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# **The European Court of Human Rights' Evaluation of Extremist Political Parties in Europe:**

*The Battle for Europe's Soul*

February 2025, Strasbourg

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## I. The Looming Shadow of Extremism: A Concerning Trend Across Europe

1. While the United States navigates the political minefield following Trump's re-election, this suffrage reflects a broader trend emerging across the Western world: the alarming rise of extremist parties, particularly far-right groups, which are increasingly capturing the electorate's heart.

Centrist parties are threatened by erosion against the inexorable rise of the extremes. In Spain, the radical left-wing party, the Spanish Socialist Worker's Party (Partido Socialista Obrero Español), holds power, while the opposite trend unfolds in neighbouring countries. France (National Rally Alliance/Rassemblement National), Italy (Brothers of Italy/Fratelli d'Italia), the Netherlands (Party for Freedom/Partij voor de Vrijheid), and more recently Germany (Christlich Demokratische Union Deutschlands/Christlich-Soziale Union in Bayern) have all witnessed a surge in far-right political influence. The European continent is fractured by cleavages along ideological lines, with centrism struggling to maintain its appeal as voters are drawn to the antipodes of the political spectrum.

While multiple factors contribute to this unsettling shift, many fear its potential consequences. As we commemorate the 80th anniversary of the liberation of Auschwitz, uninhibited hatred and dehumanizing rhetoric have become defining features of far-right political parties in Europe.

For the right extremist parties, a new, malleable term has taken center stage: migrants. This word is exploited to evoke fear and uncertainty, serving as a powerful political tool to divert public attention and reshape political discourse. As stigmatisation gains traction, concerns grow over how such extremes could translate into action. Seemingly now multiform, such lexicon accommodates hate speech.

Unlike the United States, where constitutional law prioritizes the protection of political speech and association with minimal legislative restrictions on parties, the European Court of Human Rights (from here on referred to as the ECtHR) has enshrined ground principles to regulate political organizations that incite hate and violence, posing a direct threat to democracy.

## II. Safeguarding Democracy: The European Court's Mechanism for Combating Extremism (Article 11 ECHR)

2. The ECtHR employs several key legal instruments, including Freedom of Expression (Article 10), Freedom of Assembly and Association (Article 11), and the Prohibition of Abuse of Rights (Article 17) of the European Convention on Human Rights (ECHR), to impose stringent limitations on political parties engaging in discriminatory and harmful rhetoric. These legal provisions define a rigorous threshold to justify party dissolution and prevent the disappearance of democratic values. The Court has reinforced these principles through extensive case law, offering clear interpretations and application guidelines.

In this report, the mechanisms the ECtHR has developed will be analyzed in order to examine their applicability to the current European political landscape. This analysis will evaluate the legal framework addressing the situation Europe is confronted amid the rise of political extremism, focusing on far-right parties and exploring what legal measures can (or cannot?) be taken.

The primary legal tool for dissolving extremist parties is the restriction of freedom of assembly and association under Article 11 ECHR. This provision sets a high standard threshold, recognizing that such freedoms are essential components of democratic societies. Consequently, banning a political party requires evidence of a severe and unequivocal violation of democracy

3. Therefore, this report systematically breaks down the criteria required to justify restrictions on the freedom of association under Article 11 of the European Convention on Human Rights (ECHR), as it is the primary legal tool for banning political parties.

It is essential to note that, before the European Court of Human Rights (ECtHR) can rule on a case, specific preliminary conditions must be met: all domestic legal remedies must have been exhausted, and either the State or the applicant must submit a request for the Court's review. However, this report does not focus on the procedural aspects of application, as extensive resources are readily available on that subject.

