

## **DEFENDING DIGITAL DIALOGUES: LEGAL INSIGHTS ON BREACH OF FREEDOM OF EXPRESSION**

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### **ABSTRACT**

This article addresses key aspects of the fundamental human right of expression, particularly within the context of the internet as a contemporary platform for unrestricted opinions. Emphasizing the continuity of rights both online and offline, as highlighted in the 2012 UNHCR Resolution, the study explores the global legal framework supporting freedom of opinion and expression, such as Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. From these, derivative rights emerge, including the freedom to change opinions and the unrestricted seeking and receiving of information, subject to specific conditions.

Global agreements recognize limitations on expression under well-defined circumstances, necessitating a three-part cumulative test involving clear legal provisions. Paper identifies various violations within this framework, ranging from attacks on individuals to overly restrictive legislative measures, emphasizing the concerning trend of blocking website access.

Examining pertinent cases, including *Ahmet Yildirim v. Turkey* and *Kalda v. Estonia*, the study underlines court rulings affirming freedom of expression. Recommendations for enhancing online expression encompass support for remote infrastructure, enforcement of anti-monopoly rules, simplified business setup, avoidance of internet kill-switch, and provision of privacy protections.

Recognizing the novelty of the subject, with less than three decades since the advent of email and the World Wide Web, ongoing debate and scrutiny remain crucial. The paper concludes by underscoring the evolving nature of the discourse surrounding free expression in the digital age.

**Key words:** freedom of expression, free media, internet and user-generated content, global agreements on freedom of expression, derivative rights, violations of freedom of expression, website access restrictions, digital age, court cases.

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## **1. Introduction**

In the intricate web of human rights and democracy, the freedom to express opinions is like the glue holding it all together. It is not just a nice idea; it is crucial for education, cultural sharing, and political participation, shaping who we are in society.

A central figure in this dynamic is a free and independent media. Beyond the delivery of news, it serves as a conduit for individuals to articulate their thoughts, cultivating an informed and engaged community—a quintessential heartbeat resonating within the democratic landscape.

Preserving these rights is imperative. It involves ensuring that the avenues for free expression are unobstructed, whether through traditional mediums or the digital sphere. By adhering to these principles, we not only abide by the legal framework but also contribute to the construction of an equitable society—one that treasures the free exchange of ideas as a pivotal element of collective advancement.

## **2. International and regional acts**

Freedom of expression is protected in a range of significant international and regional human rights instruments including Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 19 of Universal Declaration of Human Rights, Article 10 of the European Convention on Human Rights (ECHR), Article 13 of the American Convention on Human Rights and Article 9 of the African Charter.

All these articles are similar to each other, listing the key components of this law and ways of its implementation. These articles sound as follows.

### **2.1. International Covenant on Civil and Political Rights (ICCPR)**

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

### **2.2. European Convention on Human Rights (ECHR)**

Article 10

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

### 2.3. Universal Declaration of Human Rights

#### Article 19

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

### 2.4. American Convention on Human Rights

#### Article 13

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

### 2.5. African Charter

#### Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

## 3. The importance of freedom of expression

In his article, Andrew Puddephatt poses a critical question and provides insightful answers: Why is freedom of expression regarded as so important within the international system of human rights protection? Why is it protected in so many regional and global human rights instruments?

He believes that there are three main reasons why it is seen as so important.

Firstly, it is really crucial for us as humans to be able to express ourselves freely. Having our own identity and understanding our abilities is something we naturally need. What makes us human is how we connect with others through communication.

Next, the freedom to express ourselves is like the base for all our other rights and freedoms. If we do not have the freedom to speak out, it is hard to organize, share information, warn others, or rally for human rights and democracy.

Thirdly freedom of expression is like a necessary condition for both social and economic progress. Businesses need information, opinions, and news to function well. Fighting corruption also requires transparency, which comes from the free flow of information and opinions.

Alas, probably the single most important factor in understanding the impact of the internet on freedom of expression is the way in which it increases our ability to receive, seek and impart information.

