

FREEDOM OF SPEECH - DEFINITION AND HISTORY

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***Abstract:** The following report outlines the elements of the concept of freedom of speech, the legal acts that define it, as well as its contribution to the democratic society. Following the origin and the development of the freedom of expression throughout history, the report shows its impact in different spheres of the public life, science and art from Antiquity to modern times.*

***Keywords:** Freedom, Speech, Expression, History, International Law, Constitutional Law*

INTRODUCTION

Freedom of speech is a basic human right of great significance for the modern democratic society. In the jurisprudence of the European Court of Human Rights freedom of expression is said to be “one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment”⁵¹. In the meantime, not only the “acceptable” ideas are being protected but also those that “offend, shock or disturb”. Such are the demands of the pluralism, tolerance and broadmindedness without which there is no “democratic society”⁵².

SUMMARY

I. Definition

Freedom of expression and its boundaries are defined in numerous acts of the International Law, including the European Convention on Human Rights (art. 10), the Universal Declaration of Human Rights, (art. 19), the International Pact on Civil and Political Rights (art. 19), The EU Charter of Fundamental Rights (art. 11).

These ideas are recognized also in the national legislation: the articles of the Bulgarian Constitution proclaim the right of opinion (art. 39), freedom of the press and the media (art. 40), the right to search, receive and spread information (art. 41).

Among all the legal acts, both international and national, we can extract the following freedoms:

- Freedom of opinion;
- Freedom of information and ideas;
- Freedom of the press and the media.

As for the restrictions of these freedoms:

- Protection of the Constitutional order;
- The national security;
- Protection of public order;
- Preservation of the morals and the reputation of the individual;
- State secret.

⁵¹ Lingens v. Austria, ж. № 9815/82

⁵² Handyside v. the United Kingdom, ж. № 5493/72, § 49

The necessity of restricting the freedom of expression is determined by the so-called “paradox of tolerance”, which says: the absolute tolerance could lead to ideas proclaiming intolerance, which on the other hand could destroy the tolerance itself.

According to the European Convention on Human Rights and the jurisprudence of the Strasbourg Court, the evaluation whether a restriction of the freedom of speech is legitimate or not, is done ad hoc and includes the following three elements:

1) the restriction has to be set in a legal act (the norm has to be predictable and clear enough);

2) the restriction has to be necessary for a democratic society: it has to be proportional to the protected public aim (for example if a fine paid by a newspaper is too big compared to the extent of the affection of the interest caused by the publication, this would be disproportionate);

3) to pursue legitimate goals (the national and public security, the territorial integrity, the prevention of riots or crime, the protection of the health, morals, reputation or rights of others, the prevention of the disclosure of classified information, the authority and impartiality of justice).

II. History

Freedom of expression has a long tradition, dating back to the Hellenic polis, where the opportunity to express personal opinion during public meetings was protected. In the ancient polis, freedom of thought and freedom of speech were denoted by the term *parresia* (παρρησία).

The opportunity to say everything you think was the right of the free man, of the citizen. Such a right was therefore not provided for foreigners, much less for slaves.

The *parresia* distinguished the polis from other regimes – it was both a right and a duty, revealing its true nature: all citizens had the freedom to say what they thought and were obliged to do so, because if there is *parresia* – there is democracy, if there is democracy – there is freedom to discuss and criticize what does not work in the government and in the polis. This was a kind of guarantee that protected the system from tyrannical regimes.

However, there were also restrictions on this freedom, as its abuse could damage the democratic system it built. In such cases, anyone accused of violating democratic principles could be ostracized and sentenced to exile.

One of the critics of Athens' democratic government was Socrates, who pointed out the weaknesses of this type of political organization. In 399 BC, during the trial staged against him, Socrates, who was accused of impiety and corruption of the youth, stated: “If you offered to let me off this time on condition I am not any longer to speak my mind... I should say to you, "Men of Athens, I shall obey the Gods rather than you.”⁵³

During the Middle Ages, the Magna Carta (1215), wrung from the unwilling King John by his rebellious barons, was signed. This document will later be regarded as the cornerstone of liberty in England.

In the 15th century Gutenberg invented the printing press, which democratized information, threatening the influence and the positions of the Catholic Church. For this reason, a wide censorship campaign began, and the so-called “Index of Prohibited Books” (*Index Librorum Prohibitorum*) was created. It included works defined as dangerous to the Catholic faith and morals. Canon law prescribed two main forms of control over literature: pre-censorship (before publication) and condemnation of already published books as harmful.

⁵³ Smith, D., Torres, L., “Timeline: a history of free speech” (2006), *The Guardian*, <https://www.theguardian.com/media/2006/feb/05/religion.news>

The last and 20th edition of the Index appeared in 1948. The list was suppressed in June 1966.⁵⁴

Part of the Index was also the book "On the Revolutions of the Heavenly Spheres" (1543) by Nicolaus Copernicus, whose follower Galileo Galilei was brought before the Inquisition in 1633 for claiming that the Sun did not revolve around the Earth.

