing to take on the title and practise the profession of journalist must be registered with the Order. Journalists are divided into two categories: "professionals" who practise journalism exclusively and continuously; and "publicists", i.e., those who carry out journalistic activities on a regular and paid basis, as well as other activities or jobs. This distinction corresponds to the division of the Register into two lists. Moreover, it comprehends the provision and regulation of "journalistic practice", which must be carried out for at least 18 months in order to be eligible for inclusion in the list of "professionals", and the corresponding establishment of a special register of practitioners. It also established a special professional aptitude test and special lists for foreign journalists and for editors of technical, professional or scientific periodicals or magazines.

The "structural" discipline, i.e. self-government, is achieved by dividing the Order into two levels of bodies: the first, consisting of regional or interregional councils, elected on a territorial basis by members; the second, consisting of the National Council of the Order of Journalists, made up of members elected at regional level, which decides on appeals against the decisions of the regional councils. [202]

Article 2 enshrined in Law no. 69/1963 sets forth the rights and obligations concerning journalists. In particular, it underlines the inalienable right for journalists to freedom of information and criticism, provided they comply with the laws safeguarding the privacy and dignity of others. Moreover, it

[202] https://www.odg.it/chi-siamo/ordinamento

establishes that they are required to safeguard the substantial truth of facts and to act in good faith, respecting their ethical principles. That implies reporting well-researched facts by referring to trustworthy sources and elements, rather than employing sensationalistic tones and terms or overdramatizing news to catch the audience. They should review and amend any inaccurate news and respect the confidentiality of their sources, as they have the duty to uphold professional secrecy. This information could be revealed only if deemed fundamental, depending on the circumstances. Such provisions may be successful in enhancing the readers' trust towards journalism and the press, that means that the audience is sure that any news disseminated through these means is true and accurate.[203] Furthermore, under Article 48, journalists are required to accept responsibility for their claims. As a matter of fact, they might be subject to disciplinary proceedings, if enrolled in the Register, lists, or registry and guilty of acts that do not comply with professional decorum and dignity, or acts that harm their reputation or the dignity of the Order. The regional or interregional councils are entitled to initiate disciplinary proceedings, or in other cases it is the competent attorney general.[204]

3.6.1 Disciplinary sanctions

If journalists do not comply with their obligations, they risk certain sanctions, listed in article 51.
The disciplinary sanctions can range from warnings to expulsion from the Register.
Warnings are issued in cases of minor abuse or misconduct, consisting of reminding the journalist to comply with his/her duties. It is issued by the President of the Council of the Order unless it follows a disciplinary ruling. Within the following thirty days, the journalist can request to be subject to disciplinary proceedings. [205]
Censorship is imposed in cases of serious misconduct or negligence [206], whereas suspension from practising the procession when the journalist due to his/her conduct significantly compromised the dignity of the profession. [207] Lastly, the expulsion from the Register is inflicted in the most serious cases of abuse that have seriously harmed professional dignity to the extent that the member's enrolment in the registry, list or register is incompatible with professional integrity.[208]

[203] Art. 2, Law 3 February 1963, No. 69
[204] Art. 48, ivi
[205] Art. 52, ivi
[206] Art. 53, ivi
[207] Art. 54, ivi
[208] Art. 55, ivi

3.7 Codice deontologico delle giornaliste e dei giornalisti

Since June 1st, 2025, the present Code, approved by the National Council of the Order of Journalists (CNOG), has established fundamental principles and obligations for journalists, enshrined in other legal texts and sources such as Protocollo sulla trasparenza della pubblicità, Carta di Treviso, Carta dei doveri. It replaced the former *Testo Unico dei doveri del giornalista*, as this new code represents a more modern document that updates and aligns the previous norms with recent technological developments, in particular related to the invention of Artificial Intelligence, and calls for a more respectful language towards specific individuals. It reaffirms the freedoms to which they are entitled, beginning with the right to expression, information and criticism already outlined in Article 2 of Law N° 69/1963, and other principles.[209]

Article 14 is of particular interest, as it directly addresses migrants and refugees. It requires journalists to follow specific principles when covering news related to migrants, refugees, asylum seekers and victims of trafficking. The first principle invites journalists to employ appropriate and respectful terms and to avoid spreading information that is imprecise, distorted or incomplete. They should also avoid denigratory or discriminatory expressions and always preserve the identity of the subject who agrees to expose themselves to the media, unless permission to disclose it is explicitly given. The preservation of their identity is crucial, as their exposure to the media, may harm them or their relatives. It is also important that journalists provide clear information to these subjects and make sure they are fully aware of the consequences of the dissemination of their personal data. [210]

