EUROPEAN FREEDOM OF EXPRESSION ARTICLE 10, UNITED NATIONS RIGHTS AND POLITICAL CRIME

The **European Convention on Human Rights** (**ECHR**) (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*) is an international treaty to protect human rights and fundamental freedoms in Europe. Drafted in 1950 by the then newly formed Council of Europe,[1] the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.[2]

The Convention established the European Court of Human Rights (ECtHR). Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgements finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgements, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used.

The Convention has several protocols, which amend the convention framework.

The development of a regional system of human rights protection operating across Europe can be seen as a direct response to twin concerns. First, in the aftermath of the Second World War, the convention, drawing on the inspiration of the Universal Declaration of Human Rights can be seen as part of a wider response of the Allied Powers in delivering a human rights agenda through which it was believed that the most serious human rights violations which had occurred during the Second World War (most notably, the Holocaust) could be avoided in the future. Second, the Convention was a response to the growth of Communism in Central and Eastern Europe and designed to protect the member states of the Council of Europe from communist subversion. This, in part, explains the constant references to values and principles that are "necessary in a democratic society" throughout the Convention, despite the fact that such principles are not in any way defined within the convention itself.[3]

The Convention was drafted by the Council of Europe after Second World War in response to a call issued by Europeans from all walks of life who had gathered at the Hague Congress. Over 100 parliamentarians from the twelve member states of the Council of Europe gathered in Strasbourg in the summer of 1949 for the first ever meeting of the Council's Consultative Assembly to draft a "charter of human rights" and to establish a court to enforce it. British MP and lawyer Sir David Maxwell-Fyfe, the Chair of the Assembly's Committee on Legal and Administrative Questions, was one of its leading members and guided the drafting of the Convention. As a prosecutor at the Nuremberg Trials, he had seen first-hand how international justice could be effectively applied. With his help, the French former minister and Resistance fighter Pierre-Henri Teitgen submitted a report[4] to the Assembly proposing a list of rights to be protected, selecting a number from the Universal Declaration of Human Rights just agreed to in New York, and defining how the enforcing judicial mechanism might operate. After extensive debates,[5] the Assembly sent its final proposal[6] to the Council's Committee of Ministers, which convened a group of experts to draft the Convention itself.

The Convention was designed to incorporate a traditional civil liberties approach to securing "effective political democracy", from the strongest traditions in the United Kingdom, France and other member states of the fledgling Council of Europe. The Convention was opened for signature on 4 November 1950 in Rome. It was ratified and entered into force on 3 September 1953. It is overseen and enforced by the European Court of Human Rights in Strasbourg, and the Council of Europe. Until procedural reforms in the late 1990s, the Convention was also overseen by a European Commission on Human Rights.

Drafting []

The Convention is drafted in broad terms, in a similar (albeit more modern) manner to the English Bill of Rights, the American Bill of Rights, the French Declaration of the Rights of Man or the first part of the German Basic law.

Statements of principle are, from a legal point of view, not determinative and require extensive interpretation by courts to bring out meaning in particular factual situations.

Convention articles []

As amended by Protocol 11, the Convention consists of three parts. The main rights and freedoms are contained in Section I, which consists of Articles 2 to 18. Section II (Articles 19 to 51) sets up the Court and its rules of operation. Section III contains various concluding provisions.

Before the entry into force of Protocol 11, Section II (Article 19) set up the Commission and the Court, Sections III (Articles 20 to 37) and IV (Articles 38 to 59) included the high-level machinery for the operation of, respectively, the Commission and the Court, and Section V contained various concluding provisions.

Many of the Articles in Section I are structured in two paragraphs: the first sets out a basic right or freedom (such as Article 2(1) – the right to life) but the second contains various exclusions, exceptions or limitations on the basic right (such as Article 2(2) – which excepts certain uses of force leading to death).

Article 1 - respecting rights []

Main article: Article 1 of the European Convention on Human Rights

Article 1 simply binds the signatory parties to secure the rights under the other Articles of the Convention "within their jurisdiction". In exceptional cases, "jurisdiction" may not be confined to a Contracting State's own national territory; the obligation to secure Convention rights then also extends to foreign territory, such as occupied land in which the State exercises effective control.

In *Loizidou v Turkey*,[7] the European Court of Human Rights ruled that jurisdiction of member states to the convention extended to areas under that state's effective control as a result of military action.

Article 2 - life []

Main article: Article 2 of the European Convention on Human Rights

Article 2 protects the right of every person to their life. The first paragraph of the article contains an exception for lawful executions, although this exception has largely been superseded by Protocols 6 and 13. Protocol 6 prohibits the imposition of the death penalty in peacetime, while Protocol 13 extends the prohibition to all circumstances. (For more on Protocols 6 and 13, see below.)

The second paragraph of Article 2 provides that death resulting from defending oneself or others, arresting a suspect or fugitive, or suppressing riots or insurrections, will not contravene the Article when the use of force involved is "no more than absolutely necessary".

Signatory states to the Convention can only derogate from the rights contained in Article 2 for deaths which result from lawful acts of war.