## **4. Rights deriving from freedom of expression**

The right to freedom of expression serves as a foundational right, from which other rights emanate, such as:

### **4.1. The right to hold opinions without interference**

Within this right lies the entitlement to alter one's opinions at will, unrestricted by any specific motive or rationale. No one should treat a person unfairly based on what they think. Governments can't make it a crime to have a certain opinion.

### **4.2. The right to seek and receive information**

The UN in its guidelines states that this is important for democracy because people need information to make decisions together. For example, exposing human rights abuses might need sharing information from the government. Everyone should be able to know what personal information is stored about them and why. If there are mistakes or if the data were collected or used wrongly, people should be able to correct or erase it.

### **4.3. The right to impart information and ideas of all kinds through any media and regardless of frontiers**

This statement emphasizes the universal right to share information and ideas using any means of communication, without being restricted by geographical or political boundaries. Expression can take all forms including spoken, written and sign language as well as nonverbal expression such as images and objects of art, all of which are protected.

## **5. Legal restrictions on freedom of expression**

International and regional human rights conventions, as well as judicial mechanisms, acknowledge that the right to freedom of expression may be subject to lawful limitations in specific and narrowly defined circumstances.

Any imposed restrictions must successfully satisfy a three-part, cumulative test:

- a) They must be established by clear and accessible laws, ensuring legal certainty, predictability, and transparency for all.
- b) Restrictions must align with the articulated purposes in Article 19.3 of the ICCPR, such as safeguarding the rights or reputations of others, protecting national security, public order, or public health and morals, adhering to the principle of legitimacy.

- c) The necessity and proportionality of restrictions must be substantiated, demonstrating that they are the least intrusive means required and that the degree of limitation corresponds precisely to the intended purpose, in adherence to the principles of necessity and proportionality.

One of the provisions for these restrictions is found Under article 20.2 of the ICCPR. States are required to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

## **6. Examples of actions violating freedom of expression**

Unfortunately, in the digital world, content can be controlled and remade by the very technologies that deliver it. Servers that give access to the network can be used to block particular websites. Text messages can be intercepted and used to track protestors.

Therefore it is crucial to mention examples of actions that might go against or weaken the ability to freely express opinions. These include:

### **6.1. Attacks on a person**

The perpetration of acts such as execution, killing, enforced disappearance, torture, or arrest targeting journalists or individuals based on their exercise of the right to freedom of expression is a grave concern. These actions may be carried out by entities ranging from state agents to private groups.

### **6.2. Inconsistent and abusive application of legislation**

The erratic and improper application of legislation has the potential to stifle criticism and discourse on matters of public concern. This misuse may cultivate an atmosphere of fear and self-censorship among both media professionals and the wider public.

Examples include:

- making random rules and demanding special approvals for journalists,
- blocking their access to information,
- creating strict legal obstacles for starting or running media organizations,
- having laws that allow complete or partial censorship and banning of certain media.

Online, censorship typically manifests through legal frameworks that authorize the complete or partial prohibition of specific webpages. In extreme scenarios, governments may opt for the complete disconnection of the Internet network, effectively isolating an entire country or region from the global digital landscape.

### **6.3. Defamation laws**

Journalists, media professionals, political activists, and human rights defenders globally face ongoing imprisonment for defamation. The existence of defamation laws also instigates potent selfcensorship, driven by the apprehension of potential severe criminal or civil repercussions.

### **6.4. National security**

Safeguarding national security should not be used to limit freedom of expression. Countries need to be cautious when creating and enforcing laws related to anti-terrorism, treason, or national security (such as state secrets or sedition laws). It is crucial to ensure that these laws align with international human rights standards.

### **6.5. Blasphemy laws**

These laws are sometimes used to target and mistreat people from other religions or minority groups, causing a significant impact on the freedom to express oneself and the freedom to practice one's religion or beliefs. The EU recommends for the decriminalisation of such offences and advocates against the use of the death penalty, physical punishment, or deprivation of liberty as penalties for blasphemy.

### **6.6. Hate speech**

First it is important to say that there is no universally accepted definition of the term ‘hate speech’ in international law. This commonly alludes to expressions that are derogatory, insulting, intimidating, or harassing, and those that actively promote violence, hatred, or discrimination against individuals or groups identified by specific characteristics. Under international law, States are only required to prohibit the most severe forms of hate speech.

