

ITALY, EUROPE, AND THE RULE OF LAW

Brussels, 4 February 2026

INTRODUCTION

Democracy is one of the value pillars on which the European Union was built and on which its member states rest. Democracy is often described as majority rule and, consequently, as the power of the majority to shape the laws around which society revolves.

However, developments in the twentieth century have made this assumption inseparable from the **State of Law**: the idea that authority is exercised through clear rules and laws, that rights set non-negotiable limits, and that institutional decisions remain contestable through appropriate democratic procedures.

In this framework, **electoral choices** are fundamental, but are incomplete without the rule of law. This is the main dividing line between liberal and electoral democracies.^[1]

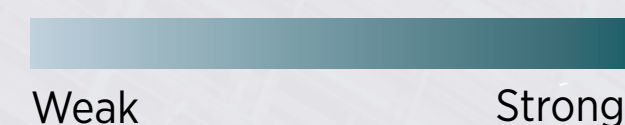
Where the rule of law's constraints weaken, elections can persist alongside intimidation and violence, leaving the democratic form devoid of substance. When key elements of the rule of law are challenged—judicial independence is a prime example—the quality of democracy suffers.

^[1] <https://ejpr.onlinelibrary.wiley.com/doi/full/10.1111/1475-6765.70021>

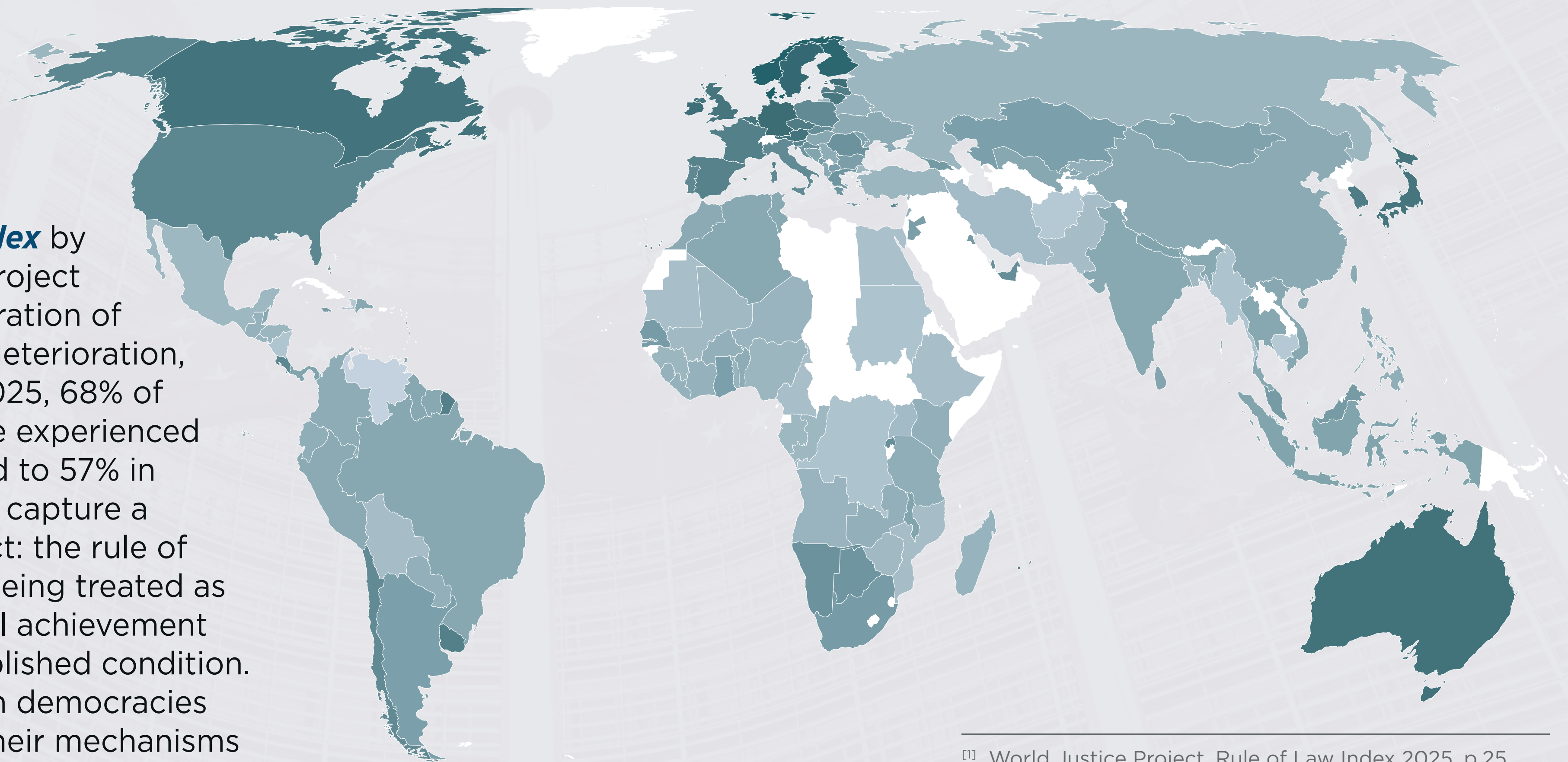
THE INDICATORS

THE GLOBAL DETERIORATION OF THE RULE OF LAW

Adherence to the rules of law



The **Rule of Law Index** by the World Justice Project describes an acceleration of global democratic deterioration, reporting that by 2025, 68% of countries worldwide experienced a decline (compared to 57% in 2024).^[1] The figures capture a relevant political fact: the rule of law is increasingly being treated as a fragile institutional achievement rather than an established condition. In response, modern democracies are strengthening their mechanisms of checks and balances.



^[1] World Justice Project, Rule of Law Index 2025, p.25 (<https://worldjusticeproject.org/rule-of-law-index/>)

THE TWO PATHS

PROTECTING THE RULE OF LAW

A country (or a supranational institution such as the EU) can support the rule of law through two different but intertwined paths.



The first concerns the **political rights of citizens**: pluralism, party competition, and freedom of expression that make democratic dissent possible.



The second concerns the **rights that precede citizenship** and from which citizens' rights are historically derived: human rights protections that apply to persons as such, including the right not to be persecuted or discriminated against.

