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Safeguarding and promoting genuine democracy in Europe

Report¹

Committee on Political Affairs and Democracy

Rapporteur: Ms Marie-Christine DALLOZ, France, Group of the European People's Party

Summary

The democratic backsliding across the world, including in Europe, is a deeply concerning phenomenon that was exacerbated by the Covid-19 pandemic. There is an urgent need to reverse this trend.

The Parliamentary Assembly should recall that only genuine democracies, based on the principles of individual freedom, political liberty and the rule of law, as enshrined in the Council of Europe Statute, can guarantee democratic security and achieve the common goal of pursuing peace based upon justice and international co-operation.

The Council of Europe member States should renew their commitment to safeguarding and promoting genuine democracy, including by guaranteeing pluralism of opinions; freedom of expression, assembly and association; free and fair elections; an effective, impartial and independent judicial system; and good democratic governance; as well as by promoting equality and providing effective protection against discrimination and hatred.

The Council of Europe should step up its activities to support its member States in their efforts to achieve genuine democracy.

1. Reference to committee: [Doc. 14823](#), Reference 4441 of 12 April 2019.



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A. Draft resolution²

1. The Parliamentary Assembly is deeply concerned about a clear democratic backsliding across the world. Europe has not been spared by this phenomenon, which has resulted in, *inter alia*, a weakening in checks and balances and the role of the opposition, obstacles and limitations to the exercise of civil and political rights and freedoms, as guaranteed by the European Convention on Human Rights (ETS No. 5), particularly freedom of expression, assembly and association, and an erosion of the rule of law. This backsliding has also been marked by citizens' decreasing faith in democratic institutions.
2. In view of this alarming situation, there is an urgent need for Council of Europe member States to renew their commitment to safeguarding and promoting genuine democracy, based on the principles of individual freedom, political liberty and the rule of law, as enshrined in the Statute of the Council of Europe (ETS No. 1), while addressing the root causes of democratic backsliding.
3. In the face of the Russian Federation's aggression against Ukraine, the Assembly recalls that realising genuine democracy is not only a commitment of each member State towards their citizens but also a responsibility to other member States since it is only genuine democracies which can guarantee democratic security and achieve the common goal of "[pursuing] peace based upon justice and international co-operation".
4. The Assembly underlines that democracy is not the dictatorship of the majority, and that democratic legitimacy does not derive solely from winning elections but encompasses the daily practice of democratic governance in the exercise of power and the functioning of institutions. Moreover, any theory attempting to justify the existence of other forms of democracy including, in particular, non-pluralistic democracies, is doomed to failure owing to its inconsistency: genuine democracy must guarantee, among other things, fundamental rights and freedoms, including those of civil society, political pluralism, and the independence of the judiciary and the media, and be based on the rule of law.
5. In this respect, the Assembly reiterates the relevance of the work carried out by the European Commission for Democracy through Law (Venice Commission) on the functioning of democratic institutions, fundamental rights, and electoral law, including the Code of Good Practice in Electoral Matters, the Rule of Law Checklist and the Checklist on the Relationship between the Parliamentary Majority and the Opposition in a Democracy.
6. The Assembly is heedful of the criticism that traditional democratic institutions and political forces have failed to meet citizens' expectations in response to major challenges in recent decades such as globalisation, migratory movements, the digital revolution and its impact on all aspects of society, climate change, economic stagnation and growing inequalities, which are said to have contributed to a general feeling of dissatisfaction with democracy.
7. The Covid-19 pandemic has only added both to this loss of faith and to the erosion of democratic safeguards, as reflected in a series of Assembly Resolutions and Recommendations on various aspects of the health crisis and its effects. Referring to [Resolution 2337 \(2020\)](#) "Democracies facing the Covid-19 pandemic", the Assembly reiterates that "democracy, human rights, and the rule of law cannot be allowed to become 'collateral damage' of the pandemic".
8. In light of the foregoing, recalling that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation as noted in the Statute of the Council of Europe, the Assembly urges the Council of Europe member States to renew the commitments they have undertaken when joining the Organisation and to honour them in the spirit in which they were first formulated. It invites them in particular to:
 - 8.1. guarantee the right to freedom of thought and expression, while combating the disinformation which undermines society's faith in the media and more broadly in democratic institutions;
 - 8.2. guarantee freedom of assembly and association and create an environment conducive to civil society activities, including non-governmental organisations;
 - 8.3. guarantee the safety of human rights defenders, especially journalists, lawyers and members of non-governmental organisations, and to support them, including financially;