3.7.1 The principle of independence

Among these, the principle of independence of journalists is crucial since they have a duty towards citizens that must be provided with complete, reliable and truthful information. As a matter of fact, they must fulfil their informative role and exercise their profession autonomously and independently; it is prohibited for them to accept any remuneration, gift or privilege that might compromise their independence and credibility. Their responsibility to the public always prevails over any other responsibility. Neither can they undertake assignments that could influence their work or lead to a conflict of interest. They can accept instructions only from their editorial staff, if compliant with the law, ethics, and contracts. Moreover, they cannot join secret associations that violate Article 18 of the Constitution on the right to association. They must comply with the decorum and dignity characterizing their profession, by applying the deontological norms and adopting a behaviour and a language that respect the dignity of their Order and of others. Moreover, they are required to collect,

[209] https://www.odg.it/codice-deontologico-delle-giornaliste-e-dei-giornalisti/59465
[210] CNOG, Codice Deontologico delle Giornaliste e dei Giornalisti, art. 14

search and disseminate accurate and comprehensive information of public interest, without omitting relevant information. Their activity shall not be subject to censorship or authorisations; however, when dealing with personal data, this might be published if relevant, if it is deemed of public interest and it is necessary to disclose it as compliant with the right to information granted to citizens. In this case, the journalist does not need explicit consent by the subject concerned. [211]

3.7.2 Disclosure of personal data

When disclosing sensitive personal data revealing the nationality, ethnic origin, religious or political beliefs, this might be treated carefully safeguarding the anonymity of the subjects concerned. The identity of an individual can be revealed only if of public interest. When covering news concerning vulnerable individuals, as minors, disabled or migrants and refugees, they should pay particular attention to how they narrate such events and protect their identities. Under Article 14, journalists are required to employ appropriate and respectful terms to prevent the dissemination of distorted or ambiguous information, and expressions that could be denigratory or discriminatory. Additionally, their identity should be protected as its disclosure could harm these subjects or their relatives. If they consent to their identification, they should be properly informed of the consequences of such exposure to media. When publishing images, journalists must ensure they are respectful of the dignity and rights of others, that they are not altered or deceptive, and must provide adequate contextualisation of the subjects concerned. Moreover, they should avoid fomenting stereotypes through such representations or disseminating images that sensationalize violence, warning users of such content, especially in order to protect minors who should not be identifiable, nor should they be victims of tragic events or witnesses. Journalists cannot use violent or aggressive images or expressions and should not encourage hateful, threatening or dangerous behaviours. [212]

3.7.3 Crime reporting

In recent years, the phenomenon of media sensationalism surrounding certain events has become significantly more pronounced. This has led to the establishment of guidelines for the proper reporting of such events and emphasised the need to always protect the inviolable rights of individuals, even when reporting on current events. However, there have been many voices raised against this position, claiming the right/duty of journalists to report any news of public interest. Article 24 aims, on the one hand, to ensure compliance with the principles of objectivity, completeness and impartiality of information and, on the other, to respect the rights to dignity, honour, reputation and confidentiality guaranteed to persons directly, indirectly or occasionally involved in investigations and trials. In

[211] ivi, Art. 3.
[212] ivi, Art. 9.

particular, when reporting on legal proceedings, the parties are required to always respect the principle of presumption of innocence, making it explicit that persons under investigation or accused are considered innocent until proven guilty. Moreover, they must clearly distinguish between the various roles played by the individuals involved in the trial, between the distinct stages of the trial and levels of judgment. They shall not disclose sensitive information or images that could harm the privacy, dignity and decorum of others. Furthermore, in the event of acquittal or dismissal, they must report the news with appropriate emphasis and in a timely manner as soon as it is known. Lastly, they should ensure adequate space for the parties involved in judicial investigations and trials. [213]

Through these provisions, the role of journalists during the preliminary investigation phase is clearly defined and constrained: they have the duty and responsibility to inform the public in an objective and accurate manner, without providing personal evaluations, exaggeration or undue anticipation of guilt. They cannot take sides or support one party over the other, as this might influence the readers' perceptions, violating the legal principle of the presumption of innocence of the accused.[214]

3.8 Introduction to the Charter of Rome

Since 2008, the Charter of Rome constitutes a code of conduct for journalists for accurate reporting on immigration issues, setting forth specific ethical principles and duties. Its main objective is to safeguard the dignity of every human being and prevent any sort of discrimination, precisely asylum seekers, refugees, migrants or victims of trafficking. It was drafted by the National Council of the Journalists' Association (CNOG) and the Italian National Press Federation (FNSI). The Carta di Roma Association was founded in 2011 to implement this code of ethics. The association is a reference point for professionals who deal with the issues covered by the Charter, precisely journalists and information operators, but also trade bodies and institutions, associations and activists involved in the safeguard of the rights of asylum seekers, refugees, minorities and migrants in the world of information.

