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FROM THE EDITORS

In the volume **5 No. 2 of** – *TRANSBORDER ECONOMICS International Journal on Transborder Economics, Politics and Statistic* we would like to draw the Readers' attention to the transborder problems that are so different for the economies under analysis. Issues related to the challenges and opportunities in the era of digital transformation, rights to work, problem of patients' rights, human rights and digital dialogues.

The article by Viktoria Hopek entitled *Human right to work in the age of automation* address and discuss the problem of human right to work in the age of automation and technological development, to consider what implications these aspects may have for rights to work, and how the right to work should be applied in the era of automation. In the contemporary "era of rights" fundamental human rights gain attention, yet the right to work remains overshadowed amid escalating automation. Advocating for discussions and solutions that uphold human rights, the article calls for a nuanced approach in balancing the right to work and automation. It underscores the need to prioritize adaptability and human dignity in navigating technological progress.

Klaudia Nosek paper *Patient's rights ombudsman as a specialized body for the protection of patients' rights* analysed the systemic position of the Patient's Rights Ombudsman in terms of the powers granted, as well as independence from other organs and equipping him by the legislator with legal instruments serving the implementation of patients' rights. The purpose of the article is not only to assess the legal status of the institution, but also the actual implementation of the entrusted tasks - on the basis of reports published by the Patient's Rights Ombudsman.

The paper by Daria Kowalska examines the *Challenges and opportunities in the era of digital transformation – a theoretical and legal analysis of human rights*. 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. 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 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.

In the paper *Action to protect human rights and freedom on the basis of the Israel-Palestinian conflict* Gabriela Pańczak and Kacper Nalepa discuss the human rights situation on Israeli territory taking into account the situation that is taking place in this part of the world and, in addition, the purpose of our paper will be to cite Amnesty International's position on compliance with international humanitarian law using the example of the armed conflict taking place between Palestine and Israel.

Gabriela Witkowska in her article *Defending digital dialogues: legal insights on breach of freedom of expression* 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.

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HUMAN RIGHT TO WORK IN THE AGE OF AUTOMATION

Viktoria Hopek[1]

ABSTRACT

The aim of this article is to address and discuss the problem of human right to work in the age of automation and technological development, to consider what implications these aspects may have for rights to work, and how the right to work should be applied in the era of automation. In the contemporary "era of rights" fundamental human rights gain attention, yet the right to work remains overshadowed amid escalating automation. This article explores employment as a universal human right, emphasizing the evolving work landscape. Navigating perspectives on automation, from predictions of temporary "technological unemployment" to fears of prolonged joblessness. Integral to human rights, the right to work extends beyond employment, encompassing fair wages and occupational safety. The article explores its incorporation in international labor law, emphasizing its status in legal instruments like the Universal Declaration of Human Rights. As automation advances, offering efficiency and raising concerns about job displacement and inequality, the article highlights the need for adaptation. Two perspectives emerge on automation's impact, posing challenges in predicting job losses or gains. The human right to work faces hurdles, requiring tailored solutions to reconcile its coexistence with automation. Advocating for discussions and solutions that uphold human rights, the article calls for a nuanced approach in balancing the right to work and automation. It underscores the need to prioritize adaptability and human dignity in navigating technological progress.

Key words: automation, the right to work, human right, technological development, employment.

JEL: Human Rights Law

1. Introduction

Nowadays, it would seem that the protection of basic human rights is at a relatively high level. More and more national and international legal

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regulations are being created to ensure their protection, and the discussion on this topic is becoming more and more common. One could even say that we currently live in the „era of rights". However, it cannot be denied that some topics do not receive the attention they deserve. This is the case with the right to work, which is often overlooked in discussions about human rights (Kwan, 2021). The entitlement to employment is a fundamental human right universally acknowledged as an inherent aspect of human dignity for individuals of all ages. It is evident, according to diverse human rights standards, that both states and businesses must undertake measures to promote and protect core labor rights (Gutterman, 2022). This topic definitely requires a lot more attention, especially now, when increasing automation is rapidly changing the way we work.

Many articles and books have already been written about how automation affects or may affect human work. There are two main schools of thought on the issue of automation in the context of the right to work that are most commonly pointed out in the literature and discussions. The first perspective argues that "technological unemployment" will be temporary and that automation will ultimately create more jobs but there are also those who are of the view that there will be long-term "technological unemployment" and a jobless future (Lau 2020). It is difficult to determine which approach is correct. One could say that fear of job loss in the era of automation is no really anything new. Sine the onset of Industrial Revolution, it has been true that technological advancements replaced certain jobs at that time. However, relatedly, after an adjustment period, the economy generated new, ultimately better-paying jobs for the displaced workers (Korinek, 2019). The issue that is not sufficiently addressed is whether the right to work can in any way provide protection for the workers replaced because the truth is that automation and technological development pose many challenges to legal systems in contemporary times. Given that the right to work and automation do not coexist by nature, conventional human rights measures such as mandating due diligence or ensuring rights-compliant implementation are not appropriate. Calling to stop or slow down automation is also not the right solution (Kwan, 2021). Therefore, it is crucial to primarily promote discussions on this topic. Hence, this is also the main goal of this article.

2. Right to work as a human right

2.1. The content and scope of the right to work

The right to work holds a crucial position within human rights and freedoms, as its definition necessitates recognizing it as a fundamental human right. The source of labor law, like other human rights, is the inherent dignity of human person. This fundamental truth is confirmed by its regulation in numerous international documents that establish human rights as an international norm and demand, imposing on states the obligation to implement economic mechanisms

and pursue employment-friendly policies (Stawowy, 2004). Evident manifestations of encroachment upon this fundamental value, which is the dignity of every human being, such as inhumane working conditions, lack of social protections, or the inability to universally participate in creating economic goods and benefiting from them, have been a cause for the formation of the second generation of human rights. This encompasses economic rights (including the right to work), social rights, and cultural rights.