The European Court of Human Rights did not rule upon the right to life until 1995, when in *McCann v. United Kingdom*[8] it ruled that the exception contained in the second paragraph do not constitute situations when it is permitted to kill, but situations where it is permitted to use force which might result in the deprivation of life.[9]

The Court has ruled that states have three main duties under Article 2:

1. a duty to refrain from unlawful killing,
2. a duty to investigate suspicious deaths and,
3. in certain circumstances, a positive duty to prevent foreseeable loss of life.[10]

Article 3 - torture []

Main article: Article 3 of the European Convention on Human Rights

Article 3 prohibits torture, and "inhuman or degrading treatment or punishment". There are no exceptions or limitations on this right. This provision usually applies, apart from torture, to cases of severe police violence and poor conditions in detention.

The Court have emphasised the fundamental nature of Article 3 in holding that the prohibition is made in "absolute terms ... irrespective of a victim's conduct."[11] The Court has also held that states cannot deport or extradite individuals who might be subjected to torture, inhuman or degrading treatment or punishment, in the recipient state.[12]

Initially the Court took a restrictive view on what consisted of torture, preferring to find that states had inflicted inhuman and degrading treatment. Thus the court held that practices such as sleep deprivation, subjecting individual to intense noise and requiring them to stand against a wall with their limbs outstretched for extended periods of time, did not constitute torture.[13] In fact the Court only found a state guilty of torture in 1996 in the case of a detainee who was suspended by his arms whilst his hands were tied behind his back.[14] Since then the Court has appeared to be more open to finding states guilty of torture and has even ruled that since the Convention is a "living instrument", treatment which it had previously characterised as inhuman or degrading treatment might in future be regarded as torture.[15]

Article 4 - servitude []

Main article: Article 4 of the European Convention on Human Rights

Article 4 prohibits slavery, servitude and forced labour but exempts labour:

- done as a normal part of imprisonment,
- in the form of compulsory military service or work done as an alternative by conscientious objectors,
- required to be done during a state of emergency, and
- considered to be a part of a person's normal "civic obligations."

Article 5 - liberty and security []

Main article: Article 5 of the European Convention on Human Rights

Article 5 provides that everyone has the right to liberty and security of person. Liberty and security of the person are taken as a "compound" concept - security of the person has not been subject to separate interpretation by the Court.

Article 5 provides the right to liberty, subject only to lawful arrest or detention under certain other circumstances, such as arrest on reasonable suspicion of a crime or imprisonment in fulfilment of a sentence. The article also provides the right to be informed in a language one understands of the reasons for the arrest and any charge against them, the right of prompt access to judicial proceedings to determine the legality of one's arrest or detention and to trial within a reasonable time or release pending trial, and the right to compensation in the case of arrest or detention in violation of this article.

Article 6 - fair trial []

Main article: Article 6 of the European Convention on Human Rights

Article 6 provides a detailed right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, and other minimum rights for those charged with a criminal offence (adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter).

The majority of Convention violations that the Court finds today are excessive delays, in violation of the "reasonable time" requirement, in civil and criminal proceedings before national courts, mostly in Italy and France. Under the

"independent tribunal" requirement, the Court has ruled that military judges in Turkish state security courts are incompatible with Article 6. In compliance with this Article, Turkey has now adopted a law abolishing these courts.

Another significant set of violations concerns the "confrontation clause" of Article 6 (i.e. the right to examine witnesses or have them examined). In this respect, problems of compliance with Article 6 may arise when national laws allow the use in evidence of the testimonies of absent, anonymous and vulnerable witnesses.

- *Steel v. United Kingdom* (1998) 28 EHRR 603
- *Othman (Abu Qatada) v. United Kingdom* (2012) - Abu Qatada could not be deported to Jordan as that would be a violation of Article 6 "given the real risk of the admission of evidence obtained by torture". This was the first time the court ruled that such an expulsion would be a violation of Article 6.[16]

Article 7 - retrospectivity []

Main article: Article 7 of the European Convention on Human Rights

Article 7 prohibits the retrospective criminalisation of acts and omissions. No person may be punished for an act that was not a criminal offence at the time of its commission. The article states that a criminal offence is one under either national or international law, which would permit a party to prosecute someone for a crime which was not illegal under their domestic law at the time, so long as it was prohibited by international law. The Article also prohibits a heavier penalty being imposed than was applicable at the time when the criminal act was committed.

Article 7 incorporates the legal principle *nullum crimen, nulla poena sine lege* into the convention.

Article 8 - privacy []

Main article: Article 8 of the European Convention on Human Rights

Article 8 provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This article clearly provides a right to be free of unlawful searches, but the Court has given the protection for "private and family life" that this article provides a broad interpretation, taking for instance that prohibition of private consensual homosexual acts violates this article. This may be compared to the jurisprudence of the United States Supreme Court, which has also adopted a somewhat broad interpretation of the right to privacy. Furthermore, Article 8 sometimes comprises positive obligations:[17] whereas classical human rights are formulated as prohibiting a State from interfering with rights, and thus *not* to do something (e.g. not to separate a family under family life protection), the effective enjoyment of such rights may also include an obligation for the State to become active, and to *do* something (e.g. to enforce access for a divorced parent to his/her child).