The Charter was not conceived as a mere list of suggestions, but as a commitment to use legally appropriate language. Information professionals must comply with specific rules, standards and prohibitions to attain quality journalism. Among the main fundamental principles, the adherence to the truth should be pivotal for Italian journalists. They are required to carefully deal with sensitive matters, related to immigration, asylum, refugees and trafficking. Compliance with deontology and with the provisions set forth in the Charter of Rome is crucial to correctly interpret the migration

[213] Ivi, Art. 24.

[214] Cass. sez. pen., No. 5587/2017

phenomenon and contrast the outdated narrative on the topic. In this regard, it is necessary to promote in-depth reporting, consider the pluralism of voices and viewpoints and comply with fair journalistic practices.[215]

The Association promotes training activities for media professionals and research and monitoring of information. It organises reflection sessions and study seminars on the representation of asylum seekers, refugees, victims of trafficking and migrants. It seeks to promote accurate and responsible reporting on issues related to immigration, the right to asylum and minorities through communication initiatives and events. It also invites information professionals, universities, civil society organisations and publishers to cooperate to jointly respect and guarantee the rights of asylum seekers, refugees, minorities and migrants. [216]

Despite its requirements and ethical principles, the Charter's effectiveness is questioned. Self-regulation only does not prove successful in addressing these challenges, as shown by the current media narratives and practices. This seems to be mainly due to its voluntary compliance and, furthermore, to the lack of sanctions.

3.8.1 Appropriate terminology

One of the principles enshrined in the Charter of Rome requires media to employ the appropriate juridical terms when reporting migration-related events and facts and provide truthful information to guarantee the public their right to accurate and integral information.

"Adopt an appropriate terminology which reflects national and international law so as to provide readers and viewers with the greatest adherence to the truth as regards all events which are the subject of media coverage, avoiding the use of inappropriate terms;[217]

The Charter highlights the significant impact of lexical choices, as language helps build a specific social reality. Here the importance of using the right terms when describing migrants and asylum seekers. Often journalists employ substantives, adjectives and verbs that have negative connotation. According to the XIII report published by the Observatory Carta di Roma, one of the most problematic term is *clandestino* (a 'clandestine' migrant). Between 2013 and 2025, in the Italian press it has been employed 1.837 times, especially by the newspapers *Libero Quotidiano* and *Il Giornale*, proving that their editorial line emphasises the necessity to counter immigration. Other denigrating terms and expressions are incorrectly employed, such as *vu cumprà, extracomunitario, zingaro*, to indicate a social and juridical condition in an imprecise and vague manner. It is not a term with a legal meaning, it does not describe a juridical status; as a matter of fact it is not included in the

[215] Charter of Rome: *Code of Conduct Regarding Asylum Seekers, Refugees, Victims of Trafficking and Migrants*,
[216] https://www.cartadiroma.org/chi-siamo/
[217] Charter of Rome, cited above

glossary included in the Charter. This glossary does not list terms that are prohibited, rather seeks to suggest appropriate terms to employ from a juridical point of view. Despite this, in the Italian media it is frequently used with a negative connotation to indicate a condition of illegality. Usually, it is used to designate irregular migrants, who may illegally cross the borders, or enter legally but stay even after their residence permit or visa expires, or who do not leave the country despite having received an expulsion order. In other cases, they are asylum seekers that apply and wait for a verdict or people who have been denied a residence permit. This term implicitly conveys to the public that they are irregular and dangerous, as it leads to their denigration and stigmatisation, since it leads to an overgeneralisation of these people, without distinguishing between the different legal meanings and identifying the juridical status of the individual. Migrant, refugee and asylum seeker are legal terms with a precise meaning, that cannot be interchanged, used as synonyms or out of context as some professionals do. Another persistent practice consists of employing adjectives referring to the ethnic origin or religion of migrants (*Tunisian, Moroccan, Jewish*).

La stampa più rappresentativa di questo cluster comprende *Il Sole 24 Ore, Il Giornale, Pianeta 2030 del Corriere della Sera e Il Gazzettino*.

