

FREEDOM OF EXPRESION AND THE INTERNET

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Abstract

Internet access in the age of speed and technology is a click away, from everyone who is surrounded by technology. But access to the internet, among all the benefits it contains, also implies guaranteeing respect for human rights. There are countries that have recognized in their jurisdiction access to the internet, countries such as Costa Rica, Estonia, Finland, France, Greece and Spain. The state does not have the right to restrict the access to the internet of its citizens, which has already been recognized by a resolution of the UN Human Rights Council in 2016. But this permissiveness of the state is not an absolute right, in the sense that any individual can use the virtual space in any way. There are also limits on the access to the Internet, in order to respect human rights. In the article below I will show how and why human rights must be respected in the sphere of the Internet, and also freedom of expression and what levers have or should have states to guarantee these rights through national human rights institutions.

Key Words: *human rights, internet, human rights institutions.*

JEL Classification: [K38, K40, K33]

1. Introduction

We live in a society governed by Internet access, by information technology. Almost all sectors of activity operate on the basis of technology. Whether we solve jobs, problems, or basic needs of our body, such as food, technology is almost indispensable.

Even communication between people has become much easier with the help of technology. If 150 years ago, we didn't even dream that we could communicate in real time with people at the other side of the Earth, nowadays this aspect is normal, natural.

Another benefit of the technology is the communication with friends, on social channels, like Facebook, Twitter, Instagram, LinkedIn.

This allows us to share news, documentaries, photos about the things that surround us. But all this must be done in a framework that respects human rights, because one's freedom ceases where the freedom of another begins.

In this sense, freedom of expression bears certain constraints.

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2. Categories of human rights in the sphere of the Internet

The world of the Internet, without which, in the current context, we often feel helpless, also implies respecting the basic rules, which find their source in the sphere of human rights and freedoms, such as: access and non-discrimination, freedom of expression and information, freedom of meeting, association and participation.

At the same time, it is to respect and protect privacy and personal data.

Another area is education and literacy. Neither young people nor children are excluded, but it is imperative that they benefit from protection.

In today's society, all branches of activity, including social relations, are dependent on the Internet, and its absence makes it impossible for the user to exercise his rights and freedoms and, as a result, he cannot actively participate in the democratic process.

It does not matter where the user wants to exercise these rights, be it rural or urban environment. Access to the Internet must be provided in a non-discriminatory way, and the authorized institutions should provide and find reasonable ways to meet the needs of Internet users.

As for freedom of expression and information, the palette is quite generous. The freedom of expression is guaranteed by art. 10 of the European Convention on Human Rights, in the following terms:

“1. Everyone has the right to freedom of expression. This right includes the freedom of opinion and the freedom to receive or to communicate information or ideas without the interference of public authorities and without regard to borders. This article does not prevent states from subjecting the broadcasting, film or television companies to an authorization regime.

2. The exercise of these freedoms which entails duties and responsibilities may be subject to formalities, conditions, restrictions or sanctions provided by law, which constitute necessary measures, in a democratic society, for national security, territorial integrity or public security, order protection and crime prevention, the protection of health or morals, the protection of the rights or the rights of others to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary”.¹

Internet users have the right to transmit information, to search freely and without interference and regardless of borders. Regarding opinions of any kind, they must be manifested in the spirit of respect, tolerance, with regard to the reputation or rights of others, including with regard to privacy. However, there are restrictions that can be imposed on incitement to hatred, violence or discrimination, but these are or will be provided for in special laws and as a result of judicial control.

¹ https://www.echr.coe.int/Documents/Convention_ENG.pdf, viewed at 11 of April 2020.

Public authorities are obliged to respect and protect the Internet user's right to freedom of expression and information. In certain cases, such as ensuring national security, public order, health or public morals, interference may be allowed in the exercise of these rights, which cannot be extended beyond what is required, in order to achieve the legal purpose for which they were maintained.

However, there is also an obligation to inform the Internet user about any restrictions that may be imposed on them, due to the inappropriate use of the online space. Therefore, the internet user will be notified in this regard, the latter being able to opt for the use or withdrawal of the service.

Internet users may have the right to meetings and association with other people in the online environment. At the same time, peaceful protests can take place in the online environment. However, there may also be legal consequences, if these protests lead to certain situations in which blockages may occur, interruptions of the respective service.