Article 9 - conscience and religion []

Main article: Article 9 of the European Convention on Human Rights

Article 9 provides a right to freedom of thought, conscience and religion. This includes the freedom to change a religion or belief, and to manifest a religion or belief in worship, teaching, practice and observance, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"

Article 10 - expression []

Main article: Article 10 of the European Convention on Human Rights

Article 10 provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas, but allows restrictions for:

- interests of national security

- territorial integrity or public safety
- prevention of disorder or crime
- protection of health or morals
- protection of the reputation or the rights of others
- preventing the disclosure of information received in confidence
- maintaining the authority and impartiality of the judiciary

Relevant cases are:

- *Lingens v Austria* (1986) 8 EHRR 407
- *The Observer and The Guardian v United Kingdom* (1991) 14 EHRR 153, the "Spycatcher" case.
- *Bowman v United Kingdom* (1998) 26 EHRR 1, distributing vast quantities of anti-abortion material in contravention to election spending laws
- *Communist Party v Turkey* (1998) 26 EHRR 1211
- *Appleby v United Kingdom* (2003) 37 EHRR 38, protests in a private shopping mall

Article 11 - association []

Main article: Article 11 of the European Convention on Human Rights

Article 11 protects the right to freedom of assembly and association, including the right to form trade unions, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

- *Vogt v Germany* (1995)
- *Yazar, Karatas, Aksoy and Hep v Turkey* (2003) 36 EHRR 59

Article 12 - marriage []

Main article: Article 12 of the European Convention on Human Rights

Article 12 provides a right for women and men of marriageable age to marry and establish a family.

Despite a number of invitations, the Court has so far refused to apply the protections of this article to same-sex marriage. The Court has defended this on the grounds that the article was intended to apply only to different-sex marriage, and that a wide margin of appreciation must be granted to parties in this area.

In *Goodwin v United Kingdom* the Court ruled that a law which still classified post-operative transsexual persons under their pre-operative sex, violated article 12 as it meant that transsexual persons were unable to marry individuals of their post-operative opposite sex. This reversed an earlier ruling in *Rees v United Kingdom*. This did not, however, alter the Court's understanding that Article 12 protects only different-sex couples.

Article 13 - effective remedy []

Article 13 provides for the right for an effective remedy before national authorities for violations of rights under the Convention. The inability to obtain a remedy before a national court for an infringement of a Convention right is thus a free-standing and separately actionable infringement of the Convention.

Article 14 - discrimination []

Article 14 contains a prohibition of discrimination. This prohibition is broad in some ways, and narrow in others. It is broad in that it prohibits discrimination under a potentially unlimited number of grounds. While the article specifically prohibits discrimination based on "sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status", the last of these allows the court to extend to Article 14 protection to other grounds not specifically mentioned such as has been done regarding discrimination based on a person's sexual orientation.

At the same time the article's protection is limited in that it only prohibits discrimination with respect to rights under the Convention. Thus, an applicant must prove discrimination in the enjoyment of a specific right that is guaranteed elsewhere in the Convention (e.g. discrimination based on sex - Article 14 - in the enjoyment of the right to freedom of expression - Article 10).

Protocol 12 extends this prohibition to cover discrimination in any legal right, even when that legal right is not protected under the Convention, so long as it is provided for in national law.

Article 15 - derogations []

Article 15 allows contracting states to derogate from certain rights guaranteed by the Convention in time of "war or other public emergency threatening the life of the nation". Permissible derogations under article 15 must meet three substantive conditions:

1. there must be a public emergency threatening the life of the nation;
2. any measures taken in response must be "strictly required by the exigencies of the situation", and
3. the measures taken in response to it, must be in compliance with a state's other obligations under international law

In addition to these substantive requirements the derogation must be procedurally sound. There must be some formal announcement of the derogation and notice of the derogation, any measures adopted under it, and the ending of the derogation must be communicated to the Secretary-General of the Council of Europe[18]

The Court is quite permissive in accepting a state's derogations from the Convention but applies a higher degree of scrutiny in deciding whether measures taken by states under a derogation are, in the words of Article 15, "strictly required by the exigencies of the situation". Thus in *A v United Kingdom*, the Court dismissed a claim that a derogation lodged by the British government in response to the September 11 attacks was invalid, but went on to find that measures taken by the United Kingdom under that derogation were disproportionate.[19]

In order for a derogation itself to be valid, the emergency giving rise to it must be:

- actual or imminent, although states do not have to wait for disasters to strike before taking preventive measures,[20]
- involve the whole nation, although a threat confined to a particular region may be treated as "threatening the life of the nation" in that particular region,[21]
- threaten the continuance of the organised life of the community,[22]
- exceptional such that measures and restriction permitted by the Convention would be "plainly inadequate" to deal with the emergency.[22]

Article 16 - aliens []

Article 16 allows states to restrict the political activity of foreigners. The Court has ruled that European Union member states cannot consider the nationals of other member states to be aliens.[23]

Article 17 - abuse of rights []

Article 17 provides that no one may use the rights guaranteed by the Convention to seek the abolition or limitation of rights guaranteed in the Convention. This addresses instances where states seek to restrict a human right in the name of another human right, or where individuals rely on a human right to undermine other human rights (for example where an individual issues a death threat).