Human rights are always rights 'to' some value, so for a better understanding of the right to work as a human right, it is important to elucidate what value it represents and what it encompasses (Zadroga, 2010). It is important to emphasize that the "right to work" extends beyond mere employment. The work environment and conditions are integral to this right, encompassing the right to occupational safety, the right to request work environments aligned with work and health conditions, the right to demand appropriate work hours, the right to a fair wage, the right to paid leave, the right to rest, the right to leisure, and the right to request work suitable to age, strength, and gender, in addition to the right to social security it is also the right to freely choose an occupation, fair work conditions, secure and healthy life, freedom of association, prohibition of discrimination and the right to protection against the termination of labor of contract (Kaya, 2019). Moreover, work is a good that has the power to express and enhance human dignity. It becomes indispensable in the life of a person who desires to shape and support their own family, acquire the right to property, or contribute to the building of the common good (Zadroga, 2010).

2.2. The right to work in the human rights protection system

The right of individuals to work is encompassed by economic, social, and cultural rights. The principle of the right to work constitutes the cornerstone of international and European labor law. As a moral imperative and legal norm, this right was expressly incorporated into the international human rights framework by the United Nations (UN) after World War II. The acknowledgment that every human being possesses the right to work is established in both the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social, and Cultural Rights.

The Universal Declaration of Human Rights in Article 23, paragraph 1, states that “everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment”. Moreover, in Article 6, paragraph 1 of the International Covenant on Economic, Social and Cultural Rights, it is stated that “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right”.

The right to work has also been regulated in many other legal acts, such as the European Social Charter, other legal acts issued under the auspices of the European Union, and the constitutions of countries around the world. This underscores how fundamental the right to work is in the human rights system.

2.3. Legal acts concerning artificial intelligence

In current times, the development of artificial intelligence and its impact on all aspects of social life undoubtedly has become a leading issue, which brings not only benefits but also many dangers, including those for human rights. At the current pace of artificial intelligence development, it is important to introduce new legal regulations at a faster pace not only at the EU level but also at the national level. Unfortunately, meeting these requirements proves to be extremely difficult, and over the past few years, relatively few legal acts addressing this issue have been created.

Serious work on legal regulation of the artificial intelligence issue at the international level began in March 2018, when a press release was issued by the group of experts on AI. Another milestone in EU legislation regulating AI is undoubtedly the publication from by the European Commission of the 'WHITE PAPER on Artificial Intelligence European approach to excellence and trust' (Fabruary 2020). This document presents the EU's position on legal regulations related to the development of artificial intelligence. The 'White Paper' outlines the issues associated with the development of this technology and sets out a plan of action to address these issues. Also worth mentioning is the Proposal for an Artificial Intelligence Liability Directive (AILD) from September 2022. The purpose of this proposal was to improve the functioning of the internal market by laying down uniform rules for certain aspects of non-contractual civil liability for damage caused with the involvement of AI systems.

Additionally, the European AI Office is being established. It will support the development of artificial intelligence based on international law adopted by the EU. In January 2024, the European Commission presented the 'GenAI4EU' initiative, in which this Office will participate. These entities will base their actions on several important sectors, such as cybersecurity and healthcare. All these legislative actions by the EU aim to mitigate the negative implications associated with the use of artificial intelligence.

AI Act will contain the first such advanced legal regulations concerning AI. It will distinguish various levels of risk associated with the development of this technology. High-risk systems will be divided into two categories. Within one of them, 8 areas will be identified. In context of the right to work one of these areas will concern employment and workforce management. Control over these systems will be exercised before entering the market and during their operation.

Despite the fact that over the past few years several other various legal regulations have been created, there are definitely too few of them, and they are

emerging too slowly compared to the quantity and pace of the issues generated by artificial intelligence in various areas of life.

3. Automation and the right to work

3.1. The concept of automation

The term "automation" refers to the use of various technologies, such as machinery, software, or other systems, to perform tasks or processes with minimal human intervention. The goal of automation is often to increase efficiency, reduce errors, and streamline operations across various industries. It can range from simple repetitive tasks to complex processes, and it plays a significant role in areas like manufacturing, transportation, finance, and more. By now automation has expanded beyond its roots in manufacturing to include applications in health care, security, transportation, agriculture, construction, energy, and many other areas (Goldberg, 2012). It is becoming increasingly common in everyday life. For the purposes of this paper, automation is broadly defined as any reliance on technology that eliminates the previously required involvement of human labor. This would therefore also include the interconnected use of robots and artificial intelligence (AI), such as the selfnavigation of vehicles.

3.2. Automation's influence on human work and threats to jobs

Technological progress is not a new phenomenon, but in recent years, it is becoming increasingly faster and more advanced, as is evident in how technology and artificial intelligence are impacting the way we work. AI can influence labor demand by automating tasks, complementing human workers, and creating new tasks. While the advantages of automation are undeniable, it simultaneously gives rise to numerous challenges. Automation, by its nature, surpasses certain human roles in terms of costs, quality and capacity efficiency (Kwan, 2021). Moreover, in recent times, people have become increasingly proficient in creating machines and programs that can figure things out on their own. As a result, tasks requiring pattern matching, especially in fields ranging from customer service to medical diagnosis, will increasingly be carried out by machines (McAfee and Brynjolfsson, 2016). Therefore, it is difficult to determine whether its purpose is to facilitate human work or even to replace it. Nevertheless, it certainly raises many questions and concerns.

There are two main schools of thought on this issue that are presented in literature and various discussions on the right to work. On one side, there are people who believe that automation will ultimately lead to mass unemployment and a jobless future. One of the most controversial problems is definitely elimination of jobs (Kwan, 2021). As machines become more and more capable,

they will replace more and more human workers. As automation takes over routine tasks, some jobs may undergo transformation or even disappear altogether. It is undeniable that automation is already having a significant impact across various industries. The impacts are noticeable in both factories and offices, affecting positions ranging from cashiers and telemarketers to accountants and researchers. With the ongoing acceleration of AI and robotics capabilities, a broader spectrum of jobs will likely be influenced. Tasks particularly susceptible to automation are typically routine and rule-based, such as data collection and processing. Additionally, roles requiring physical labor in predictable environments, like manufacturing and warehousing, are progressively being taken over by machines. Some individuals anticipate that this trend will result in a society where a significant number of people are jobless and struggle to find employment.