2. Draft resolution adopted unanimously by the committee on 16 March 2022.

- 8.4. guarantee the independence and pluralism of the media by taking the necessary measures to prevent, in particular, high concentration of their ownership and to ensure transparency as to their sources of funding and ownership;
 - 8.5. guarantee the right to free and fair elections and, in that context to:
 - 8.5.1. ensure that the electoral process is organised and supervised by an independent and impartial authority;
 - 8.5.2. ensure that election campaigns are covered in a balanced way by the media;
 - 8.5.3. initiate a discussion on the decline in electoral turnout and, where appropriate, adjust electoral practices and systems so as to restore faith in the electoral process;
 - 8.6. guarantee an effective, impartial and independent judicial system, in particular by limiting the powers of the executive and the legislature to appoint and transfer judges and by ensuring the administrative and financial independence of the judiciary;
 - 8.7. ensure that the legislative process is as inclusive as possible and that the parliamentary opposition has sufficient resources to scrutinise government activity;
 - 8.8. promote equality and provide effective protection against discrimination and hatred;
 - 8.9. guarantee good democratic governance, by ensuring, in particular, that the local and regional authorities have the necessary powers, adequate financial resources and skilled staff to provide the best possible services to the entire population;
 - 8.10. include education for democratic citizenship in the curriculum from the earliest age on so that citizens – and young people in particular – can acquire the skills to develop a culture of democracy;
 - 8.11. involve citizens, especially young citizens, in political decision making, including through consultation and other inclusive forms of participation and deliberation.
9. The Assembly invites international organisations which share the Council of Europe's values, starting with the European Union and the Organization for Security and Co-operation in Europe, to increase their co-operation with the Council of Europe in order to find common solutions to the shared problem of democratic backsliding.

B. Draft recommendation³

1. Referring to Resolution ... (2022) “Safeguarding and promoting genuine democracy in Europe”, the Parliamentary Assembly expresses its deep concern at the democratic backsliding in the Council of Europe member States, as noted, *inter alia*, by the Secretary General of the Council of Europe in her reports on the state of democracy, human rights and the rule of law.
2. In light of this observation, there is an urgent need for the Council of Europe to step up its activities to support its member States in their efforts to achieve genuine democracy based on the principles of individual freedom, political liberty and the rule of law, as enshrined in the Statute of the Council of Europe (ETS No. 1), while addressing the root causes of democratic backsliding.
3. For each member State of Council of Europe, it is a responsibility not just to their citizens but also to other States, insofar as only genuine democracies can guarantee democratic security and achieve the common goal of “[pursuing] peace based upon justice and international co-operation”.
4. In light of the foregoing, the Assembly invites the Committee of Ministers to:
 - 4.1. ask the Secretary General of the Council of Europe to consider ways of optimising and intensifying Council of Europe activities in the area of democracy and democratic governance so as to increase their impact and consistency, and to take this into account when conducting the mid-term review of its programme of activities;
 - 4.2. set up a permanent platform on democracy, which would be based on the expertise of various Council of Europe bodies, structures and activities and which would serve as a permanent platform for the exchange of information, good practices and innovations for the benefit of member States’ public authorities and other stakeholders in democracy such as political parties, non-governmental organisations and representatives of civil society, in conformity with the decision adopted by the Committee of Ministers at its 129th session (Helsinki, 17 May 2019) entitled “A shared responsibility for democratic security in Europe – The need to strengthen the protection and promotion of civil society space in Europe”, where it was agreed to “examine further options for strengthening the role and meaningful participation of civil society organisations, and national human rights institutions in the Organisation, with the view to increasing its openness and transparency towards civil society”;
 - 4.3. in light of its reflection on monitoring, consider setting up an early warning mechanism of the Council of Europe to prevent or address worrying developments with regard to compliance with democratic standards and practices in member States;
 - 4.4. consider establishing increased co-operation with other international organisations which share Council of Europe values and which play an active role in strengthening democratic resilience.

3. Draft recommendation adopted unanimously by the committee on 16 March 2022.

C. Explanatory memorandum by Ms Christine Dalloz, rapporteur

1. Introduction

“Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were, to remove the levers of control. One by one freedoms are suppressed, in one sphere after another (...). It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm to the minds of a nation menaced by this progressive corruption, to warn them of the peril (...)”

Pierre-Henri Teitgen

1.1. Procedure

1. The motion for a resolution entitled “Countering ill democracies in Europe”, on which this report is based, and which was also referred to the Committee on Legal Affairs and Human Rights for opinion on 12 April 2019, focuses on the rise of ill democracies in Council of Europe member States and refers to a number of negative practices and trends that are features of “ill democracies”. The text calls for a set of clear standards and criteria to define the phenomenon and consequently counter these practices.

2. The committee discussed this motion at its meeting of 20 May 2019, and I was appointed rapporteur on 25 June 2019. On 30 January 2020, on the basis of an introductory memorandum that I submitted, the committee held a hearing with the participation of Mr Larry Diamond, Senior Fellow at the Hoover Institution and the Freeman Spogli Institute for International Studies at Stanford University, and Mr Michael Frendo, a member of the European Commission for Democracy through Law (Venice Commission). During the same meeting, the committee accepted my proposal to change the title of the report to “Fostering healthy democracies in Europe”.⁴

3. On 8 September 2020, the committee agreed to request a contribution from the Venice Commission in order to gain a better understanding of the Council of Europe’s constitutional acquis in the field covered by my report. The information provided by the President of the Venice Commission, Mr Gianni Buquicchio, during the hearing entitled “Democracy: trends, challenges and opportunities” that was held in Budapest on 3 November 2021 was very relevant and enabled me to make progress in my work.

4. On 6 December 2021, I presented a preliminary draft report to the committee which was supported by most of the members. Improvements were proposed, however, among them the inclusion of some clarification as to the reasons for the democratic backsliding described in the report. This final version of my report takes account of the contributions and the criticisms I received. I also propose to adopt the terminology used in the Statute of the Council of Europe (STE No. 1) and to change the title to “Safeguarding and promoting genuine democracy in Europe”.