These areas interact continuously.

FREEDOM OF EXPRESSION

UNITED KINGDOM: FROM VOLUNTARY RESTRAINT TO REGULATORY REGIME

Among political rights, freedom of expression (*free speech*) is central and directly related to the **ability to influence the political landscape**. It allows citizens to express opinions and shape the preferences of the politically relevant majority. This right is guaranteed not only by the domestic law of the European states, but also at the supranational level by Article 10 of the **European Convention on Human Rights**.^[1] In the current Western debate, however, freedom of expression has also become an indicator of broader anxieties regarding democratic stability, institutional trust and governance of the digital public sphere. The controversy is rarely about **freedom of speech** as such but more about how spaces of expression are organised and controlled, by what authorities, according to what standards, and with what guarantees. In this regard, the United Kingdom and the European Union illustrate two different trajectories.



In the **United Kingdom**, the architecture of *governance* of online discourse has moved decisively away from a predominantly voluntary model of moderation towards a risk-based statutory regulatory regime.



The **Online Safety Act** sets out obligations relating to illegal content for which platforms are responsible, and the government has stated that these obligations are now in place, with the Office of Communications (Ofcom) charged with enforcing the regime. At the same time, the zero tolerance expressed by the institutions for hate speech after 2004 led to a more punctual application of the sanctions of the UK Communications Act even as a precautionary measure.

^[1] Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, art. 10

FREEDOM OF EXPRESSION

UNITED KINGDOM: FROM VOLUNTARY RESTRAINT TO REGULATORY REGIME



This institutional shift is interesting for an analysis of **the rule of law** because it relocates a significant part of the "governance of discourse" in an area of administrative compliance: the relevant issues become those of **legal clarity**, of **proportionality**, of **supervision** and of the **contestability** rather than a simple binomial of permissiveness and restriction.



