

CHALLENGES AND OPPORTUNITIES IN THE ERA OF DIGITAL TRANSFORMATION – A THEORETICAL AND LEGAL ANALYSIS OF HUMAN RIGHTS

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ABSTRACT

The aim of this article is the analysis of the impact of modern digital technologies on human rights, representing an issue that requires an in-depth consideration. The exploration of this multifaceted issue focuses on the dynamically evolving legal framework necessary to effectively respond to the emerging challenges posed by the technological developments. In this context, it becomes crucial to define the balance between technological innovation and the protection of fundamental individual rights in order to create an adequate regulatory framework adapted to the pace of progress of digital society. A key research area within this issue is freedom of speech and information, where aspects such as the spread of false information, algorithmic censorship and the right to be forgotten are analysed. The article provides the need for the urgency to adapt legal norms to the dynamic digital landscape, pointing out the necessity to adapt the law to the complex challenges posed by technological advances. The evolution of the international legal framework is also highlighted, citing the International Covenant on Civil and Political Rights, and emphasizing the important role of institutions such as the European Court of Human Rights in shaping the new legal standards of the digital world. The article indicates the need for cooperation between the legal, scientific and technological communities to ensure a balanced and adaptive approach to human rights in the digital age.

Key words: technological transformation, human rights, freedom of speech, access to information.

JEL: Human Rights Law

1. Introduction

The ongoing advancement of modern digital technologies is driving dynamic societal transformations, introducing a new trend of human development. The digital revolution, a pivotal force in these changes, is not only reshaping

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social dynamics but also shaping the digital economy, defining digital rights, and configuring novel social relations through the use of the Internet, social media, and other information and communication technologies. It is noteworthy that the relentless progress in technology is leading to profound revolutions, the ones that have the potential to significantly alter social structures. These revolutions possess the capacity to disrupt established social norms and paradoxes, ushering entirely new opportunities and challenges. In the context of these monumental social shifts, we are witnessing a revolution that not only reorganizes but also transforms the very fabric of societal functioning. Conversely, there exist the innovations that, while not necessarily commanding attention with their spectacle, serve as more subtle yet equally significant catalysts for enduring social change. These technological innovations work evolutionarily, introducing gradual modifications to our daily lives. They can be new communication technologies, tools that make everyday life easier, or innovations in the field of education. Although at first glance they do not seem to be groundbreaking, their impact is a long-term one, becoming permanently inscribed in social structures. The progress of digitization, therefore, imposes the need to understand and properly formulate legal mechanisms that not only regulate, but also effectively protect existing and emerging individual rights. In the context of sustainable socio-economic development and the realization of constitutional human rights and freedoms, there is an imperative for the construction of a comprehensive system of norms, as well as the need to modify the existing one to effectively respond to the challenges of the digital age (Piskorski and Błaszczak, 2023).

Modern digital relations are characterized by transnationality, universality and virtuality, which not only challenges the traditional understanding of human rights, but also forces them to adapt to the new social reality. Human and civil rights in this area must be analysed in greater depth, especially looking through the prism of their provision and guarantee in an environment of entities that are increasingly not a real entity, but a kind of simulation, making the boundaries of human rights and freedoms less obvious and rather ambiguous. The modern practice of legal development increasingly recognizes the need to introduce the institution of *digital rights* into the conceptual circuit (Petryshyn and Hyliaka, 2021).

2. The Evolution of Traditional Human Rights

The traditional interpretation of human rights in the area of cutting-edge developments in the techno-scientific sector is now facing a significant stage in the protection of the rights and integrity of the individual in the digital age. Human rights are subjected to myriad challenges in this context, aiming to find one of their basic and fundamental functions, that is to act as a means to foster the development of society. The world we currently live in is not static, but is an emanation of the evolution of social rules, harmonizing with the ever-changing nature of human. Accordingly, the goal of the entire system of law, and human

rights in particular, is to track and adapt to the modifications occurring in social mores as a result of technological progress (Coccoli, J., 2017). Nowadays, public awareness indicates that the use of the global network carries potential risks of human rights violations. As we become increasingly dependent on online technologies, we face challenges of inappropriate behavior that can lead to serious consequences. In light of this fact, it is important to understand that the freedom of access to information online can be a double-edged sword. On one hand, it is an unquestionable advantage, allowing quick access to knowledge, global communication and exchange of ideas. On the other hand, however, excessive freedom can foster unethical behavior, violating privacy, dignity, and thus basic human rights. The violations of human rights in cyberspace cover a wide range of aspects. In the pursuit of sustainable use of the global network, it is crucial to promote digital education and create public awareness. People should be aware of their rights and responsibilities online to effectively counter unethical practices. In addition, creating transparent Internet regulations is essential to guide users' conduct in accordance with the principles of justice and respect for human rights. It is worth noting that new technologies have created several *new behaviors* that violate human rights, but largely replicate earlier forms. However, their consequences have been modified, resulting in new difficulties correlated with their outdated legal regulation. With the rapid development of information and communication technologies, society has to deal with new challenges such as access to information. Accordingly, there is a need for innovative legal instruments that effectively regulate these areas while supporting the development of technology. An important part of this process is harmonious cooperation between different sectors of society, including both legislative representatives, scientists and representatives of the technology industry. It is essential to develop comprehensive and balanced solutions that take into account diverse perspectives and varied social interests. The modern era requires an understanding that technological advances require an equally dynamic development of law.