In the European context, a discernible line is drawn between legitimate and severe incitement to extremism, and the inherent right of individuals, including journalists and politicians, to freely articulate their perspectives, even when such expression has the potential to be deemed as provocative, startling, or unsettling.

### **6.7. Internet restrictions by operators**

Content, applications, or services should never face blockage, intentional slowdowns, degradation, or discrimination, except in exceedingly restricted circumstances.

### **6.8. Restricting freedom of expression in order to protect intellectual property rights**

Blocking access to the whole websites on the grounds of copyright protection could constitute a disproportionate restriction of freedom of opinion and expression.

### **6.9. Restrictions on the right of privacy and data protection**

Violating this right involves activities such as eavesdropping on conversations, intercepting messages, and unlawfully collecting personal information. Imposing restrictions on the anonymity of communication, for instance, might dissuade victims of various forms of violence from reporting abuses due to the fear of facing double victimization. Illegitimate access to personal data can negatively affect individuals' willingness to utilize electronic communication technologies.

### **6.10. The lack of independence of regulatory bodies**

Ensuring regulatory bodies are independent is crucial for a thriving free media. The selection and appointment of regulatory body members should adhere to rules safeguarding their impartiality and independence. These bodies must be shielded from direct political influence and have a responsibility to uphold human rights, including freedom of expression.

### **6.11. Restrictions on the right of access to information**

The UN Special Rapporteur on Freedom of Expression urges parliamentary bodies to enact legislation that ensures access to public information, aligning with universally acknowledged principles. Highlighting the paramount significance of transparency in governmental affairs, it stresses that in every democratic society, such transparency is fundamental for nurturing the confidence and trust of the citizenry.

## **7. Cases on the Right to Freedom of Expression**

In order to fully understand the problem it is essential to look at this right from more practical point of view. In all these following cases, it was acknowledged that there had been a violation of Article 10 of the European Convention on Human Rights, which, to remind, sounds as follows.

Article 10 (freedom of expression) of the European Convention on Human Rights:

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

### **7.1. Ahmet Yildirim v. Turkey**

18 December 2012 (judgment)

This case concerned a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings. As a result of the decision, access to all other sites hosted by the service was blocked. The applicant complained that he was unable to access his own Internet site because of this measure. He submitted that the measure infringed his right to freedom to receive and impart information and ideas.

The Court held that there had been a violation of Article 10 of the Convention.

The Court agreed that it was not a complete ban on the internet, just a limit on access. However, when the criminal court decided to block all access to Google Sites, it did not check if there could be a less extreme way to only block that specific site. The court did not show it tried to consider different factors or decide if it was really needed to completely block use of Google Sites.

### **7.2. Cengiz and Others v. Turkey**

1 December 2015

This case involved the complete restriction of access to YouTube, a website that facilitates the sharing and viewing of videos. The individuals filing the complaint, who were active users of the platform, specifically alleged a violation of their right to freedom of information and expression. The Court ruled that Article 10 of the Convention had been breached, determining that the interference resulting from the application of the challenged law did not meet the Convention's requirement of lawfulness, and the applicants did not receive adequate protection. Notably, the Court highlighted that the academic applicants were denied access to YouTube for an extended period, impacting their right to access and share information. Emphasizing YouTube as a significant platform for information dissemination and citizen journalism, the Court concluded that the blocking order lacked a legal basis, as there was no provision allowing the imposition of a broad internet access ban, specifically to YouTube, due to the content of one of its videos, according to domestic law.



### **7.3. Vladimir Kharitonov v. Russia**

23 June 2020

As stated in the European Court of Human Rights Factsheet, this case centered on the censorship of websites in Russia, specifically addressing various types of blocking measures. These included what is termed as:

- "collateral" blocking, where the shared IP address resulted in the blocking of multiple sites, including the targeted one;
- "excessive" blocking, where an entire website was blocked due to a single page or file; and
- "wholesale" blocking, involving the Prosecutor General blocking three online media outlets for their coverage of specific news.