The development of artificial intelligence can also deepen wage inequalities by disproportionately benefiting highly skilled workers, who can leverage AI technologies to increase productivity and innovation. As a result, low-skilled workers may experience pressure to lower wages. Additionally, the use of artificial intelligence systems in the workplaces raises many ethical concerns regarding privacy, transparency, and work quality. There is a risk that job automation may result in a decrease in skill levels, increased surveillance, job insecurity, and worsened working conditions for specific employees.

There is also another - more positive - perspective on job automation, that "technological unemployment" will be only temporary (Lau, 2020). The prevailing narrative on automation and employment suggests that while automation may eliminate numerous jobs, it also has the potential to generate many new ones. Automation may impact the demand for labor negatively, yet simultaneously, it can lead to the creation of new jobs and novel tasks. Technology does not only eliminate jobs; it also plays a role in their creation. The advent of technology might phase out certain professions, paving the way for other, more productive occupations (Badet, 2021). The emergence of technology may phase out certain professions, making room for other, more productive ones. As machines automate tasks, they liberate human workers to concentrate on more creative and strategic endeavors. This shift brings about fresh opportunities and novel industries. On the other hand, automation has a lesser impact on jobs requiring creativity, social intelligence, and complex decisionmaking. This shift is poised to result in a more productive and efficient workforce, fostering new opportunities for businesses and individuals. Frontline service jobs, such as waiters and hairstylists, may undergo changes due to automation but are unlikely to be fully automated in the near future. The same holds true for roles involving people management or specialized expertise, including CEOs, teachers, engineers, and scientists. Creative professions in the arts and media also appear less susceptible in the short term.

Which of these two perspectives is accurate? It is probable that the truth lies somewhere in between. Although automation will undoubtedly result in certain job losses, it is also poised to generate new employment opportunities. The crucial factor will be for individuals and businesses to adjust to the evolving landscape and cultivate the skills required in the age of automation.

4. The challenges facing the human right to work

In the era of automation, human rights, including the right to work, face many significant challenges. As mentioned at the beginning of this article, there are currently many different legal regulations protecting the right to work. However, it cannot be denied that during the development of technology and artificial intelligence, they may prove to be insufficient. The introduction of automation and artificial intelligence poses new challenges for legislators in terms of protecting workers' rights. It is essential to adapt legal regulations to the changing work conditions to safeguard employees from potential threats associated with automation, such as job loss, employment instability, or inequalities arising from uneven access to new technologies. This leads to other questions: whether the right to work can protect the replaced workers and how it can do so. How should the right to work and the benefits of applying automation be balanced?

Certainly, one cannot provide a single, definitive answer to this question. Given that the right to work and automation do not coexist by nature, conventional human rights measures such as mandating due diligence or ensuring rights-compliant implementation are not appropriate. Calling to stop or slow down automation is also not the right solution. It is necessary to develop tailored solutions that will reconcile these seemingly contradictory aspects. It is necessary to take a direction that will place human rights at the heart of advancements in the field of artificial intelligence (Kwan, 2021). Certain supporters of the right to work contend that it should be upheld over other competing rights such as the right to science. They would assert that the right to innovate and the right to access scientific benefits are not absolute or exclusive. Moreover, workers also have the right to benefit from scientific progress. However, automation displaces them from their jobs, making them the primary group adversely affected by technological advancements. People are compelled to continually acquire new skills for survival. While this might seem unproblematic for some, it poses a challenging and elusive demand for many, especially those who are less privileged and less capable of acquiring new skills. Individuals have diverse talents, and some may struggle to learn skills that are challenging to automate but excel in other natural abilities, such as physical strength or manual dexterity. In a scenario where everyone should equally enjoy the right to work and scientific benefits, it is unjust to sacrifice a specific group

of people. At the same time, employees must be prepared for the changing demands of the job market and new skills required in the digital era. In this context, it is crucial for labor law to include provisions regarding education and training that will assist workers in adapting to new technologies and evolving professional requirements.

5. Conclusions

In conclusion, the discourse on basic human rights has reached a significant level of attention and protection in contemporary times. However, amidst this "era of rights" the right to work often remains overshadowed in discussions on human rights. The significance of the right to work as a fundamental human right cannot be overstated, especially as automation reshapes the nature of employment rapidly. The impact of automation on human work is a subject that has generated extensive literature and diverse perspectives. Debates revolve around the potential for "technological unemployment" to be temporary or lead to a long-term jobless future. In today's age, the rise of artificial intelligence (AI) has become a crucial concern, with its broad impact on society bringing both benefits and significant risks, including those related to human rights. As AI development accelerates, there's an urgent need for swift implementation of new legal regulations at both EU and national levels. However, meeting these requirements proves challenging, with only a few legislative acts addressing AI enacted in recent years. Historical context, dating back to the Industrial Revolution, highlights the cyclical nature of job displacement and creation. Nevertheless, the challenge lies in addressing the protection of workers amidst the profound changes brought about by automation and technological advancements. The right to work, as a crucial aspect of human rights, is deeply rooted in the inherent dignity of individuals. It goes beyond mere employment, encompassing various facets such as fair wages, occupational safety, and the right to rest. However, as the era of automation unfolds, conventional human rights measures may not be sufficient to address the coexistence of the right to work and automation. Automation, characterized by technological progress, poses challenges to the job market, potentially leading to disruptions and inequalities. Striking a balance between the benefits of automation and the protection of workers becomes paramount. Discussions on this topic are essential, emphasizing the need for tailored solutions that recognize the evolving nature of work.

The challenges facing the right to work in the age of automation necessitate a comprehensive approach. Legal regulations protecting workers' rights should adapt to changing work conditions, ensuring safeguards against potential threats like job loss and employment instability. It is imperative to acknowledge the diverse talents and capabilities of individuals, especially those less privileged,

in the face of evolving skill requirements. Ultimately, the reconciliation of the right to work and automation requires a nuanced perspective. Calls to halt or slow down automation are not the solution. Instead, a direction that places human rights at the forefront of technological advancements is crucial. The right to work must be upheld alongside other competing rights, recognizing the diverse impacts of technological advancements on different segments of the workforce.

As we navigate the challenges posed by automation, fostering discussions, adapting legal frameworks, and prioritizing human rights will be key in shaping a future where the benefits of technological progress are equitably shared among all individuals in the workforce.