In the legislative field, the Internet is very valuable, as it offers the opportunity to participate in legislative initiatives, political debates, signing petitions, etc. Another area in which the Internet user must be respected is that of privacy and personal data. Internet browsing often involves the sharing of personal information, be it by name, gender, age, country of origin, phone number, address, etc. Therefore, it is important that data storage and processing by public institutions or private companies is carried out in accordance with the law, and the Internet user is informed accordingly. But the Internet user also has the opportunity to choose for the following actions: checking the accuracy of these data, requesting their correction and deletion. At European level, institutions have been set up that deal with the protection and processing of personal data.

Regulation 45/2001 lays down the rules applicable to processing in order to allow for the personal character of the EU institutions and bodies. On 10 January 2017, the Commission presented a proposal to amend a rule to align it with the General Regulation on Automatic Protection (RGPD).

The Regulation on the protection of individuals with regard to the processing of personal data by the EU institutions established the European Data Protection Supervisor (EDPS). The EDPS is an independent EU body responsible for monitoring the application of data protection rules in the European institutions and investigating complaints.

The European Commission has appointed a Data Protection Officer to monitor the application of data protection rules within this institution. The Data Protection Officer shall independently ensure the internal application of data protection rules, in cooperation with the European Data Protection Supervisor.

In Romania, such an institution is the National Supervisory Authority for the Processing of Personal Data.

This is an autonomous central public authority with general competence in the field of personal data protection and represents the guarantor of respecting the fundamental rights to privacy and to the protection of personal data, stipulated above by art. 7 and 8 of the Charter of Fundamental Rights of the European Union, by art. 16 of the Treaty on the Functioning of the European Union and art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In terms of access to education, the Internet offers a wide range of information, in any field and for any age. Children and young people can be beneficiaries of all the rights and freedoms provided by law, in the online environment. However, as they are much more vulnerable than adults, they must benefit from protection against exploitation and abuse or any other form of cybercrime that is very common in the online environment.

I would like to mention some international protection tools:

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, defines a child as "any human being under the age of 18, unless the law applicable to the child sets the age of majority below that age." It grants him a number of fundamental rights and freedoms, including the right to privacy "no child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to kind of illegal attack on his honor and reputation."

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, signed at New York on September 6, 2000.

Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children, in addition to the United Nations Convention against Transnational Organized Crime.

At European level, I would mention Council of Europe Convention on Cybercrime.

The European Union adopted in 2011 Directive 2011/92 / EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse of children, the sexual exploitation of children and child pornography.

In particular, children and young people have the right to education in order to be able to protect themselves from the potential dangers they may face in the online environment.

But internet users need to be aware that there are also remedies that can be obtained from internet providers, public institutions or national human rights institutions, such as the People's Advocate or for the protection of personal data, ANSPDCP, or human rights associations or foundations.

The obligation of the competent authorities in case of interference with the privacy in the online space is to investigate and take the necessary measures in case of damages caused, making sure that they apply sanctions.

There is also the possibility to resort to the courts, which must judge within a reasonable and impartial time the request of the Internet user. After all domestic remedies have been exhausted, an individual appeal can be exercised by the European Court of Human Rights.

3. Freedom of expression

Although the Internet brings many benefits to human activity, every day, it is also a channel through which there can be spread very quickly, messages of incitement to hatred, violence.

In order to stop this phenomenon, many international institutions and organizations have taken and continue to take attitude.

In June 2019, the United Nations Strategy and Action Plan on hate speech was launched. On this occasion, the UN Secretary-General pointed out the following aspects: "This strategy and action plan are new, but they are rooted in our oldest commitment. Respecting human rights, without discrimination based on race, sex, language or religion, is a thread that goes through the Charter of the United Nations (...) Seventy-five years later, we are in danger of forgetting this lesson. All over the world, we see a hit of xenophobia, racism and intolerance, violent misogyny, but also anti-Semitism and anti-Muslim hatred. In some places, Christian communities are being attacked. Hateful and destructive views are activated and amplified exponentially through digital technology, often targeting women, minorities and the most vulnerable. Extremists gather online and radicalize new recruits".²

The most important commitments undertaken in this Strategy are:

- monitoring and analyzing hate speech; the study of causes, vectors and actors with a role in propagating hate speech; involvement and support of victims of hate speech; convening the relevant actors; collaboration with the traditional and modern media; use of technology; the use of education as a tool to combat hate speech; promoting a peaceful, inclusive and just society; creating partnerships; supporting Member States.