4. In order for an infringement of freedom of association to be justified, it must meet the following criteria:

1. Prescribed by Law
  - i. Foreseeable
  - ii. Sufficiently precise
  - iii. Provides adequate protection against arbitrariness
  - iv. Meets the quality of law standards
2. Pursues a Legitimate Aim
  - a. National security or public safety
  - b. Prevention of disorder or crime
  - c. Protection of health or morals
  - d. Safeguarding the rights and freedoms of others
3. Necessary in a Democratic Society
  - a. Addresses a pressing social need:
    - i. Whether plausible evidence indicates a sufficiently imminent risk to democracy
    - ii. Whether the acts and speeches of party leaders, as considered in the case, are attributable to the political party itself
    - iii. Whether those acts and speeches collectively present a model of society that is fundamentally incompatible with the concept of a 'democratic society'
  - b. Proportionate to the legitimate aim pursued

5. The legal test applied by the ECtHR is highly stringent and narrowly interpreted. Let's examine these criteria in further detail:

1. *Prescribed by Law*: This criterion evaluates whether the national law provides sufficient clarity, coherence, and precision to enable individuals to understand and foresee its implications. The law must be structured in a manner that prevents arbitrary application and ensures legal certainty.
2. *Legitimate Aim*: This criterion is fundamental, as it establishes the legal and ethical foundation for restricting such a fundamental right as freedom of assembly and association. This right is intrinsically linked to freedom of expression and is indispensable in any functioning

democracy. The restriction must be justified by one or more of the specified legitimate aims but they can also be applied cumulatively:

(a) Preventing the incitement of violence or the rise of political parties that seek to undermine democratic institutions. (b) Addressing the instigation of social unrest or participation in criminal activities by political entities. (c) In rare cases, restricting parties that advocate for policies violates fundamental health or moral norms. (d) Most crucially, preventing discrimination and hate speech that infringes upon the rights of individuals or groups - which constitutes a key focus of our analysis.

The criterion of protecting the rights and freedoms of others is pivotal in determining when a political party crosses the boundaries of lawful freedom of association and expression. This raises a fundamental question: *where should the limit be drawn?*

6. The current landscape in Europe is troubling. Discrimination and hatred are increasingly infiltrating the political arena, gradually convincing the electorate. Recognizing this threat, the European Commission and the High Representative have adopted the Communication "No Place for Hate: A Europe United Against Hatred." This initiative calls upon Europeans to actively oppose hate speech and raise awareness of tolerance and respect. Similarly, the Council of Europe's European Commission against Racism and Intolerance (ECRI) has voiced grave concerns over the rising influence of ultra-nationalistic and xenophobic ideologies across Europe. This troubling trend is accompanied by a surge in antisemitism and anti-Muslim sentiment, both of which are exacerbated by the unregulated spread of hate speech on social media platforms. There, political figures and users propagate discriminatory narratives with little to no accountability. The unchecked proliferation of hate speech contributes to deepening social divisions and fostering systemic discrimination.

The consequences of this rising tide of xenophobia root deeply. According to Amnesty International, hate crimes in Europe have seen a significant rise, directly correlating with the inflammatory rhetoric of far-right politicians. This escalation in hate-fueled discourse does not merely corrode social cohesion but endangers fundamental human rights and liberties. At the institutional level, it threatens the very foundation of democratic structures. Indeed, the implications are far-reaching: a government led by a party driven by hatred inevitably corrodes democratic values, often under the guise of legitimate governance.

The Council of Europe has recognized this alarming trend, as reflected in a report submitted by Mr. Seyidov of the European Conservatives Group and Democratic Alliance, entitled *The Challenge of Far-Right Ideology to Democracy and Human Rights in Europe*. The report underscores the urgent need to address the rise in far-right violence, which is increasingly driven by xenophobia, racism, and other forms of intolerance. It warns that this phenomenon poses a substantial threat not only to human rights but also to democratic governance and the fabric of an inclusive and tolerant society.