1.2. Scope and aim of the report

5. My report aims to identify the structural components of “genuine democracy”, as referred to in the Council of Europe Statute, and to offer recommendations so that they can be strengthened in the member States. By doing so, I hope to be able to prevent the committee from channelling its energy into a debate about whether it is appropriate to use terms such as “ill democracy” or “illiberal democracy” so that it can focus on matters of substance in analysing what a genuine democracy is and how it can be strengthened. However, since these concepts are used in the motion for a resolution underlying this report as opposing liberal democracy, the latter must be briefly described.

6. Liberal democracy means a democratic system of government in which individual rights and freedoms are officially recognised and protected and in which the exercise of political power is limited by the rule of law.⁵ Although it does not use the term “liberal democracy”, the preamble to the Statute of the Council of Europe provides that “all genuine democracy” is based on principles of individual freedom, political liberty and the rule of law.

4. On 25 March 2020, a revised introductory memorandum was sent to the members of the committee for written comments. Two members of the delegation from the Russian Federation, Mr Petr Tolstoi and Mr Sergey Kislyak, expressed disagreement with both the approach and the contents of the memorandum.

5. Definition of [liberal democracy](#) on [lexico.com](#) (a collaboration between [Dictionary.com](#) and [Oxford University Press](#)). See also *Liberal Democracy*, ed. Serge Berstein, 1999, Presses Universitaires de France.

7. Even though democracy and liberalism have different content and origins in the history of political thought, political science has suggested that they form a coherent whole, because each component seems necessary to protect and support the other. So on the one hand, democracy implies the principle of equality of all citizens and their participation in the decision-making process, which is based on majority rule. It also includes the principle of popular sovereignty, which means that the people are the sole source of legitimacy and only they can authorise forms of government.⁶ On the other hand, liberalism is a political doctrine⁷ that recognises and protects a sphere beyond the rightful reach of government in which individuals can enjoy independence and privacy.⁸

8. Consequently, liberal democracy is understood to mean the political system that both protects individual rights and translates the people's views into public policy. Dysfunction in one aspect can quickly breed dysfunction in another: democracy without rights undermines democracy itself. For example, violations of freedom of expression or of assembly are clearly detrimental to pluralism, which is necessary for every democratic form of government. There is therefore good reason to fear that liberal democracy may not survive if one of its components is abandoned and if we cannot avert the slow divergence between its two pillars.⁹

2. Democratic backsliding across Europe and the world

2.1. Current position and initial analysis

9. For several years, many organisations working to promote human rights and democracy have been issuing warnings about democratic backsliding across the world. This phenomenon has been combined with an equally worrying regression in human rights and the rule of law, which are closely associated with democracy. The situation is so alarming that there is already talk of “democracy under siege”.¹⁰ In its most recent report on the state of democracy, the International Institute for Democracy and Electoral Assistance (International IDEA) warns that “the monumental human victory achieved when democracy became the predominant form of governance now hangs in the balance like never before”.¹¹

10. Unfortunately, Europe has not been spared by this phenomenon, a particular feature of which has been a rise in populist parties and a gradual erosion of democratic values by democratically elected governments and leaders. The 2021 report by the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law also notes the “clear and worrying degree of democratic backsliding”.¹²

11. Over recent decades, our democracies have been faced with many challenges, which have had a considerable impact, both on the functioning of democratic institutions and on our societies' perceptions vis-à-vis the traditional political class. The high concentration of wealth and power has taken our democratic institutions hostage through, among others, politics, media and the justice system. Globalisation, growing economic inequalities, economic stagnation, unemployment and the erosion of the middle classes have led to a general loss of faith in the ability of politicians and traditional political forces to deliver prosperity and good governance. The image of representative democracy has also been tarnished by practices such as corruption and tax fraud. Furthermore, multiculturalism and the impact of the migration crisis have given rise to feelings of insecurity creating a fertile breeding ground for nationalism and xenophobia. A general sense of dissatisfaction with democracy has taken hold and has played a crucial role in the rise of populism.

12. To restore faith in democratic institutions, we have to conduct a serious, broad-based and creative assessment of these political challenges. Policy makers also need to pay attention to the valid concerns of citizens who feel that they are losing their bearings in the face of globalisation, which threatens their jobs or economic prospects, economic failure and uncontrolled immigration, and feel abandoned by Europe, making them receptive to the appeals of populists.¹³

6. [The Populist Challenge to Liberal Democracy](#), William A. Galston, *Journal of Democracy*, April 2018.

7. Not to be confused with the economic sense of liberalism, whose roots lie in political economy and, more specifically, in the work of Adam Smith.

8. [“Illiberal Democracy’ or ‘Majoritarian Authoritarianism’? Contribution to the analysis of populisms in Europe”](#), Thierry Chopin, Policy Paper 235, Jacques Delors Institute, 19 February 2019.

9. *The People vs. Democracy*, Yascha Mounk, Harvard University Press, 2018.