For this reason, the Charter requires information professionals instead to employ more neutral and juridical appropriate expressions when describing foreigners residing in Italy. The use of these words seems to be progressively declining, partially due to training, monitoring and awareness-raising initiatives carried out over the years and the increasing emphasis on good practices in media representation. [218]

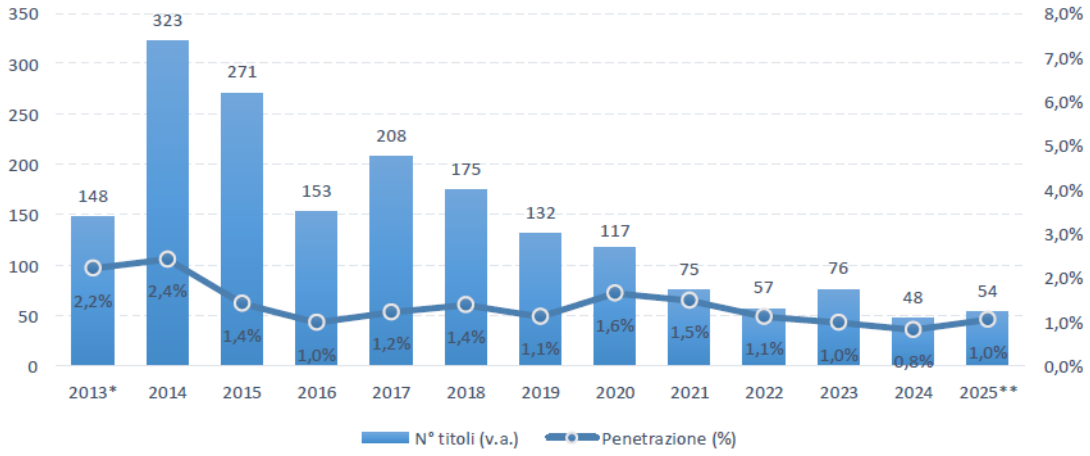
[218] Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto*, cited above, pp. 40–42.

Moreover, journalists might choose to emphasise the nationality of these individuals, even when irrelevant. They should not mention the nationality or ethnic group in the headline, as it is deemed unfair from the perspective of deontology, and it negatively frames such news. It is considered a discriminatory practice as it targets the whole ethnic group, not only the individual. However, some journalists decide to highlight the nationality of an individual and defend their choice by claiming that it is relevant information and that complies with their right and duty to report.

These practices represent an infringement of multiple principles enshrined in the Charter of Rome and other instruments. In particular, it violates Article 9 of the GDPR that prohibits the disclosure of data revealing national origin and of Article 2 Law 69/63 that requires journalists to disseminate well-researched information. This implies employing accurate legal terms instead of confusedly exchanging them.

In conclusion, despite the existence of clear legal standards, enforcement mechanisms remain weak as proven by recent reports.

Use of the term 'clandestino' in the headlines of the press (July 16th, 2013 - October 31st, 2025)



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3.8.2 Accurate and truthful information

Moreover, they should not encourage misinformation by spreading fake or distorted news, as this unprofessional behaviour may seriously harm the subjects of their story as well as influence their readers' perceptions, undermining as a consequence professionals' credibility. Neither should they oversimplify information.

"Avoid spreading inaccurate, simplified or distorted information as regards asylum seekers, refugees, victims of trafficking and migrants. CNOG and FNSI call all their colleagues' – and those responsible

[219] Ivi, p. 41

for editorial content in particular – attention to the negative effects of superficial or unprofessional behaviour on those who are the object of news coverage, on readers/viewers and, as a consequence, on media professionals' credibility. Superficial behaviour may include associating different news items in an inappropriate manner and may engender unwarranted apprehension among the public."

In this regard, journalists continue to adopt a process based on oversimplification and reduction of complexity, as argued by Russo Spena.[220] When arrivals occur, the emphasis is placed solely on the moment of arrival, without adequate discussion of the reasons behind it, and without an appropriate analysis of macro-phenomena such as economic globalization, international crises, and conflicts. For example, television news programs seem to rarely mention humanitarian crises, which are often one of the main reasons for migration flows (in 2012, only 4% of television news reports addressed these issues). Details of an event might be overlooked, making it difficult to comprehend and reconstruct certain events. An isolated event can end up being generalised if it is not properly understood and interpreted. Thus, an individual act is then associated with common and typical characteristics of the entire ethnic group. [221]

Journalists shall not provide partial, simplistic and rushed information, flash news. Within this context, they have the duty to critically analyse and report these issues, understand and correctly interpret and represent the complexity of this phenomenon, by listening to several voices and relying on trustworthy sources. [222]

3.8.3 Protection of the identity and image

Another crucial principle concerns the protection of the identity of migrants, asylum seekers, refugees and victims of trafficking. It is important that media professionals preserve the identity, personal details and image of the individuals they interview and ensure that they cannot be identified.