Article 18 - permitted restrictions []

Main article: Article 18 of the European Convention on Human Rights

Article 18 provides that any limitations on the rights provided for in the Convention may be used only for the purpose for which they are provided. For example, Article 5, which guarantees the right to personal freedom, may be explicitly limited in order to bring a suspect before a judge. To use pre-trial detention as a means of intimidation of a person under a false pretext is therefore a limitation of right (to freedom) which does not serve an explicitly provided purpose (to be brought before a judge), and is therefore contrary to Article 18.

Convention protocols []

As of January 2010, fifteen protocols to the Convention have been opened for signature. These can be divided into two main groups: those amending the framework of the convention system, and those expanding the rights that can be protected. The former require unanimous ratification by member states before coming into force, while the latter require a certain number of states to sign before coming into force.

Protocol 1 []

This Protocol contains three different rights in which the signatories could not agree to place in the Convention itself. Monaco and Switzerland have signed but never ratified Protocol 1.[24]

Article 1 - property []

Article 1 provides for the right to the peaceful enjoyment of one's possessions.

Article 2 - education []

Article 2 provides for the right not to be denied an education and the right for parents to have their children educated in accordance with their religious and other views. It does not however guarantee any particular level of education of any particular quality.[25]

Although phrased in the Protocol as a negative right, in *Şahin v. Turkey* the Court ruled that:

> "it would be hard to imagine that institutions of higher education existing at a given time do not come within the scope of the first sentence of Article 2 of Protocol No 1. Although that Article does not impose a duty on the Contracting States to set up institutions of higher education, any State doing so will be under an obligation to afford an effective right of access to them. In a democratic society, the right to education, which is indispensable to the furtherance of human rights, plays such a fundamental role that a restrictive interpretation of the first sentence of Article 2 of Protocol No. 1 would not be consistent with the aim or purpose of that provision."[26]

Article 3 - elections []

Article 3 provides for the right to regular, free and fair elections.

- *Matthews v. United Kingdom* (1999) 28 EHRR 361

Protocol 4 - civil imprisonment, free movement, expulsion []

Article 1 prohibits the imprisonment of people for breach of a contract. Article 2 provides for a right to freely move within a country once lawfully there and for a right to leave any country. Article 3 prohibits the expulsion of nationals and provides for the right of an individual to enter a country of his or her nationality. Article 4 prohibits the collective expulsion of foreigners.

Spain, Turkey and the United Kingdom have signed but never ratified Protocol 4. Andorra, Greece and Switzerland have neither signed nor ratified this protocol.

The United Kingdom's failure to ratify this protocol is due to concerns over the interaction of Article 2 and Article 3 with British nationality law. Specifically, several classes of "British national" (such as British National (Overseas)) do not have the right of abode in the United Kingdom and are subject to immigration control there. In 2009, the UK government stated that it had no plans to ratify Protocol 4 because of concerns that those articles could be taken as conferring that right.[27]

Protocol 6 - restriction of death penalty []

Requires parties to restrict the application of the death penalty to times of war or "imminent threat of war".

Every Council of Europe member state has signed and ratified Protocol 6, except Russia who has signed but not ratified.[28]

Protocol 7 - crime and family []

- Article 1 provides for a right to fair procedures for lawfully resident foreigners facing expulsion.
- Article 2 provides for the right to appeal in criminal matters.
- Article 3 provides for compensation for the victims of miscarriages of justice.
- Article 4 prohibits the re-trial of anyone who has already been finally acquitted or convicted of a particular offence (Double jeopardy).
- Article 5 provides for equality between spouses.

Despite having signed the protocol more than twenty years ago, Germany, the Netherlands and Turkey have never ratified it. Belgium, which signed the protocol in 2005, ratified it in 2012, becoming the latest member state to do so. The United Kingdom has neither signed nor ratified the protocol,[29] and since the Criminal Justice Act 2003 has had limited exceptions to the "double jeopardy" rule for serious cases.

Protocol 12 - discrimination []

Applies the current expansive and indefinite grounds of prohibited discrimination in Article 14 to the exercise of any legal right and to the actions (including the obligations) of public authorities.