10. [“Freedom in the World 2021, Democracy under Siege”](#), Freedom House

11. [“The Global State of Democracy Report 2021, Building Resilience in a Pandemic Era”](#), International IDEA, November 2021.

12. [Report by the Secretary General of the Council of Europe](#), 2021.

13. It is also important to guarantee good democratic governance. In this regard, local and regional democracy has an important role to play because citizens generally have more confidence in local authorities than they have in central government authorities. The Council of Europe's 12 Principles of Good Democratic Governance at local level – which cover issues such as ethical conduct, the rule of law, effectiveness and efficiency, transparency, sound financial management and accountability – provide an invaluable tool for local and regional authorities, which must also have the necessary powers, adequate financial resources and skilled staff to provide good governance and the best possible services to the entire population. We must welcome the fact that work is under way on the preparation, under the responsibility of the European Committee on Democracy and Governance (CDDG), of a draft recommendation of the Committee of Ministers to the member States on principles of good democratic governance to be applied generally at all levels of government, building on the 12 Principles of Good Democratic Governance at local level.

14. In addition, in view of the erosion of the popular support base of traditional parties, it is essential for governments to reinvigorate civic education and democratic education by disseminating the values of a democratic way of life at all stages of education and training for young people, including by raising awareness of the dangers of cyberspace and disinformation. In this context, it is encouraging to note that education for democratic citizenship and empowerment of and an increased decision-making role for young people are part of the Council of Europe's strategic priorities for the next four years. As the Secretary General of the Council of Europe points out, all work in this area "constitutes an investment in the future democratic development of European societies and a strong guarantee of future generations' commitment to the protection and promotion of human rights, democratic values and the rule of law".¹⁴

2.2. Progressive backsliding

15. During the January 2020 hearing, Mr Diamond argued that the significant acceleration in "democratic failure" over the last 40 years did not happen overnight, but rather through a "gradual, incremental, undeclared and stealth strangulation of democracy".¹⁵ In the same vein, Mr Frendo pointed out that the transition to an "illiberal democracy" is seldom sudden, and that it is instead the outcome of a "gradual, piecemeal erosion of the country's democratic values which ultimately only leaves behind the bare bones of an electoral process, leading to domination of the majority".

16. Mr Diamond outlined what he called the "autocrats' 12-step programme" whereby democratically elected leaders or governments, usually on a populist platform:

- i. begin to demonise the opposition as illegitimate and unpatriotic, part of the discredited establishment, out of touch with the "true people";
- ii. undermine the independence of the courts by forcing existing judges to leave and then packing the courts;
- iii. undermine the independence of the media, by denouncing them as partisan, mobilising the intense populist following against them, taking over ownership of them through politically loyal businesses and party-linked political cronies;
- iv. if there is public broadcasting, gain control of it and politicise it;
- v. impose stricter control of the internet, in the name of morality, security, counter-terrorism, but casting a chilling effect on free speech;
- vi. subdue other elements of civil society, particularly NGOs and universities, by casting them as elitist, politically partisan and anti-government;
- vii. intimidate the business community into ceasing support for opposition parties;
- viii. use State control over contracts, credit flows, and other resources to enrich a new class of political cronies who are tightly linked to and reliably supportive of the ruling party;

13. "Populist narratives may differ according to national contexts, but they share the common feature that they are profoundly divisive, claiming to stand for 'the people' – an 'imagined community' supposedly wronged by those who are against 'the people'". "Resisting ill democracies in Europe", 2017.

14. SG/Inf(2020)34. See also the work carried out in the context of Recommendation CM/Rec (2010) 7 of the Committee of Ministers on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, <https://www.coe.int/en/web/human-rights-education-youth/edc-hre-charter-review>.

15. See also Larry Diamond, *Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency*, Penguin Press, 2019; *In Search of Democracy*, Routledge, 2016; *The Spirit of Democracy*, Times Books, 2008.

- ix. extend political control over the State bureaucracy and security apparatus to purge the “deep State” of anyone not slavishly loyal, use the State intelligence apparatus as a weapon against the opposition;
- x. gerrymander constituencies and otherwise rig electoral rules to make it much more difficult for opposition parties to win the next election;
- xi. gain control over electoral administration to further tilt the electoral playing field and institutionalise offensive authoritarianism;
- xii. repeat steps 1 to 11, ever more vigorously, deepening fear of opposing or criticising the new political hegemony and thus demobilising all significant forms of resistance.”¹⁶

17. Consequently, institutions and actors whose role is to constrain and scrutinise the executive are being gradually hollowed out, compromised or hijacked. Given these trends, defending the independence of the judiciary, parliament, the public prosecution service, anti-corruption authorities, audit agencies, the media, civil society, universities and think tanks is crucially important.

18. The Rule of Law Checklist¹⁷ drawn up by the Council of Europe’s expert body on constitutional law, the Venice Commission, and endorsed by both the Assembly and the Committee of Ministers, can be seen as a useful tool to adjust a government’s course, along with a clear expression of political will to strengthen the pillars of democracy.