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PATIENT'S RIGHTS OMBUDSMAN AS A SPECIALIZED BODY FOR THE PROTECTION OF PATIENTS' RIGHTS

Klaudia Nosek

ABSTRACT

Human rights remain an illusion unless they are secured and protected by adequate mechanisms and bodies to ensure their observance. Nowadays, ombudsmen have been appointed in most European countries to uphold human and civil rights and freedoms. In Poland, this function is performed by the Ombudsman for Civil Rights. In recent decades, however, there has been a noticeable tendency to create specialized advocacy institutions, for example to protect the rights of children and patients. As a result of numerous analyzes and recommendations, recognizing the need for institutionalization of patient's rights and the creation of a body representing the patient and guarding his rights, the Patient Ombudsman was established in 2009. It happened under the Act on Patient Rights and the Patient Ombudsman. The subject of the article is an analysis of the systemic position of the Patient's Rights Ombudsman in terms of the powers granted, as well as independence from other organs and equipping him by the legislator with legal instruments serving the implementation of patients' rights. The purpose of the article is not only to assess the legal status of the institution, but also the actual implementation of the entrusted tasks - on the basis of reports published by the Patient's Rights Ombudsman.

Key words: Patient's Rights Ombudsman, ombudsman, medical law.

1. Introduction

Human rights are a set of rights and freedoms to which every human being is entitled irrespective of his or her race, gender, origin, language, religion or political beliefs. However, they remain an illusion unless they are secured and protected by appropriate mechanisms and bodies that guarantee their observance. Nowadays, ombudsmen have been appointed in most European countries to guard human and civil rights and freedoms. In Poland, this is the Ombudsman for Civil Rights. In recent decades, however, there has been a tendency to create

specialised ombudsman institutions, for example to protect the rights of children or patients. An example of such a body is the Patient's Rights Ombudsman, established in 2009. His tasks include ensuring that patients' rights are properly respected by doctors and all treatment facilities. In its activities, it focuses on ensuring maximum safety and comfort for patients during the treatment process. The research objective of this publication is to analyse the systemic position of the Patient's Rights Ombudsman in terms of the powers granted to him, as well as his independence from other bodies and his being equipped by the legislator with legal instruments for the realisation of patients' rights. The article adopts the research hypothesis that the Patient's Rights Ombudsman, unlike the Ombudsman for Children and the Ombudsman for Civil Rights, has not been equipped with sufficient legal mechanisms to enforce patients' rights, which is indirectly related to its constitutional position. Namely, the manner of its appointment and its statutory empowerment weaken its independence and possible spectrum of action. This hypothesis will be verified through institutional and historical methods, taking into account the relevant legal acts and the genesis of the establishment of the institution of the Patient's Rights Ombudsman.

2. The second section

The institution of the ombudsman, whose name varies from country to country, originated in Sweden. Its prototype was the chancellor of justice (sometimes also called the supreme ombudsman – högste ombudsmannen), attached to the crown, established by King Charles XII in 1709 (according to other sources in 1713). The parliamentary ombudsman was not established until a century later after the creation of the office of the Chancellor of Justice in 1809. The next country to establish this office was Finland (1919). In Poland, the office of the Ombudsman for Civil Rights was established on 1 January 1988.

As already mentioned in the introduction, other ombudsman institutions – of a more specialised nature – have also emerged in Poland, an example being the Patient's Rights Ombudsman. The institution of the Patient's Rights Ombudsman functions within the structure of the National Health Fund both at the national level and in the provincial branches. The road to the establishment of this institution began in January 2008, when, as a result of analyses and recommendations, the need arose to institutionalise patient rights and create a body to represent the patient and uphold his or her rights. On 6 November 2008 the parliament passed the Act on Patients' Rights and Patients' Rights Ombudsman, part of the so-called package of health laws aimed at reforming the health care system. The passing of the Act was evidence of patients' support and the need to regulate their rights.

Patients are the foundation and purpose of the health care system in Poland. One of the tasks of the health system is to guarantee patients their basic rights

related to the use of medical care. Patients' rights apply to both the public and private sectors of the medical services market. The basic legal act regulating patients' rights is the already mentioned Act of 6 November 2008 on Patients' Rights and Patients' Right Ombudsman. The Act primarily regulates issues such as the rights of the patient, the rules for making medical records available and the obligations of healthcare providers related to patient rights. The Act also defines the proceedings in cases of practices infringing the collective rights of patients.

Chapter 12 of the Act on Patients' Rights regulates the legal status of the Patients' Right Ombudsman in particular by indicating the principles of his appointment, dismissal, competence, as well as his position in the structures of state authority. The legislator has given the Patients' Right Ombudsman the status of a single-person public administration body, according to Article 42, "the Patients' Right Ombudsman is the central organ of government administration responsible for the protection of patients' rights as defined in the Act under consideration and in separate regulations." We are referring here, for example, to the Mental Health Protection Act or the Act on the Profession of Physician and Dentist. The Patients' Right Ombudsman, unlike the Ombudsman for Civil Rights or the Ombudsman for Children, does not find its legitimacy in the Constitution. It is not a constitutional body and is not subject to the Parliament in its activities. Supervision of the Ombudsman's activities is exercised by law by the Prime Minister.

Pursuant to Article 43 of the Act on Patients' Rights, an applicant for appointment to the position of Patients' Right Ombudsman must meet the following criteria together:

1) have at least a university degree and a master's degree or equivalent,
2) not have been validly convicted of an intentional crime,
3) his/her state of health allows him/her to properly perform the function of Patients' Right Ombudsman,
4) have the knowledge and experience necessary to perform the function properly.

These are standard and fairly general conditions. The first, concerning education, should be considered too general, since, for the benefit of patients and their rights, it should be specified by indicating specific fields of study, which could certainly include law, medicine or public health. The condition of not having a criminal record should be considered standard and justified as it stands, as should the one relating to health status. On the other hand, the possession of knowledge and experience adequate for the performance of the Patients' Right Ombudsman's duties is another over-general and vague requirement, which should be made more precise, if only by indicating the relevant training and the length (years) and type of experience required. It may be noted that the relatively

easy to fulfil and vague prerequisites are hardly conducive to a fair selection and choice of a candidate who could genuinely act in the interests of patients.