The Protocol entered into force on 1 April 2005 and has (As of July 2009) been ratified by 17 member states. Several member states—Bulgaria, Denmark, France, Lithuania, Malta, Monaco, Poland, Sweden, Switzerland, and the United Kingdom—have not signed the protocol.[30]

The United Kingdom Government has declined to sign Protocol 12 on the basis that they believe the wording of protocol is too wide and would result in a flood of new cases testing the extent of the new provision. They believe that the phrase "rights set forth by law" might include international conventions to which the UK is not a party, and would result in incorporation of these instruments by stealth. It has been suggested that the protocol is therefore in a catch-22, since the UK will decline to either sign or ratify the protocol until the European Court of Human Rights has addressed the meaning of the provision, while the court is hindered in doing so by the lack of applications to the court concerning the protocol caused by the decisions of Europe's most populous states—including the UK—not to ratify the protocol. The UK Government, nevertheless, "agrees in principle that the ECHR should contain a provision against discrimination that is free-standing and not parasitic on the other Convention rights".[31] The first judgment that found a violation of Protocol No. 12, *Sejdić and Finci v. Bosnia and Herzegovina*, was delivered in 2009.

Protocol 13 - complete abolition of death penalty []

Provides for the total abolition of the death penalty.[32] Currently the majority of the Council of Europe has ratified Protocol 13. Poland and Armenia have signed but not ratified the protocol, whilst Russia and Azerbaijan have not signed it.[33]

Procedural and institutional protocols []

The Convention's provisions affecting institutional and procedural matters has been altered several times by mean of protocols. These amendments have, with of the exception of Protocol 2, amended the text of the convention. Protocol

2 did not amend the text of the convention as such, but stipulated that it was to be treated as an integral part of the text. All of these protocols have required the unanimous ratification of all the member states of the Council of Europe to enter into force.

Protocol 11

Protocols 2, 3, 5, 8, 9 and 10 have now been superseded by Protocol 11 which entered into force on 1 November 1998.[34] It established a fundamental change in the machinery of the convention. It abolished the Commission, allowing individuals to apply directly to the Court, which was given compulsory jurisdiction and altered the latter's structure. Previously states could ratify the Convention without accepting the jurisdiction of the Court of Human Rights. The protocol also abolished the judicial functions of the Committee of Ministers.

Protocol 14

Protocol 14 follows on from Protocol 11 in proposing to further improving the efficiency of the Court. It seeks to "filter" out cases that have less chance of succeeding along with those that are broadly similar to cases brought previously against the same member state. Furthermore a case will not be considered admissible where an applicant has not suffered a "significant disadvantage". This latter ground can only be used when an examination of the application on the merits is not considered necessary and where the subject-matter of the application had already been considered by a national court.

A new mechanism was introduced by Protocol 14 to assist enforcement of judgements by the Committee of Ministers. The Committee can ask the Court for an interpretation of a judgement and can even bring a member state before the Court for non-compliance of a previous judgement against that state. Protocol 14 also allows for European Union accession to the Convention. The protocol has been ratified by every Council of Europe member state, Russia being last in February 2010. It entered into force on 1 June 2010.[35]

A provisional **Protocol 14bis** had been opened for signature in 2009.[36] Pending the ratification of Protocol 14 itself, 14bis was devised to allow the Court to implement revised procedures in respect of the states which have ratified it. It allowed single judges to reject manifestly inadmissible applications made against the states who have ratified the protocol. It also extended the competence of three-judge chambers to declare applications made against those states admissible and to decide on their merits where there already is a well-established case law of the Court. Now that all Council of Europe member states have ratified Protocol 14, Protocol 14bis has lost its *raison d'être* and according to its own terms ceased to have any effect when Protocol 14 entered into force on 1 June 2010.

See also []

- Territorial scope of European Convention on Human Rights
- Human rights in Europe
- European Social Charter
- Charter of Fundamental Rights of the European Union
- Human Rights Act 1998 for how the Convention has been incorporated into the law of the United Kingdom.
- European Court of Human Rights
- Capital punishment in Europe

Notes []

1. ^ The Council of Europe should not be confused with the Council of the European Union or the European Council. The European Union is not a party to the Convention and has no role in the administration of the European Court of Human Rights.
2. ^ Resolution 1031 (1994) on the honouring of commitments entered into by member states when joining the Council of Europe
3. ^ Ovey, Clare; Robin C.A. White. *The European Convention on Human Rights*. Oxford University Press. pp. 1–3. ISBN 978-01-992881-0-6.
4. ^ Report by Pierre-Henri Teitgen of France, submitted to the Consultative Assembly of the Council of Europe