These issues become politically more salient where **freedom of expression** is intertwined with **social hostility**. The official UK statistical release reports 137,550 police-recorded hate crimes in England and Wales from March 2024 to March 2025.^[1]

^[1] <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-year-ending-march-2025/hate-crime-england-and-wales-year-ending-march-2025>

FREEDOM OF EXPRESSION

UNITED KINGDOM: HATE CRIMES AND CONTEXT

Major racially or religiously aggravated offences

Crimes aggravated on racial or religious grounds		Equivalent offences without aggravating circumstances	
Code	Description	Code	Description
8P	Racially or religiously aggravated assault with injury	8N	Assault with injuries
105B	Aggravated assault on racial or religious grounds without injury	105A	Assault without injury
8M	Harassment aggravated on racial or religious grounds	8L	Harassment
9B	Fear, alarm, or public unease aggravated by racial or religious motives	9A	Fear, alarm, or public discomfort
58J	Aggravated criminal damage other than on racial or religious grounds	58A	Fear, alarm, or public discomfort
		58B	Damage to a building
		58C	Criminal damage to a vehicle
		58D	Other criminal damage

The **political salience** increases where the governance of expression is intertwined with social hostility. The official UK statistical publication reports 137,550 hate crimes recorded by police in **England** and **Wales** in the year ending March 2025.

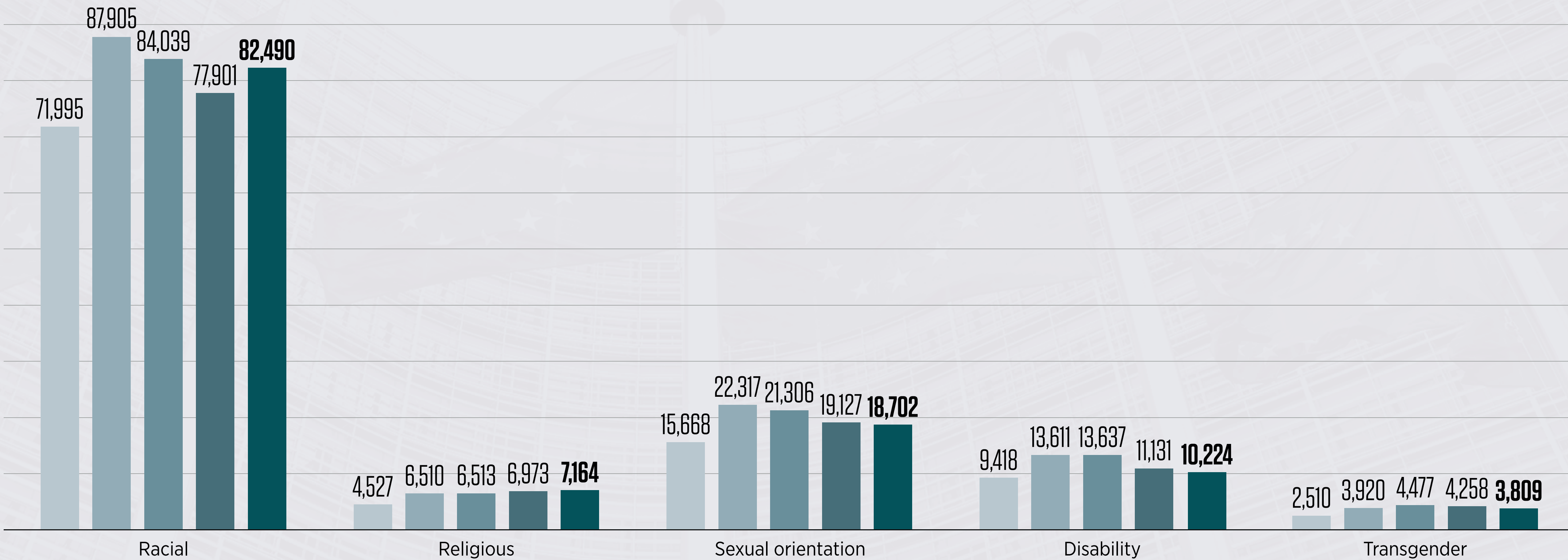
FREEDOM OF EXPRESSION

UNITED KINGDOM: HATE CRIMES

Incidents recorded by the police per monitored sector, according to type of crime

March 2021 to March 2025, England and Wales (excluding MPS)