7. Indeed, violent far-right extremism is casting an ever-growing shadow over Europe, reaching transnational levels. Furthermore, the online extremist ecosystem is evolving into a dominant and largely unregulated force, amplifying and normalizing extreme ideologies at an alarming rate. Addressing this crisis requires urgent and coordinated action at all levels: legal, political, and societal, in order to safeguard democracy and human dignity from the corrosive effects of hate-driven politics. Balancing freedom of association and speech with the protection of the rights and freedoms of others is a complex and delicate exercise. As mentioned earlier, a term that has gained prominence over the past two decades is 'migrants.' This nebulous concept is often weaponized in hate speech, exploited as a scapegoat to divert political discourse, and used to fuel frustration by conflating cause and correlation.

Applying the criterion of preventing discrimination or hate speech that undermines individual or group rights is particularly challenging when faced with an ambiguous and overgeneralized term such as 'immigration.' Politicians frequently invoke it in diverse contexts, making it difficult to apply legal

restrictions in a manner that targets specific individuals or groups without infringing upon legitimate discourse.

8. Therefore, a crucial component in this assessment is the necessity of restrictions in a democratic society. Any limitation, especially on such a fundamental constitutional right as freedom of association, must be *proportionate* to the legitimate aim pursued and respond to a *pressing social need*. (3)

9. Accordingly, the restriction must address a *serious and immediate threat to democratic values* (a). To assess this, the court must determine whether there is *plausible evidence* that the risk to democracy is sufficiently *imminent*. (ii)

10. A landmark case in this regard is *Refah Partisi v. Turkey* (2003). In this case, an Islamist political party became the largest faction in the Turkish Parliament in 1995. However, Turkey's Constitutional Court dissolved the party on the grounds that it had become a centre of activities undermining secularism, a foundational pillar of Turkish democracy. The ECtHR was tasked to evaluate whether this dissolution met the criterion of '*necessity in a democratic society*' to protect secularism.

11. The Court upheld the dissolution, concluding that Refah posed a tangible threat to democracy by advocating:

- A plurality of legal systems based on religious beliefs,
- The implementation of Sharia law,
- The use of jihad (holy war) as a method of political change.

12. The Court further emphasized that a legal system rooted in religion contradicts democratic principles and human rights. Furthermore, advocating the use of force as a means to achieve political objectives endangers the democratic order. In this case, the leaders were plotting about a holy war, which could involve a coup or violent takeover. The incompatibility in particular of the Sharia law with the European Convention on Human Rights further solidified the Court's decision.

This ruling is instrumental in interpreting Article 11, as it affirms secularism as a fundamental principle essential for pluralism in democracy. Additionally, it reinforced the preventive nature of dissolution measures, permitting states to take necessary actions when a political party poses a credible threat to democracy. The ruling underscores that states are not required to wait until a government is forcibly overthrown but may act preemptively through remedial measures: *remedium praeventivum*.

Building on that, another essential criterion is determining whether the statements and actions of a party leader can be attributed to the party as a whole (ii).

13. An illustrative example is the *Socialist Party of Turkey v. Turkey* (1998). In this case, the ECtHR ruled that individual statements made by party members should not automatically be attributed to the entire party unless they explicitly represent official policy. This ruling ensures that political parties are not unfairly penalized for the independent statements of their members unless such statements align with the party's official doctrine.

These cases illustrate the rigorous analysis required in determining when restrictions on political parties are justified under Article 11. They highlight the balance between preserving democratic values and preventing the abuse of fundamental freedoms.

14. Moreover, (iii) a crucial criterion in assessing the legality of restrictions on political parties is determining whether the leaders' acts and speeches imputable to the political party create a model of society *incompatible with democracy*. This evaluation is essential in establishing whether the party promotes a vision of society that is fundamentally incompatible with democratic principles.

This principle was reinforced in *Hizb Ut-Tahrir v. Germany* (2012), where the ECtHR upheld Germany's ban on an Islamist party that explicitly advocated for the abolition of democracy. The Court ruled that such objectives were irreconcilable with the values of a democratic society and justified the party's dissolution.

(b) The final and one of the most significant criteria is that any restriction must not exceed what is necessary to achieve its legitimate aim; it must be *proportionate* to the goal pursued.