5. ^ Verbatim of the speech given by Pierre-Henri Teitgen when he presented his report to the Consultative Assembly of the Council of Europe
6. ^ Recommendation 38 of the Consultative Assembly of the Council of Europe on 'Human rights and fundamental freedoms'
7. ^ (Preliminary Objections) (1995) 20 EHRR 99
8. ^ (1995) 21 EHRR 97
9. ^ (1995) 21 EHRR 97 at para. 148
10. ^ Jacobs & White, p. 56
11. ^ *Chahal v. United Kingdom* (1997) 23 EHRR 413.
12. ^ *Chahal v. United Kingdom* (1997) 23 EHRR 413; *Soering v. United Kingdom* (1989) 11 EHRR 439.
13. ^ *Ireland v. United Kingdom* (1979-80) 2 EHRR 25 at para 167.
14. ^ *Aksoy v. Turkey* (1997) 23 EHRR 553. The process was referred to by the Court as "Palestinian hanging" but more commonly known as Strappado.
15. ^ *Selmouni v. France* (2000) 29 EHRR 403 at para. 101.
16. ^ Duncan Gardham (17 January 2012). "Abu Qatada cannot be deported to Jordan, European judges rule". *The Daily Telegraph*. Retrieved 23 February 2012.
17. ^ Von Hannover v Germany [2004] ECHR 294 (24 June 2004), European Court of Human Rights, para 57
18. ^ Article 15(3).
19. ^ [2009] ECHR 301 paras. 181 and 190.
20. ^ *A v United Kingdom* [2009] ECHR 301 para. 177.
21. ^ *Aksoy v. Turkey* (1997) 23 EHRR 553 para 70.
22. ^ ***a*** ***b*** *Greek case* (1969) 12 YB 1 at 71-72, paras. 152-154.
23. ^ In *Piermont v. France* 27 April 1995, 314 ECHR (series A).
24. ^ protocol signatory and ratification info, Council of Europe treaties office.
25. ^ See the *Belgian linguistic case*.
26. ^ *Sahin v. Turkey* at para. 137.
27. ^ http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90115w0003.htm
28. ^ Russia enshrines ban on death penalty.
29. ^ "Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 117". *conventions.coe.int*. Council of Europe Treaty Office. 16 November 2012. Retrieved 16 November 2012.
30. ^ Information on the current state of the protocol.
31. ^ 2004 UK Government's position
32. ^ "Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances". Council of Europe. Retrieved 27 June 2008.
33. ^ Treaty Office Website.
34. ^ "List of the treaties coming from the subject-matter: Human Rights (Convention and Protocols only)". Retrieved 21 February 2009.
35. ^ Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms
36. ^ Protocol No. 14bis to the ECHR

References []

- Ovey, Clare; White, Robin C. A. (2006). *Jacobs & White: The European Convention on Human Rights* (4th ed.). Oxford University Press. ISBN 0-19-928810-0.
- Greer, Steven (2006). *The European Convention on Human Rights: Achievements, Problems and Prospects*. Cambridge University Press. ISBN 978-0521608596.
- Xenos, Dimitris (2012). *The Positive Obligations of the State under the European Convention of Human Rights*. Routledge. ISBN 978-0-415-66812-5.

External links []

- List of the ECHR and all Protocols
- Text of the ECHR
- Database of European Human Rights Court (Strasbourg) judgments
- European Convention of Human Rights website
- List of all European treaties and protocols
- Terror detention law 'must go'; BBC; 4 August 2004

- Current Status of Protocol 12
- Current Status of Protocol 14
- UK Government's position on Protocol 12
- Index on Censorship

Article 10 of the European Convention on Human Rights

From Wikipedia, the free encyclopedia

Jump to: navigation, search

This article contains many errors and needs to be ed so as to contain the proper information.

Article 10 of the European Convention on Human Rights provides the right to freedom of expression, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". This right includes the freedom to hold opinions, and to receive and impart information and ideas.

> “ Article 10 – Freedom of expression
>
> 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. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. ”

Contents
[hide]

The licensing exception []

The provision about "licensing of broadcasting, television or cinema enterprises", ie the state’s right to license the media companies, was included because of the limited number of available frequencies and the fact that, at that time, most European states had a monopoly of broadcasting and television. Later Court decision held that due to "the technical progress in the last decades, the justification of these restrictions cannot be made by reference to the number of available frequencies and channels." The public monopolies within the audiovisual media were seen by the Court as contrary to Article 10, primarily because they cannot provide a plurality of sources of information.[1]

The Court also held that devices for receiving broadcasting information, such as satellite dishes, do not fall under the restriction provided for in the last sentence of the first paragraph.[1]

Case law []

- *Handyside v United Kingdom* (1976)
- *Lingens v Austria* (1986) 8 EHRR 407
- *The Observer and The Guardian v United Kingdom* (1991) 14 EHRR 153, the "Spycatcher" case.
- *Otto-Preminger-Institut v Austria*, see Liebeskonzil (1994)
- *Jersild v. Denmark* (1994)
- *Bowman v United Kingdom* (1998) 26 EHRR 1
- *Appleby v United Kingdom* (2003) 37 EHRR 38
- *Steel and Morris v United Kingdom* (2005), see McLibel case
- *Mueller and Others v Switzerland* (1988), application number 10737/84

See also []

- First Amendment to the United States Constitution

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- Joanna Krzeminska-Vamvaka, *Freedom of commercial speech in Europe*, Hamburg: Verlag Dr. Kovac 2008 - comparative analysis of commercial speech regulation in the US, EU, under ECHR, in Germany and Poland with the comparison of general freedom of speech theory

External links []

- A guide to the implementation of Article 10 of the European Convention on Human Rights (PDF)

Freedom of speech is the political right to communicate one's opinions and ideas using one's body and property to anyone who is willing to receive them. The term **freedom of expression** is sometimes used synonymously, but includes any act of seeking, receiving and imparting information or ideas, regardless of the medium used. In practice, the right to freedom of speech is not absolute in any country and the right is commonly subject to limitations, as with libel, slander, obscenity, sion (including, for example inciting ethnic hatred), copyright violation, revelation of information that is classified or otherwise.