"Safeguard those asylum seekers, refugees, victims of trafficking and migrants who choose to speak with the media by adopting solutions as regards their identity and image so as to ensure that they are not identifiable. Asylum seekers, refugees, victims of trafficking and migrants who are identifiable – as well as the latter's relatives - may face reprisals on the part of the authorities in their country of origin,

of non-state entities or of criminal organisations. Moreover, individuals who belong to a different socio-cultural context, where the press plays a limited role, may not be aware of global media

[220] M. Russo Spena "L'uso strumentale delle differenze religiose: l'Islam nelle retoriche pubbliche", in G. Naletto (a c. di), *Rapporto sul razzismo in Italia*, Manifestolibri, Roma, pp. 47-51.

[221] V. Lai, *Tracciare confini.* cited above, p.65

[222] Associazione Carta di Roma and Osservatorio di Pavia, *Notizie Senza Volto*, cited above.

dynamics and may thus not be able to foresee all the consequences of their decision to appear in the media."

In some cases, journalists in their reports violate their codes of ethics and personal data privacy laws by publishing images or names of crime suspects. Depending on their socio-cultural background, such subjects may not be aware of the consequences of their appearance in the media. They may risk reprisals by authorities in their country of origin, non-state entities or criminal organisations.

3.8.4 Comprehensive and clear information

Journalists should also consult experts and organisations in order to provide clear and comprehensive information on the phenomenon covered.

"Whenever possible, consult experts and organisations with a specific expertise on the subject so as to provide the public with information which is clear, comprehensive and also analyses the underlying roots of phenomena".

Immigration continues to be framed as an emergency to be solved. This proves that the media fail to fully and accurately comprehend the complexity of societal changes, thereby contributing to support irrational attitudes and security 'obsessions'. The variety and richness of the phenomenon and the cultural aspects are not often covered in the media, despite the numerous success stories of integration and the social and economic contributions made by migrants to the country. To reassure citizens and manage migration flows, it is necessary to adopt efficient border control and expulsion policies, as well as to encourage social inclusion and generosity towards others, respecting human rights.

Media professionals may provide approximate representations of reality and even abuse statistical data that describe migration and decontextualise them. They may tend to select and report only data that reinforce their stances, ignoring others, and that catches and heats up the audience. This discursive strategy is known as cherry-picking. [223]

The National Council of the Order of Journalists (CNOG), the Italian National Press Federation (FNSI) and the United Nations High Commissioner for Refugees (UNHCR) commit themselves to provide courses for journalists to train them on how to cover specific sensitive topics. CNOG and FNSI are also committed to organising seminars for teaching how to represent asylum seekers, refugees, migrants and victims of trafficking in print, radio and TV. Additionally, CNOG, FNSI and the UNHCR support the establishment of an independent Monitoring Centre, in charge of monitoring advances in media coverage of these issues. Lastly, the National Council of the Order of Journalists

[223] M. Benedetti, *Il Data Journalism Italiano sulle Migrazioni*, European Journalism Observatory, 2023.

along with the Italian National Press Federation work to grant awards dedicated to media coverage that has positive outcomes.

3.9 The rulings of the National Council of the Order of Journalists

The National Council of the Order of Journalists has dealt with several cases questioning the protection of identity and the language used by journalists when covering migration-related issues.

3.9.1 Decision No. 19/2022: identity protection

Decision no 19/2022 represents an extremely relevant case that directly concerns the obligation to protect the identity of migrants. The journalist was sanctioned with censorship for publishing the full name, age and nationality of two migrants still at sea. The defendant claimed they were not entitled to anonymity because they were not formally recognised as asylum seekers, not having yet landed in Europe and, as a result, had not formally initiated any protection procedure. However, the National Council rejected his appeal and upheld the disciplinary sanction previously imposed by the regional council of Basilicata. Furthermore, it clarified that the lack of legal status does not justify the disclosure of personal data contained in judicial documents, unless strictly relevant and necessary to the news story. Therefore, the journalist did not fulfil his duty. The Council considered that these individuals are entitled to enhanced protection since, if publicly identified, they may risk facing persecution and harm. The right to privacy of migrants, refugees, asylum seekers and victims of trafficking, argues the Council, must not be violated by journalists, nevertheless these fragile individuals consent to be exposed to the media. The journalist has the duty to carry out a balancing exercise between equally protected rights when reporting. The Council concluded that the personal data that were published were not only irrelevant but also potentially harmful. Therefore, this ruling reinforced in particular the principles enshrined in Article 14 of the Italian deontological code and aligns with the General Data Protection Regulation framework discussed in Chapter 2. [224]

3.9.2 Decision No. 29/2022: appropriate terminology and accurate reporting

To understand how the principles of the Rome Charter are applied in practice, the case law culminating in Decision No. 29/2022 of the National Council of the Order of Journalists is emblematic. The case concerns the front page of *Libero,* a well-known national newspaper which, during the pandemic emergency, published the headline “We are importing the virus” on its front page, with the subheading “28 infected refugees landed in Sicily”. "Since COVID-19 in Italy is nearly innocuous, we go get it in Africa, where it still kills. Illegal immigrants stuck on the ship due to quarantine".