The Court ruled that there was a violation of Article 10 of the Convention and a breach of Article 13 (right to an effective remedy) in conjunction with Article 10. Emphasizing the significance of the Internet as a crucial tool for exercising the right to freedom of expression, the Court underscored concerns about the excessive and arbitrary effects of Russia's Information Act provisions used for website blocking, highlighting a lack of proper safeguards against abuse.

### **7.4. Kalda v. Estonia**

19 January 2016

In this instance, a prisoner raised a grievance regarding the denial by authorities to provide him access to three Internet websites containing legal information. The applicant specifically contended that the prohibition, according to Estonian law, preventing him from accessing these particular websites, violated his rights and hindered his ability to conduct legal research for ongoing court proceedings in which he was involved.

The Court found, that if a State was willing to allow prisoners access, as was the case in Estonia, it had to give reasons for refusing access to specific sites. In the specific circumstances of the applicant's case, the reasons, namely the security and costs implications had not been sufficient to justify the interference with his right to receive information.

### **7.5. Ramazan Demir v. Turkey**

9 February 2021

This case concerned the prison authorities' refusal to grant access to certain Internet sites. The person making the request was a lawyer held in Prison in 2016. He wanted to use the websites of the European Court of Human Rights, the Constitutional Court, and the Official Gazette to get ready for his defense and keep up with his clients' cases.

Turkish law allows prisoners to use these sites for training, but the applicant was restricted without a clear reason. The Court noticed that the domestic courts did not explain why accessing certain websites was not considered part of the applicant's allowed training and rehabilitation. They also did not clarify whether the applicant was seen as a dangerous prisoner or linked to an illegal group, which could justify restricting his internet access.

## **7.6. Jankovskis v. Lithuania**

9 January 2017

The court delivered a judgment on a case involving a prisoner who complained about being denied access to an educational website run by the Ministry of Education and Science. The inmate had sought information from the Ministry regarding the prospect of enrolling in a university to pursue a law degree. While the Ministry responded by directing him to find information on its website, the prison authorities, citing legal restrictions on prisoners' Internet access and security concerns, refused to grant him access to the site. The Court found that the Lithuanian authorities did not provide sufficient justification for the interference with the applicant's right to receive information, deeming it unnecessary in a democratic society and thus violating Article 10 of the Convention.

The Court clarified that Article 10 does not impose a general obligation to provide Internet access for prisoners but noted that the restriction on access to the specific website interfered with the applicant's right to receive information. While the interference was legally prescribed and aimed at protecting the rights of others and preventing disorder and crime, the website in question contained relevant information about learning and study programs in Lithuania. The Court emphasized the importance of the Internet in daily life and criticized the authorities for not considering the option of granting the applicant limited or controlled access to the particular website administered by a state institution, which would not pose a significant security risk.

## **8. Conclusions**

In conclusion, the multifaceted landscape of freedom of expression in the digital age requires careful consideration and proactive measures. The European Union, aware of the evolving challenges, has put forth valuable recommendations to safeguard online expression. These recommendations underscore the importance of fostering a supportive environment through inclusive infrastructure development, regulatory measures against monopolies, and the promotion of entrepreneurship.

Furthermore, the EU emphasizes the necessity of ensuring internet stability without resorting to technical kill-switches, advocating for multiple internationally operated links and gateways per country. The commitment to promoting privacy and encryption technologies is also evident in the recommendations, acknowledging the paramount importance of protecting users' rights.

As we navigate the complexities of online expression, it becomes evident that the legal landscape is continuously adapting to the rapid evolution of digital platforms. The court cases and violations outlined earlier underscore the challenges faced in upholding freedom of expression, highlighting the need for a nuanced approach.

In essence, the EU recommendations serve as a comprehensive guide for policymakers, urging them to create an environment that not only respects but also enhances freedom of expression online. As we reflect on the progress made in the last three decades since the inception of the World Wide Web, it is crucial to remain vigilant and adaptive in our pursuit of a digital realm that upholds the principles of democracy, inclusivity, and individual liberties.

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