A landmark case in regard to this principle is *United Communist Party of Turkey v. Turkey* (1998). The ECtHR held that simply proposing a different political system (even one that fundamentally differs from the existing structure) does not, in itself, justify the dissolution of a political party. This established that restrictions must be carefully measured against the actual threat posed.

### III. Preventing the Unthinkable: How the ECtHR Evaluates Threats to Democratic Values in Practice

15. To go further, the ECtHR has refined the application of Article 11 ECHR through various judgments concerning the restriction of political parties, such as *Herri Batasuna & Batasuna v. Spain* (2009) and *Vona v. Hungary* (2013).

In the *Herri Batasuna & Batasuna v. Spain* case concerning two political parties that were closely linked to the Basque terrorist organization ETA the Court found that these parties were actively engaged in furthering ETA's terrorist strategy by endorsing violence through speeches and actions. Consequently, the Court deemed their dissolution necessary as part of broader international efforts to prevent the public endorsement of terrorism.

What makes this case worth mentioning is that, even when a political party does not directly engage in violent acts, it can and must be dissolved if it actively supports or aligns itself with a terrorist organization. Indeed, the state is permitted to take preventive measures to protect democracy from internal threats before violence erupts.

16. Another particularly interesting case is *Vona v. Hungary* (2013). In this case, the chairman of the Hungarian Guard Association founded the far-right political party Jobbik, alongside the Hungarian Guard Movement. This movement organized rallies and paramilitary-style demonstrations, primarily targeting Roma communities. These events not only intimidated local populations but also propagated the rhetoric of 'ethnic Hungarian' supremacy, echoing the Nazi-era Arrow Cross movement, which had been instrumental in the mass persecution of Jews and Roma.

Although no direct violence occurred, the paramilitary structures, uniforms, and rhetoric used by the Hungarian Guard Movement created an atmosphere of intimidation with severe historical connotations. The Hungarian authorities and national courts ruled that the dissolution of the Hungarian Guard Association was justified, as it had provided an institutional framework for racist and paramilitary activities.

The ECtHR later confirmed this decision, affirming that states are entitled to take proactive measures against organizations that pose a direct threat to democracy. This ruling underscores that, even in the absence of overt violence, political groups that incite fear and undermine democratic values may be lawfully banned.

17.To further exemplify the application of Article 11 ECHR, the following section will now examine the criteria established in *Vona v. Hungary* and analyze how the ECtHR aligned itself with the dissolution of the association based on these principles:

(1) Prescribed by Law:

The dissolution was legally grounded in Hungarian law, which prohibits associations that violate the rights and freedoms of others (Section 16(2)(d) of Act II of 1989).

(2) Legitimate Aim:

The measure pursued legitimate aims, including public safety, the prevention of disorder, and the protection of the rights of others.

(3) Necessary in a Democratic Society:

i. Pressing Social Need and Proportionality:

18.What is particularly significant about this case is that no direct acts of violence or incitement to violence took place during the association's demonstrations. However, the paramilitary structure, the uniforms, and the rhetoric used were inherently menacing. The Court emphasized that states are not required to wait for irreversible harm before acting. Instead, they have the right to adopt preventive measures to safeguard democracy.

The pressing social need was met because the restriction on freedom of association and assembly was implemented to protect minority rights. The intimidation of the Romani population was recognized as a violation of their fundamental rights. The Court stated that *"a sufficiently imminent prejudice to the rights of others undermines the fundamental values upon which a democratic society rests and functions. One such value is the cohabitation of members of society without racial segregation, without which a democratic society is inconceivable"* (para. 57).

The Court further underscored that a series of rallies aimed at countering so-called *"Gipsy criminality"* through paramilitary demonstrations constitutes a form of racial segregation (para. 63-70).

19.Moreover, the threat posed by intimidation alone was deemed sufficiently serious to justify state intervention. The Court ruled that states may restrict freedom of association to prevent large-scale intimidation from endangering democratic stability.