[224] A. Goio, *Massimario 2023*, Consiglio Nazionale Ordine dei Giornalisti, Rome, 2023

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This ruling is of extreme interest for three fundamental reasons at the core of journalistic ethics.

The first reason concerns the headline of this article, that seems to distort reality. The Council ruled that editorial freedom cannot be justified, as the title "we are importing the virus" was deemed false and alarmist, although the article itself reported correct data (the migrants were asymptomatic and in quarantine on a ship). In terms of mass communication, the headline at issue has a significant impact, since it clearly emphasised the facts, exaggerating, to raise unfounded alarm about their real scale and the circumstances in which they occurred, while also drawing attention to the geographical origin of those involved. In this ruling, the Order of Journalists decides to strictly apply Article 2 of Testo Unico dei doveri del giornalista, as the headline at issue did not comply with what enshrined in it, which requires journalists to research, collect, process and disseminate with extreme accuracy any data or news of public interest in accordance with the substantial truth of the facts. In reality, the refugees were asymptomatic and had not landed yet, but were isolated on the ship, therefore could have not contributed to spreading the virus in Italy. Thus, the news was declared “historically false” by the Council and designed to create prejudice. The same principles are set forth in the Charter of Rome, that underlines the importance of using appropriate terminology and of providing true and well-researched information.

Furthermore, journalists must respect the fundamental rights of individuals and comply with the legal provisions established for their protection. However, inhere the term “infected” was used and, hereupon, censured because it carries a particularly negative connotation, dehumanising migrants and damaging their reputation, as already often considered in the Italian society as carriers of contagious diseases. Censorship in this case represents a warning against the instrumental use of migration as a catalyst for collective fears. The Council considered the statement as discriminatory, capable of

225 https://www.ilpost.it/2020/06/25/le-prime-pagine-di-oggi-2546/10_libero-85/

influencing public opinion, already alarmed due to the pandemic. Here, the Charter of Rome intervenes against discrimination, preventing the right to report the news from fuelling social alarm. Furthermore, in his defence, the editor invoked the right to criticise and consistency with the newspaper's "editorial line" and insisted that there were no discriminatory intentions and urged that the context of the matter be considered, as well as other statements in other newspapers. However, the Council concluded that the expressions contained in the title could potentially undermine fundamental human rights. His appeal was therefore rejected and the ruling handed down by the disciplinary council of the region of Lombardy was upheld.[226]

3.10 Religious discrimination: decision no. 84/16

The following case does not directly concern news related to migration or asylum. However, it is relevant to the broader argument developed in this chapter. As documented in the previous section on the ethnicisation of news, Italian media often juxtapose Islam, immigration and security threats, constructing a narrative in which religious and ethnic otherness becomes synonymous with danger. Decision No. 84/16 of the Lombardy Regional Disciplinary Council concerning journalist Filippo Facci represents an extreme manifestation of this overlapping discourse. Although the article targeted Muslims as a religious group rather than migrants or asylum seekers, the language used – evoking invasion, contamination and the defence of "our space" – mirrors the alarmist approach analysed at length above. Furthermore, the case is legally significant in that it illustrates the concrete disciplinary consequences that can arise when a journalist crosses the line between legitimate criticism and incitement to hatred, reinforcing the legal framework discussed in this chapter.

Decision no. 84/16 of the regional disciplinary council of Lombardy is quite relevant to discuss the legal implication of terminological choices. The case involved the Italian journalist Filippo Facci who was sanctioned by the regional council with a two-month suspension following his extremely vulgar and racist remarks against Muslims, published on the Italian newspaper *Libero* on July 28th, 2016. The headline of his article was "Filippo Facci reveals the true face of Islam: why I hate it".
Facci invoked his right to freedom of expression to justify his remarks. However, he did not just merely criticise a religion. Journalists are supposed to inform the readers on matters of public interest, they have a social role and are expected to "mirror" reality, as previously argued. That implies reporting in an objective and accurate way, avoiding expressing personal judgements, particularly if these may undermine the dignity and reputation of others. As evident, Facci overstepped certain boundaries, aware that his statements could indeed influence public perception, especially since they

[226] A. Goio, *Massimario 2023*, cited above.

were published on a well-known national newspaper. He admitted that he intentionally exaggerated, but he did not apologise nor did he regret pronouncing those hateful words. On the contrary, he bemoaned not being free to express his opinion on certain issues without provoking outrage and strong reactions, in particular when talking about Muslims accusing them of being oversensitive. In this regard, he denied having made racist and hateful comments, by arguing that did not attack them, but their religion. Therefore, he addressed an idea and not a group of persons, further adding that he has also criticised other religions, including the one predominant in Italy. He claimed to have covered the topic appropriately, complying with the norms, and to be free to criticise anything, including any holy text, although, according to him, it seems that only criticism of the Koran provokes such accusations. In his defence, his attorney underlined his exasperation for having to preface any discussion of Islam with politically correct disclaimers.