2020/21 2021/22 2022/23 2023/24 2024/25

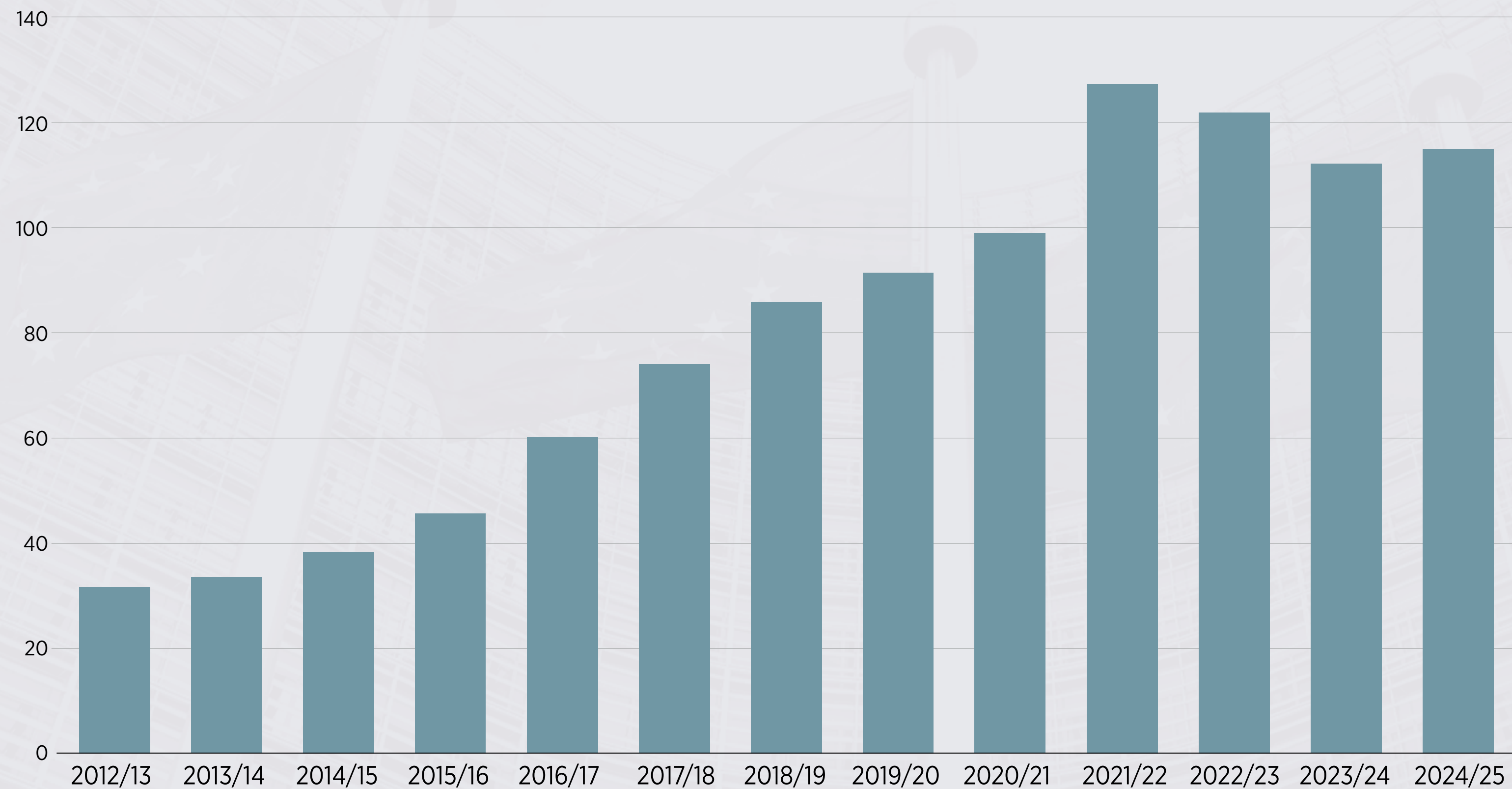


Source: <https://www.gov.uk>

FREEDOM OF EXPRESSION

UNITED KINGDOM: THE EVOLUTION OF HATE CRIMES OVER THE YEARS

The survey



In the last year

Data to March 2025

52%

Public order

41%

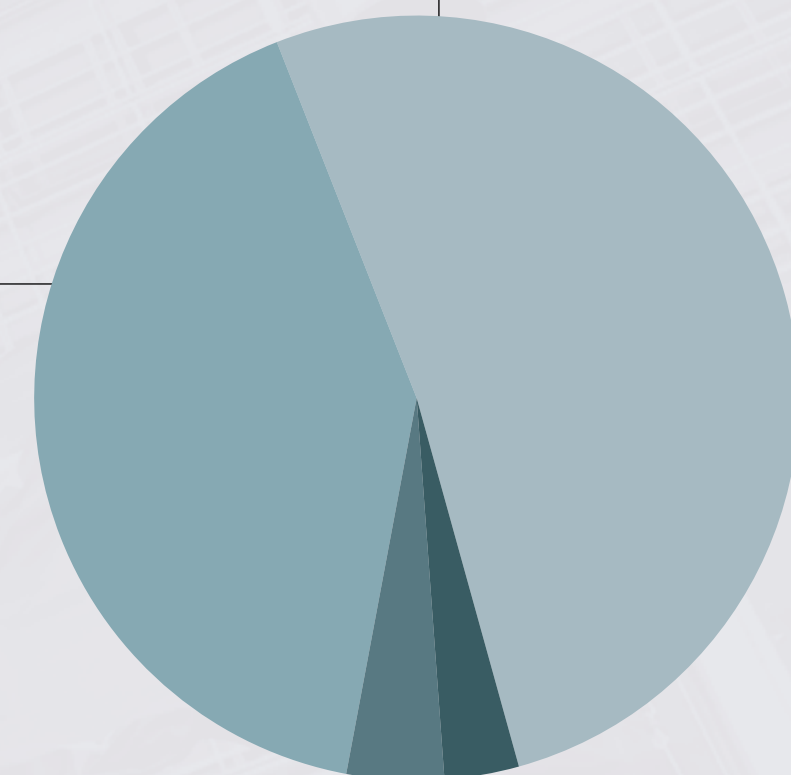
Violence against the person

4%

Other notifiable offences

3%

Damage and arson



Source: <https://www.gov.uk>

FREEDOM OF EXPRESSION

EUROPEAN UNION: DIFFERENT INSTITUTIONAL LOGICS



TWO AXES OF INTERVENTION

The European Union has generally approached the same problem through a **different institutional logic**.

On one axis, "hate speech" is anchored in criminal and civil law obligations at EU level through instruments such as Council Framework Decision 2008/913/JHA on **combating racism and xenophobia**.

On the other hand, the EU has increasingly treated harmful content as a governance issue for the digital public sphere, with illegality largely defined by national law but within the limits drawn at EU level by the **Digital Services Act**.



THE EXTENT OF EUROCRIMES

The further move currently under discussion is the proposal to extend the list of "Euro-crimes" under Article 83(1) TFEU to include **incitement to hatred** and **hate crimes**, thus changing the current scenario.^[1]

The discussion at EU level increasingly links hate speech to other harmful online content such as **disinformation**, treating both within the same broader framework. In this respect, the Commission has drafted two different Codes of Conduct, both aimed at making platforms accountable.

[1] <https://www.europarl.europa.eu/legislative-train/theme-protecting-our-democracy-upholding-our-values/file-hate-crimes-and-hate-speech>