3. Impact of the Covid-19 pandemic

19. The Covid-19 pandemic has severely tested the public’s faith in democratic institutions and has affected many components of European societies beyond health services, including respect for the values defended by the Council of Europe. In terms of the impact on democracy, the conclusion in the report of the Secretary General of the Council of Europe is unequivocal: while the phenomenon of democratic backsliding predates the health crisis, the legitimate measures taken by national authorities to deal with Covid-19 have exacerbated the trend.¹⁸

20. The health crisis has affected the democratic process in every country in the world. According to a report by International IDEA, in order to deal with the pandemic, more than half of the world’s countries declared a national state of emergency that enabled them to take drastic (and often necessary) measures to stem the spread of Covid-19. In more than half of the world’s countries, the measures taken were viewed as worrying from a democracy and human rights perspective because they were, among other things, disproportionate to the health risk. The aspects of democracy that have seen the most worrying developments during the pandemic are freedom of expression, media freedom and personal integrity and security. Another core democratic process that has been heavily affected by the pandemic is the electoral process, with half of the elections scheduled between February and December 2020 having been postponed due to the pandemic.¹⁹

21. Our Assembly has adopted a number of texts concerning different aspects of the health crisis and its effects. In [Resolution 2337 \(2020\)](#) “Democracies facing the Covid-19 pandemic”, which was adopted on the basis of a report approved by our committee, the Assembly highlighted the importance of parliaments as guarantors of democracy in times of crisis and reaffirmed their fundamental role in holding governments to account: parliaments, which ensure that the system of checks and balances functions properly, considerably mitigate the risk of abuse of emergency powers by governments and evaluate the effectiveness of measures taken to tackle the pandemic. The Assembly also underlined that the continuity of parliamentary work and the provision of information to the public about it also ensure government legitimacy, promote transparency in policy making and enhance public trust, which can increase public adherence to emergency measures. With regard to elections during emergency situations, the Assembly suggested a set of principles based on the Venice Commission’s recommendations.

16. [“Defending Liberal Democracy from the Slide Toward Authoritarianism”](#), Larry Diamond, Stanford University, November 2017.

17. [Rule of Law Checklist – endorsed by the Parliamentary Assembly](#), Venice Commission, Council of Europe, October 2017.

18. [Report by the Secretary General of the Council of Europe](#), 2021, op. cit.

19. [Taking Stock of Global Democratic Trends Before and During the COVID-19 Pandemic](#), International IDEA, December 2020.

22. The Assembly has also identified democratic values and fundamental principles from which States must not deviate, and drawn attention to certain areas where problems have arisen, such as: the legal basis for introducing a state of emergency was not always sufficient to justify the measures taken and was not always clear; the duration and scope of restrictive measures were not always duly limited; derogations from the European Convention on Human Rights (ETS No. 5) may have been used too freely and perhaps unnecessarily; judicial systems' emergency operating arrangements did not always guarantee the right to a fair trial and a public hearing within a reasonable time; and parliament, notably the opposition, was not always able to play its role fully.

4. The structural components of genuine democracies

4.1. Pluralism of opinions and freedom of expression

23. To boost people's participation in political debate, it is essential for every citizen to have access to the whole spectrum of opinions, thoughts and ideas. Everyone must have the right to freedom of thought and conscience, and no one should be subject to ill treatment or be prosecuted for their ideas. Pluralism of ideas allows for beneficial exchange of opinions and makes political debate possible.

24. Freedom of thought is protected under Article 9 of the European Convention on Human Rights and there is a considerable amount of case law of the European Court of Human Rights in this field.²⁰ To strengthen political debate, freedom of expression, which is protected by Article 10 of the Convention and on which there is another large body of case law, may only be restricted in very precise circumstances, because it is "the mainstay of the defence of fundamental rights" and without it, "it is impossible to discover the violation of other rights".²¹ Any potential restriction must therefore be viewed as an exception, be proportionate to the goal pursued and be interpreted narrowly.

25. It should be underlined that social media are gradually becoming a crucial factor in people's participation in politics, as they facilitate communication in the public realm and offer new possibilities for free expression. However, they also facilitate the dissemination of contentious, harmful and illegal content. In addition to hate speech, a growing amount of disinformation is contributing to "information disorder" and is having a negative impact on society's trust in the media and, more broadly, democratic institutions.²² A clear regulatory framework concerning information in the digital age is therefore needed, as is close co-operation between governments and multinational internet companies.²³

26. According to a report prepared by Mr Frithjof Schmidt (Germany, SOC) entitled "Democracy hacked? How to respond?", "manipulation and disinformation tactics played an important role in elections in at least 18 countries in 2017, damaging citizens' ability to choose their leaders based on factual news and authentic debate and giving rise to what has been named 'digital authoritarianism'. At the same time, governments around the world are tightening control over citizens' data and using claims of "fake news" to suppress dissent, eroding trust in the internet as well as the foundations of democracy."²⁴ Digital interference in elections is still widespread across the democratic spectrum and on social networks, which are a growing conduit for electoral manipulation and mass surveillance.²⁵

27. As regards media coverage of election campaigns, the Assembly's election observation reports note that in a large number of countries, most of the media are affiliated with the main political parties and advertising media are controlled by them, so media pluralism can be regarded as limited. In his speech on 3 November 2021, the President of the Venice Commission, Mr Buquicchio, confirmed this when he underlined that one of the main challenges in elections is distortion of political competition, including through imbalanced media coverage. Moreover, there are serious concerns about the very high concentration of media ownership, the monopolisation of many media outlets and the lack of transparency as to their sources of funding and ownership.