Unlike classic ombudsmen, who are appointed by the legislative body (in Poland by the parliament), the Patients' Right Ombudsman is appointed by the Prime Minister from among persons selected through an open and competitive recruitment process. Such a mode of appointment definitely weakens the constitutional position of the Ombudsman and does not promote his independence. The law does not specify the term of office of the body. It seems that it would be appropriate to adopt a 5-year term of office with a possible prohibition on reapplying (more than 2 times) for the position, in order to strengthen and stabilise the position of the Patients' Right Ombudsman and relate this function to the classic ombudsman. The stability of the office of the Patients' Right Ombudsman is also not favoured by the possibility of the Prime Minister to dismiss the Patients' Right Ombudsman at any time and without specific reasons. The recalled Patients' Right Ombudsman must perform his duties until the date of appointment of his successor.

The Patients' Right Ombudsman performs his/her tasks with the help of no more than two deputies. The Prime Minister appoints and dismisses the deputies of the Ombudsman at the request of the Ombudsman. A deputy Patients' Right Ombudsman may be a person who meets the following criteria together:

1) has at least a university degree,
2) he/she has not been validly convicted of an intentional offence,
3) his/her state of health allows him/her to properly perform the function of deputy Patients' Right Ombudsman,
4) has the knowledge and experience to be able to discharge properly the functions of deputy Patients' Right Ombudsman.

These are essentially identical criteria to those for a candidate for Patients' Right Ombudsman, however, the educational criterion has been "lowered" by not requiring a master's degree, allowing a person who has only completed a bachelor's degree to be a deputy Patients' Right Ombudsman. Interestingly, with regard to one of the deputies, the legislator has "higher" requirements. For, according to Article 46, "One of the deputies of the Patients' Right Ombudsman shall have at least a university degree in medical sciences and a master's degree or equivalent."

The Ombudsman presents annually to the Council of Ministers, no later than by 31 July of the following year, a report on the observance of patients' rights in the territory of the Republic of Poland. In turn, the Council of Ministers shall present the above report to the Sejm of the Republic of Poland, no later than 31 August of the following year, together with its position on the report.

The Patients' Right Ombudsman shall perform his tasks through the Office of the Patient Ombudsman. The organisation of the office and its detailed modus operandi shall be laid down in the statutes granted by order of the Prime Minister.

Chapter 12 and particularly Chapter 13 of the Act on Patients' Rights indicate the scope and manner of performance of the tasks of the Patients' Right Ombudsman. Article 47 of the aforementioned Act contains a catalogue of the Patients' Right Ombudsman's scope of action. Firstly, the scope of the Patients' Right Ombudsman's activities includes conducting proceedings in cases of practices that violate the collective rights of patients. Proceedings in cases of practices violating the collective rights of patients are regulated by Chapter 13 of the Patients' Rights Act (Articles 59–67). Article 59 of the Patients' Rights Act provides a legal definition of practices that violate the collective rights of patients, which are defined as:

1) unlawful organised acts or omissions of health care providers,
2) organisation of a protest action or strike by the organiser of the strike, as established by a final court decision, contrary to the provisions on the resolution of collective disputes, aimed at depriving patients of their rights or limiting those rights, in particular undertaken for the purpose of financial gain.

Examples of such practices include the unjustified charging of fees in a health care facility or the failure to collect consent for an operation. Practices that infringe the collective rights of patients are prohibited by law. In an investigation into practices that infringe the collective rights of patients, the Patients' Right Ombudsman has the right to request documents and any information concerning the circumstances of practices that are reasonably suspected of being practices that infringe the collective rights of patients, within no more than 30 days of receiving the request. The Patients' Right Ombudsman shall issue a decision to initiate proceedings in respect of practices infringing the collective rights of patients and shall notify the parties thereof. The Patients' Right Ombudsman shall, by way of decision, refuse to initiate proceedings if an act or omission clearly fails to meet the conditions set out in Article 59 or if the applicant for a decision to consider a practice as infringing the collective rights of patients has not substantiated the deprivation of patients' rights or the restriction of those rights. The Patients' Right Ombudsman may also refuse, by way of decision, to initiate proceedings if he considers it justified to do so. If the Patients' Right Ombudsman issues a decision declaring a practice to be in breach of patients' collective rights, he orders it to be discontinued or indicates the actions necessary to remove the effects of the breach of patients' collective rights, setting time limits for such actions. The Patients' Right Ombudsman's decisions in cases of practices infringing the collective rights of patients are final. The Patients' Right Ombudsman's decision may be appealed to the administrative court. The administrative court shall examine the complaint without delay. Significantly, to the extent not regulated in the provisions of the Act on Patients' Rights, the provi-

sions of the Code of Administrative Procedure apply to the proceedings on the application of practices that violate the collective rights of patients. It is also worth noting that proceedings on the application of practices that violate the collective rights of patients are not initiated if one year has elapsed since the end of the year in which they ceased.

The Patients' Right Ombudsman is empowered to impose fines up to the amount indicated in the Act and in the cases mentioned therein (Articles 68–69). Firstly, the Patients' Right Ombudsman shall, by way of a decision, impose a fine of up to PLN 500,000 on the entity providing health services or the organiser of a strike in the event of failure to take the actions specified in the decision to recognise a practice as infringing the collective rights of patients within the period specified therein. Secondly, in the case of failure to provide, at the Patients' Right Ombudsman's request, the documents and information referred to in Article 61 (concerning the circumstances of the application of practices which are reasonably suspected to be in breach of patients' collective rights), the Patients' Right Ombudsman shall impose, by way of a decision, on the entity to which the request was addressed, a financial penalty of up to PLN 50,000. The funds derived from the aforementioned fines shall constitute income to the state budget. The pecuniary penalty is subject to collection under the provisions on enforcement proceedings in administration.

The competence of the Patients' Right Ombudsman includes investigating violations of individual patients' rights (Articles 50–53). This is the competence that is most relevant in practice. The Patients' Right Ombudsman initiates an investigation if he becomes aware of information that at least plausibly indicates a violation of patient rights, including in particular:

1) the designation of the applicant,
2) an indication of the patient whose rights are affected,
3) concise description of the facts.