During the Reformation, monarchs who broke away from Vatican control also imposed a kind of censorship. On November 16, 1538 Henry VIII decreed that all new books printed in England must be approved by the Privy Council before publication. This requirement remained in effect in some form until 1694.⁵⁵

In 1559 – five years before Shakespeare was born – Elizabeth proclaimed that no play should be performed that dealt with "either matters of religion or of the governance of the estate of the common weal." During Shakespeare's career, his company had to get a licence from the Master of the Revels to perform, or to print plays. One of the most striking examples of censorship in his plays was the forced omission from the first edition of "Richard II" of the whole scene of the deposition of Richard, which made rebellion seem too respectable.⁵⁶

In 1606 (the year of "Macbeth") an Act of Parliament was passed, proclaiming that "... if any time... any person or persons do or shall in any stage play, interlude, show, maygame, or pageant jestingly or profanely speak or use the holy name of God or of Christ Jesus, or of the Holy Ghost or of the Trinity, which are not to be spoken but with fear and reverence, shall forfeit for every offence by him or them committed, ten pounds".

As a result many plays had to be revised; the two printed versions of Marlowe's "Doctor Faustus" (1603, 1608), show several changes as a result of the Act. Such changes can be found also in Shakespeare's plays, printed before and after 1606.⁵⁷

In 1644 in his pamphlet "Areopagitica", the poet John Milton argued against restrictions of freedom of the press, saying that: "He who destroys a good book, kills reason itself." It was not until 1689, after James II was overthrown and William and Mary installed as co-rulers, that the Bill of Rights guaranteed "freedom of speech in Parliament."

In a letter from 1770 Voltaire wrote his famous words: "Monsieur l'abbé, I detest what you write, but I would give my life to make it possible for you to continue to write." The ideas of the Enlightenment found expression in the Declaration of Human Rights, adopted in 1789, a fundamental document of the French Revolution that proclaimed freedom of speech. In 1791 the First Amendment to the Constitution of the United States (part of the so-called Bill of Rights), was adopted. It states: "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*"

In 1859 in the essay "On Liberty" the English philosopher John Stuart Mill argued for toleration and individuality: "If any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility." In the same year Charles Darwin's work "On the Origin of Species" was published. It expounded the theory of natural selection. TH Huxley publicly defended Darwin against religious fundamentalists and for that reason was called "Darwin's Bulldog".

The rise of totalitarian regimes in the 20th century had an opposite dynamic: eradicating all freedom of speech. These regimes immediately took complete control of the media and made it into an instrument for conveying state ideology. All the "deviant" or dissenting views and opinions

⁵⁴ Encyclopaedia Britannica, "Index Librorum Prohibitorum" (1998), <https://www.britannica.com/topic/Index-Librorum-Prohibitorum>

⁵⁵ <http://www.historyofinformation.com/detail.php?id=351>

⁵⁶ <https://internetshakespeare.uvic.ca/Library/SLT/literature/publishing/censorship.html>

⁵⁷ <https://internetshakespeare.uvic.ca/Library/SLT/literature/publishing/censorship.html>

were severely punished. In the earliest days of the 1917 Russian Revolution, for example, the Bolsheviks imposed strict censorship rules and wrecked the presses of rival political groups.⁵⁸ The policy of propaganda and indoctrination initiated by Lenin was continued by his successor, Stalin, who further institutionalized the censorship machine.

In Germany, Hitler appointed Joseph Goebbels as director of propaganda almost immediately upon taking power to institute a regime of strict censorship in all areas of expression: printed and broadcast media, culture, and scholarship. One of Goebbels's first acts was to incite anti-Semitism in the media. He then rallied support for a massive book burning on May 10, 1933 in Berlin and other cities to destroy “non-German” books: 25,000 books were burned. A century before, the German poet Heinrich Heine (son of Jewish parents) prophetically wrote:

*“Where books are burned, human beings are destined to be burned too.”*⁵⁹

CONCLUSION

Freedom of speech is a very broad concept with many manifestations in cultural and social life, in everyday life, in general – in any situation that requires speech – expression of opinion, dissemination of information and ideas not only orally but also in any other way – through writing, sounds, images, video, gesture, dance...

However, this freedom should not be an end in itself, it ends where other, in some cases more valuable, goods have to be protected – the privacy and the dignity of the individual, security and order in society. But these values should also not be absolute: what if the order, the regime threatens the freedom of the individual (the case of the Bulgarian writer Georgi Markov)? Or what if the ideas of the individual threaten the established order (the paradox of tolerance)? When can we put one value above another and how is this determined? In any case, the balance must be found between the two extreme tendencies – absolute freedom and its negation, we need to realize that the genuine freedom of speech is also a responsibility. Only this way is it possible to achieve it.

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⁵⁸ <https://democracyweb.org/freedom-of-expression-history>

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