It is noteworthy that Americans are much more tolerant of hate speech than other nations.³

On the other hand, in the 2017 report published by the OSCE, numerous hate crimes were identified, respectively against persons with disabilities, Christians, Muslims, motivated by racism and xenophobia, against Roma and Sinti, anti-Semitic, motivated by sexual orientation and gender identity and based on belonging to a certain gender.⁴

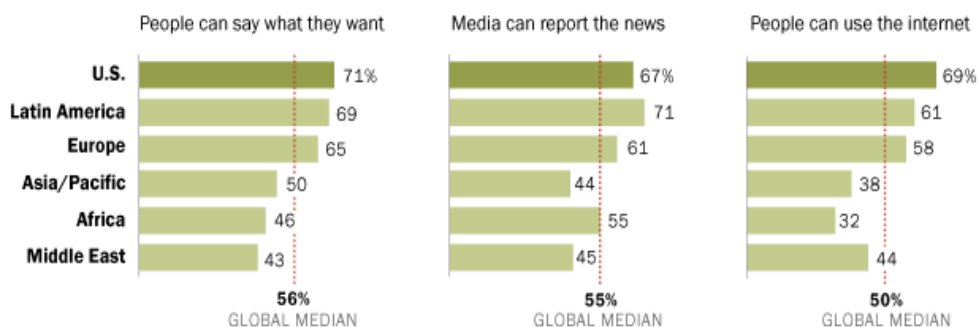
² <https://www.un.org/sg/en/content/sg/statement/2019-06-18/secretary-generals-remarks-the-launch-of-the-united-nations-strategy-and-plan-of-action-hate-speech-delivered>; viewed at 11th of April 2020.

³ <https://www.pewresearch.org/fact-tank/2016/10/12/americans-more-tolerant-of-offensive-speech-than-others-in-the-world/> viewed at 11th of April 2020.

⁴ <http://hatecrime.osce.org/2017-data.>, viewed at 15th of April 2020.

Americans especially supportive of free speech, press freedom and internet freedom

Regional median saying it is very important that ___ without state/govt censorship in our country



Note: Global median of 38 countries. Russia and Ukraine not included in Europe median.

Source: Spring 2015 Global Attitudes Survey.

PEW RESEARCH CENTER

Figure 1. Americans especially supportive of free speech, press freedom and internet freedom⁵

4. ECHR - human rights in the online environment

The general principles set out by the Court regarding freedom of expression also apply to the Internet: "Given their accessibility and their ability to store and disseminate large amounts of data, Internet sites greatly contribute to improving public access to news and in general to facilitate the communication of information. Since the creation of archives on the Internet is an essential aspect of the role played by the Internet sites, the Court considers that it falls within the scope of art. 10."⁶

Chronologically, 2015 was the year in which the complaint of a company that ran a commercial news portal, accused by national courts of being responsible for the comments of its readers in connection with one of its articles, was examined. The case went down in the history of the ECHR, as *Delfi AS v. Estonia*.

On 24 January 2006, the applicant company published an article on the Delfi's portal entitled 'SLK destroyed a projected ice road.' Ice roads are public roads formed by the sea-frozen and open between the mainland of Estonia and some islands in winter. The abbreviation SLK comes from AS

⁵ PEW Research Center, https://www.pewresearch.org/fact-tank/2016/10/12/americans-more-tolerant-of-offensive-speech-than-others-in-the-world/ft_16-10-15_freedom-of-expression_chart/, viewed at 11th of April 2020.

⁶ *Times Newspapers Ltd against United Kingdom* (no.1 and 2), no. 3002/03 and 23676/03, pt. 27, 10th of March 2009.

Saaremaa Laevakompanii (Saaremaa Maritime Company, a joint stock company). SLK provides public ferry services between the mainland and some islands. L. was a member of the supervisory board of SLK and the sole or majority shareholder of the company at that time. On 24 and 25 January 2006, the article received 185 comments. About 20 of these contained threats against L.'s person and insults to him.

On 9 March 2006 L.'s lawyers requested that the applicant remove the comments insulting and claimed 500 000 kroons (EEK) [approximately EUR 32 000 (EUR)] as compensation of moral prejudice.