20. [Guide on Article 9 of the European Convention on Human Rights](#), European Court of Human Rights.

21. Individual dissenting opinion of Judge Pettiti in the European Court of Human Rights judgment on the case of *Markt Intern Verlag GmbH and Klaus Beermann v. Germany* (1989).

22. [Report by the Secretary General of the Council of Europe](#), 2021, op. cit.

23. *The People vs. Democracy*, Yascha Mounk, Harvard University Press, 2018, op. cit.

24. Doc. 15028.

25. <https://freedomhouse.org/article/report-digital-election-interference-widespread-countries-across-democratic-spectrum>,

<https://freedomhouse.org/article/social-media-are-growing-conduit-electoral-manipulation-and-mass-surveillance>.

28. Safety of human rights defenders including lawyers, journalists and members of NGOs is certainly a criterion of a genuine democracy. In [Resolution 2225 \(2018\)](#) “Protecting human rights defenders in Council of Europe member States”, the Assembly noted that reprisals against human rights defenders had been on the rise in recent years. Likewise, in [Resolution 2317 \(2020\)](#) “Threats to media freedom and journalists’ security in Europe”, it highlighted the urgent need to protect journalists’ safety and stated that over the previous five years, “threats to media freedom and the safety of journalists have become so numerous, repeated and serious that they are jeopardising [...] the stability and smooth functioning of our democratic societies”.

4.2. Freedom of assembly and association

29. The right to freedom of peaceful assembly, which is protected by Article 11 of the European Convention on Human Rights, is a fundamental right in a democratic society and, like the right to freedom of expression, it is one of its foundations. Freedom of association – which is also protected by Article 11 – is similarly important and the European Court of Human Rights has underlined its direct relationship with democracy and pluralism, noting that the state of democracy in a country can be gauged by the way in which this freedom is guaranteed by national law and the way in which it is applied by the authorities in practice.

30. While, in the context of Article 11, the Court has often referred to the essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage, pursuing various social or economic aims, proclaiming or teaching a religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. In addition, NGOs play an important role in monitoring State action and exposing human rights abuses. As underlined by the former Secretary General of the Council of Europe, this watchdog function is in full compliance with the objectives of a liberal democracy and in profound contrast with any authoritarian method.²⁶

31. In [Resolution 2226 \(2018\)](#) “New restrictions on NGO activities in Council of Europe member States”, the Assembly also underlined the importance of NGOs in developing and realising democracy, the rule of law and human rights, which they do by promoting public awareness and participation in public life, ensuring the transparency and accountability of public authorities and contributing to the cultural life and social well-being of democratic societies. Noting with concern that the space for civil society had been shrinking in several Council of Europe member States over the previous years, especially in respect of NGOs working in the area of human rights, the Assembly decided to remain active on this issue.²⁷ In 2021, the Assembly adopted a further resolution on the same subject, noting that space for civil society was still dwindling.²⁸

4.3. Free and fair elections

32. Having promoted and protected the desired pluralism, every democratic government should also guarantee the right to free and fair elections, which is crucial in sustaining the foundations of effective and genuine democracy governed by the rule of law. The legitimacy of any government relies on elections that allow citizens to participate in the democratic debate and to express their choices at the ballot box.

33. In its conclusions, which remain valid today, the Forum for the Future of Democracy held in Kyiv from 21 to 23 October 2009 stated that:

i. Democratic elections are decisive for ensuring that the will of the people is respected in the shaping of the legislature and government at all levels. The process of translating the outcome of elections into political mandates should take place in a fair, impartial and trustworthy manner. Citizens must be sure that their collective will has been respected and, in turn, they will accept the verdict from the ballot box.

ii. The Council of Europe’s objective is to establish a common understanding about all the principles which qualify elections as being ‘free and fair’ in compliance with democratic standards. Those standards must be fully implemented in all elections throughout the Council of Europe space and in those States aspiring to join the Organisation or engage in a privileged relationship with it.

34. However, it must be noted that public confidence in the electoral process is falling sharply, as shown by the continually decreasing level of voter turnout. According to the report of the Secretary General of the Council of Europe, for the tenth year in a row, the average turnout in parliamentary elections in Europe has

26. [Report of the Secretary General of the Council of Europe](#), 2017, p. 59.

27. The report of the Secretary General of the Council of Europe reaches the same conclusion: the space for civil society is shrinking in an increasing number of countries and peaceful public demonstrations are often treated as dangerous.

28. [Resolution 2362 \(2021\)](#) “Restrictions on NGO activities in Council of Europe member States”.

stagnated, and it actually decreased in 2020. At the end of 2020, 13 member States (27.66%) had elected their parliament on a turnout lower than 50%. Despite this downward trend in election turnout, the report notes a renewal of interest in public affairs, which appears to show that “the current electoral systems are not sufficiently sharp enough to ensure the continued influence of citizens over public decisions and the ensuing bond of trust between the electorate and its elected representatives”. It would therefore be essential to initiate substantive reflection on the development of electoral practices and systems in order to adapt them to current realities.