As a response, the Council observed that unquestionably his comments were racist and xenophobic, not in line with the principles regulating the journalistic activity. Indeed, they undermined the dignity of individuals belonging to a race or practising a religion that is not that of the majority. Despite Facci claiming that the object of his article was Islam and not Muslims and therefore could not be classified as racist. In fact, he directly addressed them, calling them stinky and filthy *people*, considered them oversensitive and hypocrites, and offended their food, culture and mosques. He did not merely offend their religion, but also explicitly its practitioners, morally and physically, inferring they are all like that. Additionally, he repeated that he did not want these "people" in his "house", meaning in his space, country. This expression seems to be in line with the alarmist frame reinforced by the Italian media, that represent the country as threatened and invaded by foreigners. The physical separation and the comparison between *us* and *them* are here evident ("*our country", "our culture" "my house"*). And even more serious was his attack towards Islam, deliberately offending an entire cultural system and system of values. As a matter of fact, he hates every form of Islam, without distinguishing between Islam extremism and the Islam practiced peacefully by millions of people (*"all forms of Islam, Muslims and their religion, which is even more disgusting than all the others")*. The worst insults concern the Koran, which he defines as a "military manual" and other vulgar terms. It is important to note, considers the Council, that for Muslims, the Koran has a very significant value, different from that of other sacred books of other religions. For Muslims, the book is the very essence of God, therefore offending the Koran implies offending God himself.

From a juridical point of view, the Council found that he had breached several significant provisions that regulate the journalist profession in Italy. Beginning with article 2 of Law 69/63 that reaffirms the inalienable right for journalists to freely report, inform and criticise, provided that they comply with norms that safeguard human dignity and reputation and that respect the substantial truth of facts.

It also underlines they should always act in good faith.[227] Moreover, Facci was found to violate article 1 of Law 205/93 (Legge Mancino), that indicates measures to punish individuals who disseminate ideas based on racial or ethnic superiority, and contribute to racial, ethnic, national or religious discrimination, fostering a climate of intolerance and hatred. [228]And lastly, he did not comply with article 9 enshrined in the deontological code on the processing of personal data in the exercise of journalistic activity. This latter imposes journalists the obligation to respect individuals by not discriminating them due to their race, religion, political opinions, sex, personal, physical or mental conditions.[229] Moreover, as evident, Facci's vulgar and racist language does not respect either the suggestions provided by the Charter of Rome.

In conclusion, Facci greatly exceeded the limits of legitimate expression of his own thoughts and was sanctioned for his direct, indiscriminate and generalised attack on a group of people on religious grounds. Furthermore, the language used was deemed unacceptable for a professional journalist. It is therefore considered that the journalist Facci, through his intolerant conduct, has compromised the very dignity of the profession, by inciting hostility and hatred towards who belongs to another cultural and religious sphere. [230]

3.11 Final remarks

Despite the existence of a legal and deontological framework, the analysis carried out in this chapter proves that media coverage of migration and asylum remains problematic. Journalists continue to adopt stylist choices that consist of the ethnicisation of news and sensationalism. Moreover, they reinforce the dominant frame of alarmism, as well as existent prejudices and stereotypes. These communicative practices do have concrete legal implications, since they lead to the infringement of fundamental rights, as the right to privacy and the right to dignity, and of the principle of non-discrimination enshrined in international and local instruments.

The rulings examined in the closing section aim to illustrate the tension between these competing interests. In this regard, Decision No. 19/2022 underlines the imperative of protecting migrants' identity regardless of their legal status, while Decision No. 29/2022 sanctions the use of discriminatory language and the reporting of factually false and inaccurate news. Through these rulings, the National Council proves its commitment to fight irresponsible journalism. The case involving the Italian journalist Filippo Facci further discusses how the boundary between legitimate