A request addressed to the Patients' Right Ombudsman is free of charge and, importantly from the point of view of patients, there are no formal requirements for this request. The Patients' Right Ombudsman may also initiate inquiries on his own initiative, taking into account, in particular, information obtained which makes it at least plausible that a violation of patients' rights has occurred. After reviewing the request addressed to it, the Patients' Right Ombudsman may: take up the case, stop at pointing out the applicant's or the patient's legal remedies, refer the case according to its jurisdiction, or not take up the case. The Patients' Right Ombudsman must notify the applicant and the patient concerned of taking one of the above actions. The Ombudsman, when conducting an investigation, has two options of action, he may conduct the investigation himself or he may request the investigation of the case or part of it to the competent authorities,

in particular the supervisory authorities, the public prosecutor's office, state, professional or social control, in accordance with their competences. In the case of conducting the proceedings on its own, the Patients' Right Ombudsman may:

1) examine, even without prior notice, any case on the spot,
2) demand explanations, submission of files of any case conducted by the chief and central bodies of state administration, bodies of government administration, bodies of non-governmental, social and professional organisations, and bodies of organisational units with legal personality, as well as bodies of local self-government and self-governing organisational units and self-governments of medical professions,
3) request the submission of information on the status of the case conducted by the courts, as well as the public prosecutor's office and other law enforcement bodies, and request the inspection at the office of the court and public prosecutor's office and the files of other law enforcement bodies, once the proceedings have been completed and the decision has been made,
4) commission the preparation of expert reports and opinions.

When considering the issue of both proceedings for practices infringing the collective rights of patients as well as investigations, it should be borne in mind that the Patients' Right Ombudsman is not competent to assess the diagnostic and treatment process itself. Such a view was first of all expressed by the Voivodship Administrative Court in its judgment of 25 April 2019 (ref. VII SA/Wa 2357/18), according to which "the Patients' Right Ombudsman has no competence to assess the diagnostic and therapeutic process applied to the patient. For this reason, he is obliged to take into account the opinion issued by specialists in a given field of medical knowledge."

Unlike the Ombudsman for Civil Right, the Patients' Right Ombudsman only has competence in civil court proceedings, but cannot request the initiation of pretrial proceedings for offences prosecuted ex officio by an authorised prosecutor, as well as request the initiation of administrative proceedings, file complaints before an administrative court, and participate in these proceedings with the rights of a public prosecutor.

In addition to the competences described above, the Patient’s Right Ombudsman's scope of action includes:

- preparing and submitting to the Council of Ministers draft legal acts concerning the protection of patient rights,
- submitting motions to competent authorities to undertake legislative initiative or to issue or amend legal acts in the field of patient rights protection,
- preparing and issuing publications and educational programmes popularising knowledge on the protection of patient rights,
- cooperating with public authorities to ensure that patients' rights are respected, in particular with the minister responsible for health,

- presenting evaluations and conclusions aimed at ensuring effective protection of patients' rights to competent public authorities, organisations and institutions, as well as self-governments of medical professions,
- cooperation with non-governmental, social and professional organisations whose statutory objectives include protection of patient rights,
- analysis of patients' complaints in order to identify threats and areas in the health care system that need to be remedied.

Thus, it can be seen that the above activities are primarily related to the monitoring of legal regulations concerning patients' rights and education on their subject.

3. Conclusions

In conclusion, the establishment of the Patients' Right Ombudsman can be seen as a complement to the health care system in Poland. First and foremost, "persons aggrieved by the providers of health services have gained another opportunity to pursue their claims" . It is noteworthy, however, that by placing the Patients' Right Ombudsman among the organs of government administration, the Patients' Right Ombudsman was deprived of the most important feature of the ombudsman's office – the feature of independence from the executive authorities. The Patients' Right Ombudsman should also be independent of other bodies, which is also not guaranteed by the legislator. The Patients' Right Ombudsman also does not have immunity, unlike the other two ombudsmen. Another aspect that significantly weakens the constitutional position of the Patients' Right Ombudsman is the lack of anchoring of this institution in the Constitution of the Republic of Poland. The qualification prerequisites for candidates for the Patients' Right Ombudsman and the influence of the Minister of Health on its selection should be considered too vague and not conducive to good selection. The Patients' Right Ombudsman should be a tenure body, like the other two Ombudsmen. Finally, one should also note the phenomenon of duplication of competences between the Patients' Right Ombudsman and the constitutional ombudsmen (the Ombudsman for Civil Rights and Ombudsman for Children). Indeed, a patient whose rights have been violated can, in most cases, apply to both the Patients' Right Ombudsman and the Ombudsman for Civil Rights, and sometimes even to the Ombudsman for Children.

The legal structure of the Patients' Right Ombudsman leads to the conclusion that he does not have adequate legal instruments that could lead to the realisation of the patient's right of access to publicly funded health care services. The activities of the Patients' Right Ombudsman are primarily aimed at controlling entities

performing medical activities. Due to its systemic position, i.e. total structural and functional dependence on the government administration, the Patients' Right Ombudsman has no effective possibilities to influence other "actors" occurring in the health care system. It is worth considering a solution that would enable a broader control, e.g. of the activities of the National Health Fund, which, as a state organisational unit, should closely cooperate with other executive authorities. Extending the competences of the Patients' Right Ombudsman in this direction could pay off in the future when the problem of protecting patients' rights with regard to the behaviour of private insurers arises.

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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 (Żoch, 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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ACTION TO PROTECT HUMAN RIGHTS AND FREEDOM ON THE BASIS OF THE ISRAEL-PALESTINIAN CONFLICT

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ABSTRACT

The imposition of martial law on the territory of a specific state entails certain obligations. In the international arena, laws that permit the violation of fundamental individual rights should never be introduced. During an armed conflict, countries are obliged to comply with international humanitarian law, which has the protection of civilians as its goal. Compliance with the aforementioned law is achieved by regulating the conduct of all parties during hostilities. Under the provisions of international humanitarian law, all parties to an armed conflict are obliged to distinguish between military targets and the population, as well as civilian objects, and to direct attacks only against military objects (Amnesty International 2021). Deliberately caused attacks on facilities where civilians are present or reside are prohibited by international law and constitute war crimes.