35. Moreover, the prevention of governmental manipulation of the electoral process is central to the democratic alternation of political parties in government. For this reason, the electoral process must be organised and supervised by an independent and impartial authority tasked with guaranteeing free and fair elections.

36. Outside of government, it is vital to prevent vested economic interests from exerting illegitimate influence. Electoral authorities must pay attention to the issue of the transparency of funding of political parties and candidates. At the same time, disproportionate prohibition of funding for parties can lead to manipulation of pre-election campaigning.²⁹ In [Resolution 2390 \(2021\)](#) “Transparency and regulation of donations to political parties and electoral campaigns from foreign donors”, the Assembly expressed serious concern over the fact that legal loopholes in the existing regulations governing financial contributions to political parties and electoral campaigns from foreign sources were or could be exploited or deliberately circumvented in order to exert inappropriate influence on political processes. It made specific proposals to close these loopholes and called on States to review their relevant regulations, including their enforcement, among other things.

37. In addition, Assembly [Resolution 2332 \(2020\)](#) “Setting minimum standards for electoral systems in order to offer the basis for free and fair elections” states that a discrepancy between the political choices of voters as expressed in elections and the composition of elected institutions is a sign of democratic deficit and puts the electoral system’s fairness in doubt. The Assembly therefore asked the Venice Commission to consider ways of setting up minimum standards with which electoral systems must comply in order to be regarded as guaranteeing not only free elections, but also fair results. It also called on it to consider updating the 2002 Code of Good Practice in Electoral Matters in order to keep pace with the political realities observed in European societies and face up to new challenges.

4.4. Parliamentary opposition’s fundamental role

38. The representation system and the significant legacy of parliamentarianism have already created an important tradition concerning the opposition in Council of Europe member States. However, the legal position of the opposition should be appropriate to its political task, which is to ensure that the minority’s views and rights are articulated, that its opinions are aired and that its ideas are disseminated. Every opposition should have sufficient means to perform the essential scrutiny of government activity. Any measure taken to weaken the parliamentary opposition leads to tyranny of the majority, and hence amounts to undermining democracy itself.³⁰

39. In 2008, our Assembly adopted [Resolution 1601 \(2008\)](#) “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament”. Subsequently, in view of worrying trends across Europe, the former Secretary General of the Council of Europe, Mr Jagland, asked the Venice Commission to formulate guidelines on relations between the majority and the opposition. As a result, on 21-22 June 2019, the Venice Commission adopted an opinion entitled “Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist”.³¹

40. This checklist – which was subsequently endorsed by the Committee of Ministers – goes beyond specific opposition rights and also deals with rights of parliamentarians and parliament in general. However, the focus is on opposition rights. The opposition must be able to participate in the legislative process effectively: in this context, the list deals with its involvement in agenda-setting, the allocation of speaking time, the tabling of amendments, decisions to be taken by a qualified majority, the initiation of referenda and the possibility of seeking review of the constitutionality of laws.

41. The importance of opposition involvement in parliamentary scrutiny of the government’s activity is also underlined. More generally, the list reflects the fundamental principles according to which democracy is not dictatorship by the majority. In his speech on 3 November 2021, Mr Buquicchio underlined that a problem

29. Venice Commission, [Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report](#).

30. *Parliamentary Opposition in Old and New Democracies*, Ludger Helms, Routledge, 2009.

31. [CDL-AD\(2019\)015](#).

often criticised by the Venice Commission is that of legislation being passed swiftly with no prior consultation or in-depth debate in parliament. He stressed that a maximally inclusive process involves compromise or, better still, seeking a win-win solution.

4.5. Legality and legal certainty

42. The principle of legality is recognised by both the European Court of Human Rights and the Venice Commission as a component of the rule of law. It is a highly important principle in the legal order of every democracy, because it implies that everything that the government does should be in accordance with and allowed by the law. As the law is the outcome of the parliamentary process, its supremacy strengthens the democratic system.

43. That is the reason why no government is permitted to interpret the law *contra legem*. It should be combined with the principle of legal certainty, as accessibility and predictability of the law require that the law is worded with sufficient precision and clarity to enable legal subjects to adjust their behaviour in accordance with its rules. Moreover, every institution in a democracy must respect the non-retroactivity of criminal law and *res judicata*.³²

4.6. Anti-discrimination, diversity and inclusion

44. Democracy is based on respect for human rights and the participation and inclusion of all citizens. On 17 May 2019, in Helsinki, on the 70th anniversary of the Council of Europe, the Committee of Ministers adopted a declaration in which it reaffirmed “the importance of anti-discrimination and equality policies in a democratic society characterised by pluralism, tolerance and broad-mindedness”. Further to this declaration, a Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) was set up by the Committee of Ministers to promote equality for all and develop more inclusive societies which offer effective protection against discrimination and hatred and in which diversity is respected.

45. Regrettably, the whole of Europe is seeing an increase in hate speech and crimes targeted in particular at Roma and Travellers, Jews, Muslims, Black people and ethnic minorities. Victimisation based on sexual orientation and gender is also frequent. As the European Commission against Racism and Intolerance (ECRI) noted in its 2019 annual report, hate speech by politicians against minority groups and migrants, including by parliamentarians and especially in the form of xenophobic populism during election campaigns, has increased in frequency. At times, even high-level politicians engage in negative stereotyping.³³ In addition, the rise of xenophobia and racism is infringing on the democratic space of national minorities, who can find themselves excluded from political discourse and decision making as a result.