Therefore, the approach to formulating new legal norms should be characterized by creativity and flexibility in order to effectively respond to changing social and technological realities. The joint work of different communities is the key to creating a law that not only protects citizens, but also promotes innovation and the development of society (Petryshyn and Hyliaka, 2021). The article describes the evolution of human rights in the context of the right to speech and information.

2.1. The evolution and reinterpretation of the freedom of speech and information in the context of technological development

Considering the issue of the freedom of speech is the subject of an exceptionally extensive and multifaceted discussion among lawyers and scientist, the complexity of which stems both from the roots of this principle and

its legal and social implications. In the context of modern social and technological realities, there is an urgent need to identify problems related to the freedom of speech and access to information. The development of social media, fake news, and algorithmic censorship is creating new challenges for the effective management of the limits of the freedom of speech. The analysis of these issues requires consideration of both legal and social perspective.

A few years ago, the so-called hybrid warfare scandal erupted. The social media such as Twitter and Facebook have become a tool for influencing political processes, casting a shadow over the functioning of mature, well-established liberal democracies. There is a suspicion that the data of some 50 million Facebook users has been used to manipulate public sentiment and consequently, the election results. The creation of psychological profiles of the social platform's users was intended to present them with personalized content to influence their voting decisions. These activities may have affected the US elections, the Brexit referendum and the Kenyan elections. As a result of this incident, the issue of sharing personal information and its use in the context of the human right to information gained publicity and became the subject of much discussion. This topic has been widely discussed, arousing public interest and becoming the subject of analysis. In the context of this controversial phenomenon, questions are being raised about the ethics of the use of personal information and the impact it may have on the decisions made by users in various spheres of public and private life (Demczuk, 2020).

This mechanism may present a potential risk not only to the integrity of the right to individuality of the global network user, but also to the overall democratic mechanisms and security of civil rights in the state (Bodnar, 2018). The modern Internet, originally designed to enable the resurgence of autonomous, open, critical and rational public debate, is now facing the dominance of content that spreads hatred, hate and entire narratives based on negative emotions, stereotypes and prejudices. We are increasingly encountering fake news. Paradoxically, the space, instead of serving as a means of communication and exchange of views, has become an arena for untrue information, fake news and the content based on extremely negative emotions. Today, cyberspace is increasingly becoming a place where the reality of post-truth is taking shape (D'Ancona, 2018). The impact of disinformation on our security is extremely noticeable today. Easy access to the Internet and social media platforms contributes to the fact that fake news is widely disseminated. This is made possible by the ease and very low cost of producing and distributing such content. They are often used as a means to make money, especially in the internet advertising community. Through eye-catching titles, even the least relevant news can entice the viewer to click which generates profit from ads accompanying the content (Žoch, 2021). The right to the freedom of expression and access to information represents an excellent example of the adaptation of *traditional* human rights in the face of technological progress.

Within the framework of a democratic state under the rule of law, the said right should be understood as the right to universal participation of every individual in the sphere of public life and social debate. This is an important factor supporting the creation and functioning of a democratic state based on institutions and representative bodies. This underscores the universal nature of this right as the foundation of a democratic legal order. The rights to the freedom of expression and access to information cannot be understood as unconditional access to *any information*. It is necessary to interpret them as the right of every individual to have unfettered access to safe, legal, and above all objective sources of information. Every individual has the right to access any information, which implies the right to fully and freely choose among them. Unfortunately, this understanding of these human rights becomes difficult in the context of the growing phenomena of algorithmic censorship. It results in a situation in which the individual is losing his freedom to make decisions about the information reaching him, as this choice is made by algorithms. This phenomenon poses significant threats to individual autonomy and can also affect the democratic functioning of the state. In the context of the challenges discussed related to the freedom of expression, access to information and the growing role of algorithms and the fake news phenomenon, it is crucial to strike a balance between the protection of individual rights and the need to regulate the online space. With the evolution of technology and social media, it is necessary to adapt to the changing information landscape.

When it comes to Europe, there is a general agreement on the essence of the freedom of expression, namely to define it in both the Charter of Fundamental Rights of the European Union (2007, Article 11) and the European Convention on Human Rights (1950, Article 10). Both documents define this right as the freedom to form and express opinions as well as the freedom to receive, communicate information and ideas without interference from public authorities, regardless of the limits. However, despite the general formulation of the limits of these rights, there is a need to adapt the understanding of freedom of expression to modern technical and scientific means. In today's world, where communication is increasingly based on the advanced technological instruments, it is important to take into account aspects related to the exercise of freedom of expression through modern tools.