Allegations have been made against Palestine that the military wing of Hamas and other Palestinian armed groups fired rockets at Israel in significant numbers. The incident resulted in the deaths of 12 Israelis. The aforementioned attack was directed at civilian facilities, such as homes, and its victims, as already mentioned, were civilians; which is in violation of international humanitarian law. An additional allegation raised after this attack is that the attackers used weapons that are inherently indiscriminate in nature.

In our presentation, we would like to discuss the human rights situation on Israeli territory taking into account the situation that is taking place in this part of the world and, in addition, the purpose of our paper will be to cite Amnesty International's position on compliance with international humanitarian law using the example of the armed conflict taking place between Palestine and Israel.

Key words: Israel-Palestinian conflict; casualties; human rights.

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1. Introduction

1.1. Action taken

The Israeli-Palestinian conflict, which has been ongoing for over a century, escalated with renewed intensity on Saturday, October 7, 2023. The root of this conflict can be traced back to the idea of establishing a Jewish state in the territory of Palestine. This underlying issue has led to many contradictions, resulting in conflicts such as the Suez Crisis, the Six-Day War, and the Yom Kippur War, which nearly brought Israel to collapse, thus causing severe and long-lasting consequences. Since the mid-1990s, Israeli authorities have increasingly imposed stringent restrictions on the movement of Palestinians in the Occupied Palestinian Territories (OPT) (Bojarczyk 2023). These restrictions include the establishment of military checkpoints, roadblocks, fences, and other structures aimed at controlling the movement of Palestinians within the OPT and limiting their travel to Israel or abroad (Amnesty International 2021).

Developing over the years, the conflict primarily revolves around disputes regarding territory and statehood. The goal of the Palestinians has been to establish their own state and reclaim territory that, according to international law, still belonged to them. Additionally, a significant issue is the large number of refugees, primarily displaced in 1948 from the territory of Palestine. The number of displaced Palestinians is estimated at around 750,000, with today's population reaching 8 million refugees, residing in Palestinian refugee camps located both in Palestine itself and in neighbouring countries. It is estimated that in the Gaza Strip, three-quarters of the population consists of refugees. Therefore, a significant issue is the right of refugees to return to the lands from which they were expelled (Bojarczyk 2023).

The Gaza Strip is often referred to as the largest ghetto in the world. This area is mainly sustained by international aid and grants from Palestine's allies. A concerning aspect of Palestinian life is the societal acceptance of aggression from Israel. It has become commonplace for human rights to be violated and for Palestinians to be deprived of the ability to fight for their rights to existence (Amnesty International 2021).

1.2. Conflict and human rights

According to the principles of international law, parties to an armed conflict, both state and non-state armed forces, are obligated to abide by the provisions of international humanitarian law, which aims to protect civilian populations. Adhering to such norms helps safeguard civilians who are unable to defend themselves in the event of armed attacks. Parties to an armed conflict are not

allowed to violate human rights inherent to them by the very fact that these rights are intrinsic (Amnesty International 2021).

The provisions of international humanitarian law stipulate that all parties to a conflict must bear in mind that their duty is to distinguish between military objectives and civilian populations and objects. The aforementioned norms require that armed attacks be directed solely at military objectives. Attacks deliberately and directly targeting civilian objects constitute war crimes according to international humanitarian law. It is worth emphasizing that disproportionate and selective attacks are also prohibited acts (Amnesty International 2021).

During the continuation of armed attacks, it is necessary to apply basic precautionary measures aimed at minimizing harm to civilian populations. These precautionary measures include effectively warning the population before an attack and addressing situations where the attack may result in disproportionality. It is worth noting that the Israeli military can conduct military operations in populated areas inhabited by civilian populations; however, attention should be paid to the aim of these operations, which should be directed at military objectives. These principles allow for the minimization of civilian casualties.

However, a problem with the application of the aforementioned principles has become evident in the Gaza Strip (GS), where, as reported by the media, provisions of international humanitarian law are being ignored, and attacks are primarily directed at objects inhabited by civilian populations. Reports indicate targeted attacks on educational facilities, temples, and office buildings. Article of 49 of Geneva Convention states: *Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive*.

1.3. Supposed Effective of Gaza siege

Response to Hamas's attack, Israel declared a siege on the Gaza Strip on October 10, cutting off supplies of water, electricity, fuel, medicine, and food to that area. In exchange for discontinuing these actions, they demand the release of hostages held by Hamas. This situation undoubtedly exposes the civilian population, deprived of basic healthcare and access to clean water, to being unable to meet their basic needs. The Gaza Strip, through these actions, is exposed to the rapid spread of infectious diseases, which can lead to serious complications and irreversible consequences. The use of such a blockade is unacceptable and constitutes a violation of international humanitarian law and may undoubtedly be considered a war crime in the future, as it is a manifestation of action directed against the civilian population as collective punishment.

Despite calls from the Israeli people to leave the Gaza Strip, it was not possible for the population residing in this area due to continuous shelling of areas near the borders, and additionally, through the imposition of a maritime blockade.

According to Bartosz Bojarczyk's commentary in "Expert's Eye", "The scenarios of this conflict, especially for Palestinians, are not very optimistic. I believe that after the bombardment of the Gaza Strip, Israel will deploy ground forces there to pacify the area. They will also try to free prisoners and reach all Hamas fighters in order to eliminate them" (Bojarczyk 2023).

Determining what really happened in the Gaza Strip is quite a challenge. The flow of reliable information is significantly hindered due to restrictions on access to the area for outsiders. Any information that is obtained regarding this matter is often shaped by social media. However, those who gather information on this subject do not always adhere to rigorous standards of accuracy, leading to the spread of misinformation in the media.

According to Roman Kuźniar, "the main problem is, of course, the way operations are conducted in Gaza. The massacre of civilians and the sea of ruins over vast areas of the Gaza Strip are the foundation of the martyrdom myth that will inspire future generations of Palestinian fighters and terrorists" (Kuźniar, 2023). At the moment, there are no real prospects for Israel and Palestine to coexist peacefully. What both nations, as well as international organizations and all states operating on the international stage, should strive for now is to avoid bloodshed, terror, and pacification. Unfortunately, emerging scenarios are not favorable to Palestine, which is likely conditioned by the disproportionality of forces and the location of the conflict.