46. In [Resolution 2275 \(2019\)](#), the Assembly pointed out that, when used in political debate, hate speech becomes a barrier to constructive dialogue between political forces and undermines democratic values. It pointed out that “politicians have both a political obligation and a moral responsibility to refrain from using hate speech and stigmatising language, and to condemn promptly and unequivocally its use by others, as silence may be interpreted as approval or support. The enhanced protection of freedom of expression that they enjoy also strengthens their responsibility in this area”.

47. The participation of women is an essential component of democracy. There can be no true democracy without balanced representation and participation of women and men in the democratic process. A democracy that overlooks the aspirations and potential of 50% of society is inherently biased. Equality also helps to strengthen democracy, as has been shown by research and experience on the ground. It is therefore necessary to tackle the patterns of exclusion, the structural barriers, the stereotypes and the unequal power relationships that perpetuate these patterns.

4.7. Government not abusing or misusing its power

48. The separation of powers is one of the fundamental pillars of the modern State. Every constitutional order must guarantee that the powers of the State are divided between three branches: the legislature, the executive and the judiciary. Ultimately, the aim is to prevent abuses of power, but it is also essential to avoid misuse of power. Any democracy puts in place legal safeguards against arbitrariness and abuse of power in case the government attempts to expand its powers beyond the law, or even to use its powers for illegitimate purposes.

32. [Rule of Law Checklist](#), Venice Commission.

33. [Report by the Secretary General of the Council of Europe](#), 2021, op. cit.

49. Therefore, clear restrictions and an authority with the power to remedy and punish abuses are strongly recommended. Independent authorities, such as the Ombudsman and a number of regulatory committees as recommended by the Venice Commission, can also serve as a useful means of remedying abuse or misuse of power.³⁴

4.8. Efficiency, impartiality and independence of the judiciary

50. An efficient, impartial and independent judicial system is an essential pillar of the rule of law and a prerequisite for the exercise of fundamental rights and freedoms, including the right to a fair trial. It is also the cornerstone of the system of democratic checks and balances, namely the separation of powers. Therefore, the judiciary must be administratively and financially independent and the government must refrain from taking action that undermines its special status. This means that sufficient funds are required, and that the judicial council tasked with the administrative management must be made up of judges (at least 50% + 1) chosen by their peers. Additionally, the judiciary should have independent decision-making power and judges must have personal independence with regard to their term of office and remuneration.

51. In his speech on 3 November 2021, Mr Buquicchio mentioned the following worrying developments in relation to the independence of the judiciary, including infringements arising from legislation: excessive powers of the executive and the legislature in appointing judges; the absence of guarantees of stability for judges – including the possibility that they can be transferred easily without their consent; the creation of new courts or the elimination of old ones; the limited role of judges in electing the National Council of the Judiciary; and the existence of special courts that try judges themselves.

52. Similarly, one of the key findings in the report of the Secretary General of the Council of Europe is that proposed legislation and intervention with the aim of exerting political influence over judicial appointments and the make-up and running of self-governing judicial bodies have become more common in recent years. In addition, steps have been taken to weaken the security of judges' tenure or empower the executive to replace court presidents in a discretionary manner.

5. Conclusions

53. Democratic backsliding in Europe (and around the world), which has been happening for several years already, has worsened during the ongoing health crisis, to the point where we are being warned of the danger that "our democratic culture will not fully recover".³⁵ There is an urgent and imperative need to reverse this trend. The Russian Federation's aggression against Ukraine demonstrates the importance of the responsibility of member States in this context. For the Council of Europe member States this is not just a responsibility that the authorities have vis-à-vis their citizens but also one which each member State has vis-à-vis all the others, because only genuine democracies can ensure "the pursuit of peace based upon justice and international co-operation", as advocated by the Organisation's Statute.

54. This crisis of democracy affects almost all aspects of the democratic order: erosion and loss of confidence in institutions, mis- and disinformation of the public, disintegration of social cohesion and polarisation of society.

55. Some argue that new models of democracy need to be invented because "liberal democracy" has been incapable of meeting the challenges of the last few decades. Yet democracy has the necessary resilience and flexibility to deal successfully with current and future challenges and citizens' needs and expectations while remaining committed to respect for individual freedoms and the rule of law.

56. As underlined by Mr Buquicchio in his speech before the committee on 3 November 2021, "democracy is not an exercise for philosophers, it must be alive and involve the people who gave it its name, as well as their elected representatives", which means us parliamentarians of member States.

57. The Assembly should clearly express its political will to strengthen and renew democracy based on respect for individual freedoms and the rule of law. In the process, it must be borne in mind that a stable and robust democracy is not static; on the contrary, it is capable of adapting to new challenges and developments in society and addressing citizens' needs and expectations, which are likewise in a constant state of flux. The Assembly should also make recommendations on how the impact and consistency of the Council of Europe's democracy-related activities could be enhanced.

34. [Rule of Law Checklist](#), Venice Commission.

35. [Report by the Secretary General of the Council of Europe](#), 2021, op. cit.