To some extent, these important issues are reflected in the International Covenant on Civil and Political Rights. This document, adopted by the international community, further emphasizes the importance of protecting the freedom of expression as a fundamental individual right. The International Covenant on Civil and Political Rights expands the understanding of freedom of expression, taking into account modern challenges and means of communication (Coccoli, 2017). It is regulated in Article 19 – everyone has the right to the freedom of expression; this right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether orally,

in writing or in print, in the form of art or by any other means of expression of his choice (UN General Assembly, 1966). This Covenant, supported by 168 signatories, represents a solid foundation that exceeds the limitations of other acts, making it applicable in the context of dynamic technological advances. With its extensive scope, the ICCPR provides a durable and flexible legal framework, taking into account the evolving landscape of communications technology. Its comprehensive provisions provide a solid starting point for the ongoing development of legal disciplines related to these advances. The pact's relevancy is not limited to traditional forms of communication, but extends to the specifics of digital communication. The responsibility now lies with the doctrine, lawyers and politicians who should work together to develop a detailed legal framework tailored to the challenges of today's digital context. Building on the existing reference point, that is the International Covenant on Civil and Political Rights it is necessary to develop new norms that take into account the specifics of human rights in the digital age. International law should develop in the direction of detailing the principles of the freedom of expression, privacy, access to information and other aspects related to digital communications. In this context, legal instruments should be developed to protect individuals from excessive intrusions into online privacy, while also regulating the liability for abuse in the digital space. In addition, there is a need for special legal categories covering aspects unique to the digital world, known as *digital law*. These could include issues such as data protection, the right to online anonymity, security, cyber justice, Internet access as a fundamental right, and regulation of artificial intelligence and automation.

As for the norms of the European law, especially the Council of Europe's Convention on Human Rights and Fundamental Freedoms, the key institution that plays an active role in establishing new standards is the European Court of Human Rights. It is this body that has an important function in shaping new legal norms, as well as in interpreting existing provisions. The European Court of Human Rights is the place where cases of human rights violations in member states are decided. Its decisions have a significant impact on the development and evolution of legal standards. Nowadays, situations in which complaints are made about the activities of entities in cyberspace are becoming more common. With the ongoing digitalization of society and the growing role of the Internet in various spheres of life, there has been a noticeable increase in the number of incidents and issues related to the functioning of individuals in the cyberspace area. This phenomenon brings with it a number of challenges and problems, both for individuals and for society as a whole. The complaints often relate to the issues of personal data security, privacy violations, as well as various types of fraud or cyber-attacks (Demczuk, 2020)

One of the more high-profile rulings was *Google v. Agencia Española de Protección de Datos (AEPD) and Mario González*. In this case, Google was sued by the Spanish Data Protection Agency (Agencia Española de Protección de

Datos, AEPD) and Mario González (2014). As a result of these proceedings, the Court of Justice of the European Union announced a significant ruling on the right *to be forgotten*. The judgment required Google to remove a link that led to information about a Spanish citizen from the search results within the European Union. The right to be forgotten also falls under Article 17 of the RODO. The essence of the right to be forgotten is to allow individuals to control their personal data, ensuring that their data is not only deleted by the original administrator, but that the deletion takes place on various platforms where the information may have been disclosed. The RODO's emphasis timely and comprehensive data deletion reflects lawmakers' growing commitment to protecting individuals' privacy rights in the digital environment. The right to be forgotten provides an important mechanism for individuals to regain control over their personal data and mitigate potential risks associated with the long-term existence of such data in the public space (Demczuk, 2020).

3. Conclusions

In conclusion, as we navigate the ever-changing landscape of the digital age, it becomes increasingly apparent that safeguarding human rights and freedoms requires a multifaceted and adaptive approach. The intertwined relationship between evolving technologies and societal structures necessitates a collaborative effort among legal, scientific, and technological communities to establish dynamic frameworks capable of addressing emerging challenges. The call for comprehensive legal mechanisms is not merely a response to the current state of affairs but an acknowledgment of the perpetual evolution of digital technologies. It is a recognition that our understanding of rights, privacy, and freedom must evolve in tandem with the capabilities and applications of digital tools.

In this ongoing dialogue, the role of institutions like the European Court of Human Rights becomes pivotal. They serve as guardians of established principles while adapting them to the digital context. Precedents set in landmark cases such as *Google v. Agencia Española de Protección de Datos*, highlight the significance of protecting individual privacy rights in an era where information is both ubiquitous and vulnerable. Moreover, the evolution of international legal frameworks, exemplified by documents like the International Covenant on Civil and Political Rights, lays the foundation for a global commitment to adapting to the challenges of the digital era. The incorporation of digital law categories, including but not limited to data protection, online anonymity, and regulation of artificial intelligence, signifies an earnest effort to ensure that legal standards remain relevant and effective in an ever-changing digital landscape. As we move forward, the emphasis on digital education, public awareness, and transparent

regulations remains paramount. Striking a balance between protecting individual rights and regulating online spaces requires ongoing collaboration and a commitment to ethical practices by both users and innovators.

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