1.4. Responsibility of crimes perpetrators

A) Serious violations of international humanitarian law and the commission of other crimes under international law are subject to criminal liability before national courts or the International Criminal Court (ICC). Israel signed the Rome Statute of the ICC but did not ratify it in 2002. It announced that it does not intend to submit to its jurisdiction. With Palestine's accession to the Rome Statute of the ICC, representatives of both sides may be held accountable for at least some of their actions.
B) If the above form of sanctioning is not applied, another possibility would be the utilization of the universal jurisdiction of third-party states.

Under humanitarian law, Amnesty International has no position on the occupation. However, it calls on Israel, as an occupying power, to have the exclusive use of international humanitarian law and international human rights law (Amnesty International 2021).

It should be pointed out that the conflict unfolding in the region is an asymmetric conflict. International law proves insufficient in assessing the phenomena occurring there. In the case of Palestinian-Israeli clashes, we observe the collapse of the concept of a just war. Military forces do not adhere to international humanitarian law there, and they are reluctant to submit to jurisdiction. According to the concept of a just war referred to earlier, to which Michael Walzer appealed, a war can be considered just if it meets two basic criteria: a just cause and proper conduct (Kuźniar 2023).

1.5. Symbolic date of Hamas' attack on Israel

In the media, we can find information pointing to the symbolism of the date of Hamas' attack on Israel. According to sources, 50 years ago, there was an attack by Arab states, led by Egypt and Syria, against Israel. That attack is described as one that caught the authorities of the attacked state by surprise. Today's situation is analogous; attacks on the Palestinian population have surprised the entire world. Speculations also arise in the media regarding potential beneficiaries of the whole situation, which are referred to as the authors or actors of the conflict (Kumelska-Koniecko 2023).

1.6. Position, Amnesty International

The recently announced report "*Israel's apartheid against Palestinians: Cruel system of domination and crime against humanity"* describes how mass seizures of Palestinian land and property, unlawful killings, forced displacements, drastic restrictions on movement, and other human rights violations constitute a system that, under international law, is equivalent to apartheid. This system operates through violations that Amnesty International recognizes as apartheid, meeting the criteria for crimes against humanity as outlined in the UN International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the International Criminal Court (Amnesty International 2021).

The aforementioned apartheid includes, among other things, the confiscation and displacement of Palestinians. The Israeli state continually carries out mass, unlawful land seizures from Palestinians. Furthermore, Israel implements policies and establishes legal norms aimed at forcing Palestinians to relocate to small enclaves. Going back to 1948, Israeli forces destroyed hundreds of thousands of Palestinian homes.

As stated by the Secretary General of Amnesty International, Agnès Callamard, "The international response to apartheid can no longer be limited to fruitless condemnations and deliberations. If we do not address the root causes of the problem, Palestinians and Israelis will not break free from the cycle of violence that has destroyed so many human lives".

1.7. European Union's position on the Israeli-Palestinian conflict

The European Union clearly expresses its position on the Israeli-Palestinian conflict. An expression of this position is, among others, the first document issued on this issue – the Shuman Declaration. The official position of the Community was developed in 1980. The Venice Declaration was adopted by the European Council at that time. Its subject was an appeal to both sides, advocating for the start of negotiations. An important aspect included in the Declaration was the demand for the recognition of the Palestinians' right to self-determination (Szydzisz 2014).

1.8. Effects of the conflict

It is worth considering the potential consequences of the current conflict. Undoubtedly, one of the consequences could be a true humanitarian catastrophe. It is estimated that a significant number of innocent lives have been lost at this point. The use of practices by Israeli authorities has led to almost mass destruction of civilian populations. Further deepening of hatred between two perennially competing cultures will certainly lead to further oppression of Palestinians. The events taking place today, including those in the Gaza Strip, demonstrate helplessness in the face of pain, suffering, and oppression caused by hatred. Despite the efforts of many international organizations and despite the existence of international humanitarian law, compliance with which should be the foundation for conducting armed actions, we still passively observe unlawful actions that should be eliminated from the international community. Fighting terrorism and lawlessness would seem futile in today's world. The United States, for example, experienced the difficulties accompanying such actions when it launched a global war on terrorism after September 11 (Kumelska-Koniecko 2023).

According to PhD Magdalena Kumelsko-Koniecka (2023), "The worst-case scenario would be the involvement of other regional actors in the theater of armed conflict - Hezbollah, Israeli militias, or Syrian forces". She argues that such a development could lead to the involvement of global powers, with the USA at the forefront. She mentions that the transfer of American forces to the eastern Mediterranean waters to deter aggressors would harm Ukraine, resulting in a negative impact on the security of Central and Eastern Europe. Marek Leonard, Director of the European Council on Foreign Relations, also emphasizes that the Palestinian-Israeli conflicts have overshadowed the war in Ukraine. The tragedy unfolding in the Middle East is comparably tragic to that which has affected Ukraine (Leonard 2023).

An important topic underlying the discussed war is the issue of oil, the price of which is undoubtedly dependent on political aspects. In the context of potential Iranian involvement, there is a threat of closing the 33-kilometer-wide Strait of Hormuz, a key oil transportation route. This poses a danger because it is estimated that Iranian oil supplies are the largest in five years.

2. Conclusions

The Israeli-Palestinian conflict intensified significantly on October 7, 2023, continuing a century-long dispute rooted in territorial and statehood ambitions. The historical context includes pivotal conflicts like the Suez Crisis, the Six-Day War, and the Yom Kippur War, highlighting Israel's struggle for independence and the subsequent shift towards normalization of relations with some Arab states. At the heart of the conflict are Palestinian aspirations for an independent state and the return of refugees expelled in 1948, now numbering around 8 million.

Recent escalations saw an unprecedented attack by Hamas and Palestinian Islamic Jihad on October 8, 2023, catching Israel off guard with a combined rocket and ground assault. This attack resulted in over 1,300 Israeli casualties, sparking a severe response and drawing global attention to the conflict's brutality. International humanitarian law requires all parties to differentiate between military.

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

Gabriela Witowska[1]

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 Yildrim 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 it is 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 Yildrim 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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