[227] Art. 2, Law of 3 February 1963, No. 69,
[228] Art. 1, Law of 25 June 1993, No. 205
[229] CNOG, Codice di deontologia relativa al trattamento dei dati personali nell'esercizio dell'attività giornalistica, art. 9
[230] Consiglio di disciplina territoriale, Ordine dei giornalisti della Lombardia, proc. al n 84/16

criticism and hate speech can be crossed. As a consequence, specific religious groups are stigmatised and dehumanised, associating their presence in our territory to security threats and invasion.
If hostile language is more and more tolerated and violent words undermining human dignity are "normalised" and accepted by the Order, the risk is weakening the effectiveness of deontological codes and of the Charter of Rome, making it an optional document. A more tolerant attitude might contribute to compromise human dignity and the truth of facts and blur the line between admissible language and hate speech. In conclusion, this inconsistency demonstrates that journalistic ethics in Italy is not a static set of rules. On the one hand severe sanctions are imposed, while on the other journalists continue to adopt dangerous communicative practices and a lexicon that the Charter itself defines as inappropriate. The ethical responsibility when covering migration is thus delegated to journalists and the subjective interpretation of the disciplinary councils. Thus, self-regulation proves insufficient, therefore rigorous and consistent enforcement and commitment by media professionals are demanded to uphold the dignity and rights of the most vulnerable individuals.

Conclusion

This study dealt with the challenging balance between the right to freedom of expression and the right to privacy and human dignity of migrants, refugees, and asylum seekers. These individuals, on the grounds of their vulnerability, are entitled to greater protection, which is granted by a vast array of legal texts, including the Universal Declaration of Human Rights and the recent General Data Protection Regulation. However, their identities and privacy are often undermined since they have to undergo intrusive screenings and interviews during which their information is collected and entered into a database that is accessible by authorities within the entire European territory. The negative impact of modern technologies was also considered; for instance, Artificial Intelligence is increasingly employed by media and politicians to generate fake and distorted images in support of their aggressive narratives towards these individuals.

As underlined throughout the research, freedom of expression is not absolute, even though it is at the core of democratic systems and highly safeguarded by instruments such as the European Convention of Human Rights. Indeed, the European Court of Human Rights has repeatedly stated that it must be exercised responsibly to avoid breaching other inalienable rights and leading to defamation and discrimination. Through a balancing exercise, the Court has to assess each time whether a restriction is proportionate and necessary, considering the context in which a statement was made and its impact.

The research mainly focused on the Italian context to assess the extent to which Italian journalists respect their ethical and juridical obligations when exercising their profession. However, when covering migration, it appeared that migrants' rights are sacrificed in the name of the right to freedom of expression, invoked by journalists. They expose these people's personal stories and identities, disseminate their sensitive data and photographs, often without their consent and without considering the harmful consequences of this disclosure. This evaluation was conducted through a thorough analysis of the existing international, European, and national legal framework. As the results show, the communicative practices adopted by Italian media fail to comply with their standards and principles and undermine these individuals' fundamental rights. In addition to that, the tackled the proliferation of hate speech and the dehumanising rhetoric amplified not only by the media but also by politicians. Thereby, they contribute to creating a hostile social climate where the distinction between *Us* and *Them* is reinforced instead of being reduced. These problematic linguistic practices, along with disinformation and fake news in the current post-truth era, seriously threaten migrants' dignity and reputation. Additionally, the persistent use of denigratory language indicates that the existing legal provisions are not always efficient. As argued, the deontological code that regulates the exercise of the journalistic profession in Italy and the Charter of Rome seem to be applied in an

inconsistent manner, as if these documents were optional. This was proven through the analysis of some decisions by the National Council of the Order of the Journalists and the Council of Lombardy that sanctioned three journalists for their discriminatory statements. Journalists continue to employ inappropriate, violent and offensive terms ("clandestino") and raise fear towards migrants through sensationalistic and alarmist tones and the *ethnicisation* of news, particularly when reporting crimes. As discussed hereinbefore, language does not simply describe reality, since it contributes to a social construction of reality and significantly influences the public perception of a phenomenon. If migration is constantly portrayed as dangerous and described in terms of an invasion, the human dignity and social and juridical condition of migrants are inevitably eroded.

Ultimately, this study advocates not only stricter regulation but also that the media seriously commit to upholding the principles enshrined in the existing regulatory framework. Journalists must change their attitudes through training, institutional support, and professional culture. Furthermore, they must fully embrace the ethical principles included in their deontological codes and the Charter of Rome. This is a fundamental step towards a fair, truthful, and accurate representation of migrants and asylum seekers in the media. This should be their main concern; they should be more interested in upholding public interest than in responding to market-driven logics and editorial pressures and working independently, free from political interference.

Further research could tackle the recent EU Artificial Intelligence Act, whose effectiveness in the prevention of AI-generated misleading content is yet to be evaluated. Moreover, it could explore whether these standards and ethical principles are respected across different European Member States. This study has only begun to address these issues that will surely be relevant in the evolving media landscape.

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