The right to freedom of expression is recognized as a human right under Article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that "[e]veryone shall have the right to hold opinions without interference" and "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". Article 19 goes on to say that the exercise of these rights carries "special duties and responsibilities" and may "therefore be subject to certain restrictions" when necessary "[f]or respect of the rights or reputation of others" or "[f]or the protection of national security or of public order (order public), or of public health or morals".[1][2]

Freedom of speech may be legally curtailed in some religious legal systems and in secular jurisdictions where it is found to cause religious offense, such as the British Racial and Religious Hatred Act 2006.

The right to freedom of speech and expression []

Concepts of freedom of speech can be found in early human rights documents.[3] England's Bill of Rights 1689 granted 'freedom of speech in Parliament' and the Declaration of the Rights of Man and of the Citizen, adopted during the French Revolution in 1789, specifically affirmed freedom of speech as an inalienable right.[4] The Declaration provides for freedom of expression in Article 11, which states that:

"The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law."[5]

Article 19 of the Universal Declaration of Human Rights, adopted in 1948, states that:

"Everyone has the right to 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."[6]

Today freedom of speech, or the freedom of expression, is recognized in international and regional human rights law. The right is enshrined in Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights.[7] Based on John Milton's arguments, freedom of speech is understood as a multi-faceted right that includes not only the right to express, or disseminate, information and ideas, but three further distinct aspects:

- the right to seek information and ideas;
- the right to receive information and ideas;
- the right to impart information and ideas

International, regional and national standards also recognize that freedom of speech, as the freedom of expression, includes any medium, be it orally, in written, in print, through the Internet or through art forms. This means that the protection of freedom of speech as a right includes not only the content, but also the means of expression.[7]

Relationship to other rights []

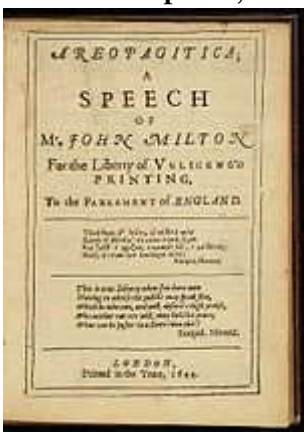
The right to freedom of speech and expression is closely related to other rights, and may be limited when conflicting with other rights (see Limitations on freedom of speech).[7] The right to freedom of expression is also related to the right to a fair trial and court proceeding which may limit access to the search for information or determine the opportunity and means in which freedom of expression is manifested within court proceedings.[8] As a general principle freedom of expression may not limit the right to privacy, as well as the honor and reputation of others. However greater latitude is given when criticism of public figures is involved.[8]

The right to freedom of expression is particularly important for media, which plays a special role as the bearer of the general right to freedom of expression for all.[7] However, freedom of the press is not necessarily enabling freedom of speech. Judith Lichtenberg has outlined conditions in which freedom of the press may constrain freedom of speech, for example where the media suppresses information or stifles the diversity of voices inherent in freedom of speech. Lichtenberg argues that freedom of the press is simply a form of property right summed up by the principle "no money, no voice".[9]

Origins []

Freedom of speech and expression has a long history that predates modern international human rights instruments.[10] It is thought that ancient Athens' democratic ideology of free speech may have emerged in the late 6th or early 5th century BC.[11] Two of the most cherished values of the Roman Republic were freedom of religion and freedom of speech.[12]

Freedom of speech, dissent and truth []



AREOPAGITICA;
A
SPEECH
OF
Mr. JOHN MILTON
For the Liberty of VNLICENC'D
PRINTING.
To the PARLAMENT of ENGLAND.
LONDON,
Printed in the Yeare, 1644.

First page of John Milton's 1644 ion of *Areopagitica*, in it he argued forcefully against the Licensing Order of 1643.

PANEGYR. TERTIA.
DE VITANDIS ET E RE-
PVB. PROSCRIBENDIS
Libris pernicioſis.

In "Panegyricae orationes septem" (1596) Henric van Cuyck, a Dutch Bishop, defended the need for censorship. Van Cuyck argued that Johannes Gutenberg's printing press had resulted in a world infected by “pernicious lies.” He singled out the Talmud and the Qu’ran, and the writings of Martin Luther, Jean Calvin and Erasmus of Rotterdam.[13]