FREEDOM OF EXPRESSION

EUROPEAN UNION: THE LEGAL CONTEXT



THE CODE OF CONDUCT

Introduction: 2016, recently overhauled

Purpose: counter incitement to hatred.

Content: platforms must pay attention to harmful online content and sensitive topics that may be at risk.



THE CODE OF GOOD PRACTICE ON DISINFORMATION

Introduction: 2022, with reinforcements compared to the 2018 Code

Purpose: to agree with social platforms on a common code regarding intentional manipulation.

New: this approach has acquired a more explicitly legal character through its connection with the Digital Services Act.^[2]

^[2] <https://enlargement.ec.europa.eu/news/european-democracy-shield-and-eu-strategy-civil-society-pave-way-stronger-and-more-resilient-2025-11-12>

FREEDOM OF EXPRESSION

A EUROPEAN SPECTRUM (NOT A SINGLE MODEL)

The Romanian, German, and Italian episodes thus point not to a single European model for managing the transition from opinion to political representation, but to a spectrum.



Romania has prioritised **the integrity** of representation itself, accepting that institutional intervention can nullify an electoral process when manipulation is deemed sufficiently serious.



Germany, on the other hand, exemplifies a legalised model of **protected democracy** in which limiting political representation is conceptually possible, but channelled through high legal thresholds.



Italy falls somewhere in the middle: it has a **constitutional anti-fascist ban** on reconstituting the dissolved fascist party, yet the translation of this ban into dissolutions or exclusions has historically been contingent and rare.