Although Delfi SA has removed the respective comments, it did not agree with the payment of any compensation. By a decision of the Estonian court, Delfi AS was obliged to pay 320 Euro to L, the money representing moral damages. The Estonian courts have held that there is a control over the information that appeared in the comments, which could be exercised by Delfi AS, which could establish rules for posting comments as well.

The Estonian courts noted that there was a control of the information appearing in the comments, which could be exercised by Delfi AS., which could also establish rules for those posting comments. There was also the possibility to delete comments that contained obscene words, at any time, an option that the author of that comment did not have.

Dissatisfied with the decision of the Supreme Court of Estonia, Delfi AS challenged it to the ECHR for infringement of its right “to freedom of expression”, as provided in art. 10 of the European Convention on Human Rights. The court held that Article 10 of the Convention had not been violated, and the domestic courts correctly declared the applicant company liable for the slanderous comments posted on its portal, which constitutes a justified and proportional restriction of the applicant company's right to freedom of expression.

The ECHR decision took into account the fact that those slanderous and threatening comments appeared in reaction to the article published by the applicant company, on its news portal, and the company did not take any measures to prevent the attainment of the reputation of the persons nor the possibility for the comment holders to be held liable. In addition, the Court considered the sanction applied to it, moderate.⁷

Another representative case was *Jersild v. Denmark* decided by the European Court of Human Rights in 1994. Mr. Jersild, a journalist, had conducted and edited a TV interview with members of a group of young people, calling themselves "the Greenjackets", who made abusive and derogatory remarks about immigrants and ethnic groups in Denmark during the interview.

⁷ CEDO [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-126635%22%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-126635%22%7D)}, viewed at 11th of April 2020.

Later, Mr. Jersild was convicted of aiding and abetting "the Greenjackets". The court held by twelve votes to seven, that Denmark violated Article 10 ECHR (freedom of expression), stressing that the applicant's conduct during the interviews clearly dissociated him from the persons interviewed.

Judges Ryssdal, Bernhardt, Spielmann and Loizou expressed a dissent, stating that it was absolutely necessary to add at least a clear statement of disapproval (Para. 3). Judges Gölcüklü, Russo and Valticos have filed a shorter dissenting opinion, stating that the journalist responsible for the broadcast in question made no real attempt to challenge the points of view he was presenting, which was necessary if their impact was to be counterbalanced.⁸

5. National institutions for the protection of human rights

The emergence of national, independent and equidistant human rights institutions, whether there are institutes, centers, commissions, ombudsmen, has given them the opportunity to train and inform people working in public institutions and who are responsible of the "protection and promotion of human rights - legislative, executive, legal, educational, etc., at national, regional and local level - with regard to the international human rights system, the provisions of the treaties for the protection of fundamental rights and freedoms, protection mechanisms and functioning as well as to the obligations assumed by Romania, as a state party, regarding the observance of international norms and standards, to refrain from violating the rights and freedoms and the adoption of those affirmative measures, strategies, programs and projects able to give effectiveness to the exercise of these rights and freedoms."

The role of national institutions is particularly important, given that through the levers they have by law, they manage to invite not only state entities, but also non-governmental entities, to succeed together, to raise awareness of the importance of respecting human rights.

The United Nations was the first organization particularly interested in the promotion and non-judicial protection of human rights, and in this regard, the year 1946 marked the pioneer of this field, being debated, for the first time, by the Economic and Social Council.

The year 1960 marked the adoption of a resolution recognizing the national institutions a unique role in the promotion and protection of human rights. Moreover, governments were invited to encourage the creation and support of these bodies.

The city of lights, Paris in 1991, was the host of the international technical meeting on national institutions for the promotion and protection of human rights.

⁸ https://en.wikipedia.org/wiki/Jersild_v._Denmark, viewed at 16th of March 2020.

Following the international meeting, certain conclusions were drawn, validated by Resolution no. 54/1992 of the UN Commission on Human Rights, entitled Principles regarding the status of national institutions, called "Paris Principles". The General Assembly of the United Nations approved them by Resolution no. 48/134 of December 20, 1993.

Of particular importance, the document urges Member States to set up and strengthen national human rights institutions, recognizing their important role in promoting and protecting these rights.