Crucially, the Court reaffirmed that states do not have to wait until a political movement resorts to violence or actively undermines democracy before taking action. The principle of prevention is vital: states can intervene when a sufficiently imminent threat, such as racial intimidation, endangers democratic values. As noted by the Court, *"the cohabitation of members of society without racial segregation, without which a democratic society is inconceivable,"* must be safeguarded.

Finally, this ruling from the ECtHR sends a strong message to contemporary European societies: racism and discrimination against minorities will not be tolerated, and state parties are fully empowered to take preventive measures to combat such activities before they escalate further.



## IV. The Boundaries of the Extreme Right: Applying Articles 10 and 17

20. Having conducted a rigorous analysis of Article 11, this report initially mentioned the potential applicability of Article 10 (freedom of expression) and Article 17 (prohibition of abuse of rights). However, these provisions are rarely the primary legal basis for dissolving a political party.

While Article 10 is frequently invoked alongside Article 11 to balance the need to protect democracy and prevent political parties from promoting violence or anti-democratic ideologies, Article 17 is reserved for more extreme cases. Article 17 serves to exclude extremist parties from invoking ECHR rights when their objectives are fundamentally incompatible with democratic principles, public safety, or fundamental rights. A striking example is *Hizb Ut-Tahrir v. Germany*, concerning an international Islamist political organization that actively advocated for the establishment of a caliphate and the implementation of Sharia law. This case underscores that extremist organizations cannot rely on the protections of the European Convention if their primary aim is to dismantle democracy or incite violence.

21. Indeed, freedom of expression, association, and political assembly are not absolute rights, contrary to some common perceptions. These freedoms must be balanced against the necessity of protecting democratic structures and the rights of others.

## V. Extremism's Resilience: Limitations in the European Legal Remedies

22. In examining the effectiveness of legal frameworks, several key questions arise:

*What Conclusions Can Be Drawn?*

*Are the existing legal mechanisms sufficient to counteract the rise of extremism and hate against minorities?*

*Are the legal precedents still relevant, given that most cases date back ten to twenty years, making them increasingly disconnected from today's political landscape?*

*Does the high threshold for dissolving political parties inhibit effective action against extremist groups?*

23. A key challenge in addressing extremism through the courts is that democracy itself is founded upon the principle of freedom, meaning any restrictions on political parties must be weighed against fundamental democratic liberties. The European Court of Human Rights (ECtHR) walks a fine line: protecting democracy from its potential adversaries while safeguarding its essential freedoms.

In practice, political parties must reach an exceptionally high level of threat before being considered for dissolution. This high standard partly explains why hate speech and extremist rhetoric still

proliferate, particularly when framed around vague, catch-all terms like ‘migrants.’ This term, used indiscriminately, obscures the specific minorities being targeted and creates a loophole that allows discrimination to persist. For instance, anti-immigration rhetoric may be presented as a generalized concern about border control and national security, yet, upon closer examination, it often disproportionately targets specific ethnic and religious groups, such as people from Arab or African backgrounds. Political figures may cloak their language under the umbrella of ‘migration crisis’ while perpetuating harmful stereotypes, demonizing these communities as threats.

24. Despite these growing threats, the European legal framework still faces critical gaps in countering hate-driven politics. For example, the Charter of European Political Parties for a Non-Racist and Inclusive Society has only been signed by a limited number of states, with some of the most affected nations notably absent.

This raises a profound question: *Are legal instruments alone enough to combat extremism in the face of deep-rooted sociocultural shifts?*

25. The growing normalization of far-right rhetoric and the spread of disinformation suggest that a purely legal response may not be sufficient. Addressing extremism requires not only robust legal mechanisms but also a broader cultural and societal commitment to upholding democratic values.