FREEDOM OF EXPRESSION

EUROPEAN DEMOCRACY SHIELD: OBJECTIVES AND TENSIONS



THE INITIATIVE OF THE EU COMMISSION

The latest development in this field is the Commission's proposal to outline a **European Democracy Shield**, aimed at protecting democratic processes from manipulation of information and foreign interference, as well as strengthening the resilience of the information space, ensuring the credibility of elections and the independence of the media.



HOW IT WORKS

In this sense, the Shield functions less as a “free speech law” and more as an **umbrella for the instruments of democratic self-defence** (and in a sense national defence), attempting to coordinate existing regulatory instruments while expanding the focus on electoral integrity and social resilience. This does not eliminate the central tensions, i.e. the risk of pre-emptive removal.^[1]



CRITICALITIES

Any risk mitigation regime may create incentives for excessive content removal, uneven attention across languages, or the shifting of controversial debates to less visible spaces. It can also generate legitimacy problems if such measures are perceived as **politically selective**, particularly in polarised national contexts.

^[1] <https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=52181>

FREEDOM OF EXPRESSION

POLITICAL RIGHTS AND FRINGE PARTIES

The **freedom of expression** is only one part of a broader architecture of political rights that also includes association, assembly, and the ability to organise collectively to compete for power. Parties are the main vehicle through which ideas are stabilised into programmes, translated into candidates, and win elections.

It is also here that the rule of law becomes more than a guarantee against censorship: it becomes **the set of constraints that determines which forms of political organisation are permissible**, how a democracy can defend itself against anti-democratic actors, and which institutions have the authority to draw these lines. In this sense, the debate is significant across Europe, where each country has different legal and political approaches.

THE ROLE OF SUPRANATIONAL INSTITUTIONS

In this framework, the challenge for European supranational institutions is probably not to homogenise different national constitutional identities, but to **act as a connector**.

On the one hand, the European Court of Human Rights (also recognised by the European Union as binding) has developed a structured approach under Articles 10 and 11 of the ECHR, in which **pluralism** is the default condition of democracy and restrictions on political parties and political discourse must be justified according to strict standards of proportionality.

On the other hand, the EU Court of Justice anchors the internal coherence of the Union around the **requirements of the rule of law**, linking the obligations of EU membership to effective judicial protection and institutional guarantees.

FREEDOM OF EXPRESSION

ROMANIA: ELECTORAL INTEGRITY AND INSTITUTIONAL “SELF-DEFENCE”

The Romanian case, for example, is instructive because it put this political right under pressure:



ELECTIONS

The annulment of the first round of presidential voting by the **Constitutional Court** at the end of 2024, justified by concerns of legality and integrity, has been analysed as an unprecedented intervention in the electoral process, explicitly linked to allegations of Russian interference and coordinated online manipulation.



POLITICAL REPRESENTATION IN DANGER

The decision did not target a political tendency in the strict sense, but rather the very conditions under which the **political representation** was constituted, on the premise that manipulation had compromised the fairness of the electoral process.



CRITICALITIES

This **institutional “self-defence”** may be democratically justified in principle, but it becomes sensitive when the motivations, evidence, and procedures are perceived as opaque or improvised, especially if the decision affects votes already being cast for parts of the electorate abroad.^[1]

^[1] <https://www.theguardian.com/world/2025/apr/25/romania-ploiesti-city-appeals-court-ruling-presidential-election>

FREEDOM OF EXPRESSION

GERMANY: DEFENSIVE DEMOCRACY, INTERMEDIATE INSTRUMENTS AND COUNTERBALANCES



THE GERMAN MODEL

Germany offers a different version of the same problem and is doctrinally more oriented towards **“protected democracy”**: political representation of ideas is protected, but not unconditionally.

The Fundamental Law model accepts that an open society can set constitutional boundaries against organisations that seek to abolish the democratic and liberal fundamental order, but insists that exclusion takes place through justified procedures rather than executive discretion.



THE CASE OF AFD

The debate in the Bundestag on whether to initiate proceedings against **Alternative für Deutschland (AfD)** exemplifies this logic; cross-party political initiatives at the parliamentary level sought to test the party’s legitimacy before the Federal Constitutional Court, explicitly relying on **constitutional mechanisms** rather than a politically motivated prohibition.