Both the Declaration and the Program of Action, adopted by the 1993 World Conference in Vienna, reaffirmed the paramount role of national institutions, "especially as advisers of the competent authorities, in the action that seeks to remedy the violations of these rights., as well as regarding the dissemination of information on human rights, education in this field"⁹

Regarding the freedom of expression, representatives of global institutions and national governments around the world have endorsed freedom of expression as a basic human right. But freedom of expression it is not mentioned only in the First Amendment of the United States, but recognized by lots of international organizations, having been endorsed since 1948 in the United Nations Universal Declaration of Human Rights. (Dutton, Dopatka, Hills, Law, Nash, 2011, p. 9)

In the field of human rights, national human rights institutions are called upon to take firm attitude when they observe human rights violations in the online environment.

In recent years there has been an intensification of hate speech in the online environment.

National human rights institutions, such as the Ombudsman, can draw up special reports on human rights violations, including in the online environment, when they consider that there are many such actions.

By the means made available by the legislator they can draw the attention of public institutions, regarding the violation of human rights also in this virtual space. The purpose of the reports is not to limit freedom of expression, but only to show that there are boundaries within which ideas can be expressed that can lead to violent and hostile attitudes toward some people.

6. Romanian Ombudsman and the freedom of expression

The People's Advocate intervened in the situation when a young woman from Cluj County was fined by the representatives of the Local Police for a critical post on a social network, at the address of the Mayor of the locality where she resides. From the information obtained from the media, it was found that other similar sanctions were applied over time. The jurisprudence of

⁹ *Ibidem.*

the European Court of Human Rights has ruled that. "*The state has no right to sanction and thus inhibit the criticism of persons holding public office, when issues of public interest are raised*", even if that criticism would be made through expressions, even if it did not this was the case in the post of the young woman from Cluj.

The Romanian People's Advocate has often opined that one cannot talk about freedom of expression without the existence of freedom of opinion, because it allows anyone to participate in social, political, cultural life. Therefore, any form of censorship of freedom of expression and opinion could lead to serious interference with fundamental rights and freedoms.

In the period following the establishment of the state of emergency on the Romanian territory, as a result of the COVID-19 pandemic, the People's Advocate took note of the requests addressed to the National Authority for Administration and Regulation in Communications (ANCOM) by the Ministry of Internal Affairs of Strategic Communication, in the sense of closing several sites that were estimated to broadcast false news about the evolution of the SARS-CoV-2 epidemic, with the potential to create panic among the population. The People's Advocate specified that neither the decree for the establishment of the state of emergency, nor the one regarding the extension of this measure does not mention the freedom of expression between the rights whose exercise is to be restricted during this period.

Accordingly to the author Wolfgang Benedek and Matthias C. Kettemann, „the freedom of the press and the media is one of the core liberal rights. A free press and autonomous media are considered cornerstones of any democratic society. A critical media is essential for furthering public discourse on the big questions a society faces.” (Benedek, Keteterman, 2013, p. 28)

Considering its attributions provided by the Constitution, as guarantor of citizens' rights and freedoms, considering that the necessary measures must be in accordance with the constitutional provisions regarding the respect of freedom of expression, but also the right of the person to have access to any information of public interest, according to art. 30 and 31 para. (1) of the Constitution, clarifications were requested from the Strategic Communication Group, in the context in which the Organization for Security and Cooperation in Europe also expressed at the end of March its concern about the Decree establishing the state of emergency, emphasizing the importance of freedom information flows and the right of the press to report on the pandemic and government policies: "These provisions of the emergency decree represent a risk to the unrestricted work of journalists, self-censorship for media actors trying to inform the public and even counterproductive"... if the authorities make the flow of information disseminated by the media and independent journalists more difficult, they will only promote a greater visibility of misinformation".

Conclusions

Human rights, including those in the online environment, are rights won in democratic states, and they must be protected and guaranteed by the authorities. Unfortunately, they might become very fragile, especially in times of crisis, which can affect the states of the world. These situations can be encountered in the case of a global pandemic, where rights and freedoms can be restricted. Such a moment was represented by the global crisis generated by the COVID-19 virus.

The Ombudsman, as guarantor of citizens' rights and freedoms, considers in these days, that the necessary measures must be taken by the authorities in accordance with the constitutional provisions regarding the respect of freedom of expression, but also the right of the person to have access to any information of public interest, emphasizes the importance of freedom information flows and the right of the press to report on the pandemic and government policies.

As long as the voice of the ombudsman is heard, even in those days in the context of state emergency it means that democracy is not dead and the rights and freedoms of citizens are respected.

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