26. As Marija Pejčinović Burić, former Secretary General of the Council of Europe, warned in 2019: *“Europe is facing a shocking reality: antisemitic, anti-Muslim, and other racist hate crimes are increasing at an alarming rate. The extremist shooting in Hanau, Germany, in which nine people were killed and several wounded, is a tragic example. Such heinous acts are often fueled by toxic rhetoric and conspiracy theories disseminated through social media and the internet. We must put an end to the spread of this dangerous discourse, which strikes at the very heart of our democracies. Our member states must unite against the rising right-wing threat by working closely with ECRI and implementing its recommendations.”*

27. The rising sense of insecurity among Europeans continues to amplify anti-immigration sentiment. Many feel increasingly marginalized by economic and social pressures, believing that equality and inclusion result in stronger competition for fewer resources. Xenophobic nationalists exploit these misconceptions, increasing division and resentment. To counteract this, the Council of Europe stresses the need for a proactive approach, including greater investment in inclusive education and awareness campaigns.

28. Recent election campaigns have demonstrated a disturbing trend: ultra-nationalistic, xenophobic, racist, and homo/transphobic rhetoric is once again dominating the public discourse, especially on social media platforms. Remarks once deemed unacceptable are now normalized, infiltrating everyday conversations and diminishing the principle of human dignity. Hate speech online is increasingly spilling over into real-world interactions, further deepening societal divisions.

In recent years, extremist threats have materialized in violent attacks against mosques, synagogues, and asylum reception centers across Europe. Beyond physical violence, the digital sphere plays a pivotal role in the spread of extremist ideologies.

Findings from the International Conference on Transnational Terrorist Threats highlight that online platforms are extensively exploited for recruitment, propaganda dissemination, and even providing instructional material. Violent far-right actors increasingly engage in transnational coordination via digital networks, making interception and counteraction significantly more challenging.

29. European Economic and Social Committee (EESC) President Oliver Röpké emphasized the urgency of collective action: *“We all have a responsibility to combat hatred. To effectively tackle it, we must work together—politicians, civil society, and citizens alike. Only through collaboration and*

*dialogue can we push back against the rising hostility in our society, which poses a direct threat to our democracy.”*

#### *What Must Be Done?*

30. As Marie-Colline Leroy, Belgian State Secretary for Gender Equality, Equal Opportunities, and Diversity, stated: *“The evolution of societal debates demands constant vigilance and continuous effort—both at the European and national level—toward building a society where everyone has a place, feels respected, and safe. We must continue to strive for this goal, alongside civil society, to construct a truly inclusive union.”*

Despite these calls for action, anti-immigration rhetoric remains rampant. Migrants and refugees remain primary targets of hate speech, particularly in times of crisis. Terrorist attacks in Europe have intensified xenophobic sentiment, while LGBTQ+ communities, especially transgender individuals, have become frequent scapegoats during periods of social and political instability. Additionally, crises have historically fueled a resurgence in antisemitic hate speech.

30. To effectively combat these threats, proactive measures must be put in place before crises escalate. Establishing strong foundations for social cohesion and implementing rapid-response mechanisms against hate speech in everyday life will enhance resilience and enable swift intervention when tensions rise.

#### *The Question Remains: Are Legal Protections Enough?*

31. After thoroughly examining the legal protections in place to counter extremism in Europe, it becomes evident that these safeguards, while important, are not sufficient to address the rise of extremism, particularly within the context of right-wing movements. The existing legal frameworks are often limited by their inability to effectively target the nuanced, evolving nature of hate speech and extremist rhetoric. Legal precedents, many of which are decades old, struggle to keep pace with the contemporary political landscape, where broad and vague terms like ‘migrants’ are used to perpetuate discrimination without clearly identifying the specific communities under threat. Moreover, the high threshold required for dissolving political parties allows extremist groups to continue operating, further emboldening hate-driven agendas.

32. As we witness the increasing normalization of extremist rhetoric, the fundamental question remains: Are our legal safeguards truly enough, or are we witnessing democracy’s erosion in real time? When the foundations of democracy are shaken by extremism, the real test lies not only in the strength of laws and institutions but also in whether we, as a society, decide to resist or stay powerless into complacency. If the rise of the extremes is met with indifference, then the hard-earned lessons of history have already been forgotten...

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