FREEDOM OF EXPRESSION

GERMANY: DEFENSIVE DEMOCRACY, INTERMEDIATE INSTRUMENTS, AND COUNTERBALANCES



ASSUMPTIONS OF NON-COMPATIBILITY

Parliamentary concern did not remain isolated. In May 2025, for example, the Federal Office for the Protection of the Constitution classified the party in question as incompatible with the democratic order and warned against its possible election, thus reinforcing the perception of a **rule of law** based on technical rather than political mechanisms.^[1]

Despite this, the German Constitutional Court has so far chosen to allow the party to operate and has even intervened to protect it on several occasions.^[2]

In this respect, it is interesting to note the case of the far-right magazine *Compact*, which is considered to be close to the AfD. On 16 July 2024, when the Federal Minister of the Interior, Nancy Faeser, decided to ban the magazine and the publishing company, the Federal Administrative Court (Bundesverwaltungsgericht - BVerwG) annulled the suspension, calling it **non-proportional**.^[3]

^[1] <https://www.eunews.it/en/2025/05/05/german-intelligence-classifies-afd-as-far-right-group/>

^[2] <https://www.aljazeera.com/news/2020/6/9/germanys-far-right-afd-wins-symbolic-court-case-against-minister>

^[3] <https://apnews.com/article/germany-far-right-magazine-compact-ban-bb0b27f7924f697ba42a0118ddf459d2>

FREEDOM OF EXPRESSION

ITALY: CONSTITUTIONAL ANTI-FASCIST BAN AND LIMITS TO ITS APPLICATION



THE SPECIFICITY OF THE PENINSULA

In this scenario, Italy can be integrated as a third perspective that represents neither a replication of Romania's crisis of electoral integrity, nor a reflection of Germany's "protected democracy" mechanism, but rather a case of an explicitly formulated constitutional prohibition against reorganisation "in any form" of the dissolved fascist party.



THE ROMAN SALUTE

Again, the boundaries are complex. In 2024, for example, the Court of Cassation ruled that the **"Roman salute"** is punishable only where it entails a concrete danger of reconstituting the fascist party or threatens public order, a formulation that restricts the scope of **criminal liability**.

At the same time, in the last 30 years, only one party has been outlawed and dissolved in Italy because it violated the Constitution.^[1]

^[1] National Front by the Italian Constitutional Court in 2000

HUMAN RIGHTS

THE ISSUE OF INCITEMENT TO HATRED

The point at which the debate on freedom of expression most frequently escalates into calls for legal constraints is **incitement to hatred** (hate speech).



A LIMIT TO EXPRESSIVE FREEDOM

In much of Western debate, hatred is treated as the category that renders **explicit the limits of freedom of expression**, as it is invoked to argue that speech can be used to offend, organise intimidation, normalise inequality, and foreshadow measures that would erode the rights of targeted groups.



THE PILLAR OF DEMOCRACY

At the same time, European courts generally assume that the protection of human rights is an inalienable pillar of democracy that cannot be demolished by political will.



FREEDOM OF ASSOCIATION

This is also why incitement to hatred is often juxtaposed with freedom of association. The controversy is not only about what can be said, but whether actors who mobilise hostility should be allowed to operate as ordinary participants and what political proposals might be legitimate in a democratic society.

The argument based on the rule of law is therefore **structural**: democratic politics requires legal constraints to prevent social prejudices that could result in systematic vulnerability for minorities.

HUMAN RIGHTS

HUMAN RIGHTS AND POLICY: MIGRATION AND SECURITISATION



FRAGILE CATEGORIES

Sensitivity on this issue, therefore, links freedom of speech to concrete political choices and proposals that may be more or less in line with the rule of law. In most Western countries, existing legislation is aimed at **protecting groups of individuals** who are now considered particularly exposed and fragile, such as migrants and LGBTQIA+ groups.



SECURITISATION

With regard to migrants, the issue intertwines dramatic human rights challenges with the growing pressure for a **pro-security** approach (*securitisation*). This approach is increasingly visible in policy, action strategies, and online space across Europe. Public anxiety about security in relation to **migration flows** to Europe has prompted several European governments to make specific policy choices that have strained security on the one hand and human rights on the other.



ITALY-ALBANIA PROTOCOL

In Italy, the recent central case has been the **Italy-Albania Protocol** for the transfer of certain categories of persons intercepted at sea for offshore processing and/or detention from one country to another. Despite clear political choices, national and European courts have repeatedly intervened.

In 2024, an Italian court blocked fast-track border procedures that would have allowed migrants to be detained in Albania, pointing out that the Italian government could not determine a fixed list of safe countries of origin.

HUMAN RIGHTS

ITALY-ALBANIA: OUTSOURCING AND JUDICIAL REVIEW

Following a referral, the **Court of Justice of the European Union (CJEU)** ruled that EU governments may draw up such a list (if in line with European provisions) but left the national court free to decide on a case-by-case basis and independently assess the safety of the country of origin.^[1]

Here again, the debate in Europe consists of similarities and differences.

FRANCE: INTEGRATION REQUIREMENTS AND ELIGIBILITY

In France, for example, the salient theme so far is not outsourcing, but the use of **inclusion and eligibility requirements**. The French immigration law adopted in December 2023 was partially annulled by the Constitutional Council on 25 January 2024, with a significant number of provisions censured, reinforcing the institutional point that tightening the status of migrants is rather a procedural matter of the rule of law, rather than a free political choice.^[2]

^[1] <https://www.giurisprudenzapenale.com/2025/08/01/la-sentenza-della-cgue-sulla-designazione-di-un-paese-terzo-come-paese-di-origine-sicuro/>

^[2] <https://www.conseil-constitutionnel.fr/en/decision/2024/2023863DC.htm>

HUMAN RIGHTS

LGBTQIA+: POLAND (END OF “LGBT-FREE ZONES”) AND PENAL REFORMS

The LGBTQIA+ issue follows a parallel path. In **Poland**, the most visible recent change has been the dismantling of resolutions for the creation of “LGBT ideology-free zones” adopted by municipalities in previous years. **Human Rights Watch** reports that in May 2025 the last such local resolution was abolished, marking the end of free zones as a formal local government phenomenon. At the same time, a distinct legal track concerns hate speech against this community and others: monitoring sources report government work on amendments to extend protections for crimes related to **sex discrimination**, equating them with **racism** (through proposals to reform the Criminal Code discussed in 2024).^[1]

^[1] <https://www.hrw.org/news/2025/05/16/poland-ends-lgbt-free-zone>

LGBTQIA+: ITALY (SURROGACY AND RECOGNITION AT BIRTH)

In Italy, a sensitive issue related to LGBTQIA+ has been the criminalisation of **extended surrogacy** (or universal offence), which makes it illegal for Italian citizens to resort to this practice abroad, punishing it with imprisonment.

However, the Italian Constitutional Court ruled that it was unconstitutional to deny legal recognition of the birth to the “intended” mother in certain cases of **medically assisted procreation** carried out abroad by lesbian couples, allowing the registration of two mothers on birth certificates in the circumstances examined by the ruling.^[2]

^[2] <https://www.reuters.com/business/healthcare-pharmaceuticals/lesbian-mothers-win-legal-status-italy-ivf-ruling-2025-05-22>

CLOSING REMARKS

RULE OF LAW AS AN ENABLING CONDITION

In contemporary democracies, the rule of law is not an additional safeguard to elections, but an **enabling condition** for a fair and functional system. What ultimately distinguishes democratic government from majority rule is that political power is exercised through known rules and **constrained by rights**.

This makes the rule of law a central element of democratic legitimacy; it defines how decisions are made, how authority is limited and how conflicts remain governable without slipping into coercion. In all Western systems, this balance rests on an **institutional pact** between politics and third-party bodies, such as the judiciary, supervisory bodies, and international bodies.

Governments and parliaments retain the mandate to set collective goals and implement policies, but within a framework of legal constraints that they do not control at will.

CURRENT PRESSURES AND FINAL DEMAND

Courts, for their part, should not replace politics but demarcate the boundaries that keep political competition compatible with equal rights and **procedural equity**.

Under current pressures, such as **polarisation**, **digital discourse governance** and **foreign manipulation**, this pact is increasingly being put to the test. In recent years, tensions between Member States and European courts have been growing, in some cases openly (think of Poland and Hungary) and in others less obviously but just as **problematic**.

The central issue is thus to agree on a new pact between politics and procedures, and thus **reconcile** the **democratic voting system** with the **rule of law**.