Before the invention of the printing press a writing, once created, could only be physically multiplied by the highly laborious and error-prone process of manual copying out. No elaborate system of censorship and control over scribes existed, who until the 14th century were restricted to religious institutions, and their works rarely caused wider controversy. In response to the printing press, and the *heresies* it allowed to spread, the Roman Catholic Church moved to impose censorship.[14] Printing allowed for multiple exact copies of a work, leading to a more rapid and widespread circulation of ideas and information (see print culture).[15] The origins of copyright law in most European countries lie in efforts by the Roman Catholic Church and governments to regulate and control the output of printers.[15] In 1501 Pope Alexander VI issued a Bill against the unlicensed printing of books and in 1559 the Index Expurgatorius, or *List of Prohibited Books*, was issued for the first time.[14] The Index Expurgatorius is the most famous and long lasting example of "bad books" catalogues issued by the Roman Catholic Church, which assumed responsibility to control thoughts and opinions, and suppressed views that went against its doctrines. The Index Expurgatorius was administered by the Roman Inquisition, but enforced by local government authorities, and went through 300 ions. Amongst others it banned or censored books written by Rene Descartes, Giordano Bruno, Galileo Galilei, David Hume, John Locke, Daniel Defoe, Jean-Jacques Rousseau and Voltaire.[16] While governments and church encouraged printing in many ways because it allowed for the dissemination of Bibles and government

information, works of dissent and criticism could also circulate rapidly. As a consequence, governments established controls over printers across Europe, requiring them to have official licenses to trade and produce books.[15]

Title page of *Index Librorum Prohibitorum*, or *List of Prohibited Books*, (Venice 1564).

This 1688 ion of Jacobus de Voragine's Golden Legend (1260) was censored according to the Index Librorum Expurgatorum of 1707, which listed the specific passages of books already in circulation that required censorship.[17][18]

The notion that the expression of dissent or subversive views should be tolerated, not censured or punished by law, developed alongside the rise of printing and the press. *Areopagitica*, published in 1644, was John Milton's response to the Parliament of England's re-introduction of government licensing of printers, hence publishers.[19] Church authorities had previously ensured that Milton's essay on the right to divorce was refused a license for publication. In Areopagitica, published without a license,[20] Milton made an impassioned plea for freedom of expression and toleration of falsehood,[19] stating:

"Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."[19]

Milton's defense of freedom of expression was grounded in a Protestant worldview and he thought that the English people had the mission to work out the truth of the Reformation, which would lead to the enlightenment of all people. But Milton also articulated the main strands of future discussions about freedom of expression. By defining the scope of freedom of expression and of "harmful" speech Milton argued against the principle of pre-censorship and in favor of tolerance for a wide range of views.[19]

As the "menace" of printing spread, governments established centralized control mechanism.[21] The French crown repressed printing and the printer Etienne Dolet was burned at the stake in 1546. In 1557 the British Crown thought to stem the flow of sious and heretical books by chartering the Stationers' Company. The right to print was limited to the members of that guild, and thirty years later the Star Chamber was chartered to curtail the "greate enormities and abuses" of "dyvers contentyous and disorderlye persons professinge the arte or mystere of pryntinge or selling of books." The right to print was restricted to two universities and to the 21 existing printers in the city of London, which had 53 printing presses. As the British crown took control of type founding in 1637 printers fled to the Netherlands. Confrontation with authority made printers radical and rebellious, with 800 authors, printers and book dealers being incarcerated in the Bastille in Paris before it was stormed in 1789.[21]

A succession of English thinkers was at the forefront of early discussion on a right to freedom of expression, among them John Milton (1608–74) and John Locke (1632–1704). Locke established the individual as the unit of value and the bearer of rights to life, liberty, property and the pursuit of happiness. However Lockes ideas evolved primarily around the concept of the right to seek salvation for one's soul, and was thus primarily concerned with theological matters. Locke did not support a universal toleration and freedom of speech, some groups, like atheists, should not be allowed according to his ideas.[22]

By the second half of the 17th century philosophers on the European continent like Baruch Spinoza and Pierre Bayle developed ideas encompassing a more universal aspect freedom of speech and toleration than the early English philosophers.[23] By the 18th century the idea of freedom of speech was being discussed by thinkers all over the Western world, especially by French philosophes like Denis Diderot, Baron d'Holbach and Claude Adrien Helvétius[24] The idea began to be incorporated in political theory both in theory as well as practice; the first state edict in history proclaiming complete freedom of speech was the one issued December 4, 1770 in Denmark-Norway during the regency of Johann Friedrich Struensee.[25] However Struensee himself imposed some minor limitations to this edict in October 7, 1771, and it was even further limited after the fall of Struensee with legislation introduced in 1773, although censorship was not reintroduced.[26]

John Stuart Mill (1806–1873) argued that without human freedom there can be no progress in science, law or politics, which according to Mill required free discussion of opinion. Mill's *On Liberty*, published in 1859 became a classic defence of the right to freedom of expression.[19] Mill argued that truth drives out falsity, therefore the free expression of ideas, true or false, should not be feared. Truth is not stable or fixed, but evolves with time. Mill argued that much of what we once considered true has turned out false. Therefore views should not be prohibited for their apparent falsity. Mill also argued that free discussion is necessary to prevent the "deep slumber of a decided opinion". Discussion would drive the onwards march of truth and by considering false views the basis of true views could be re-affirmed.[27] Furthermore, Mill argued that an opinion only carries intrinsic value to the owner of that opinion, thus silencing the expression of that opinion is an injustice to a basic human right. For Mill, the only instance in which speech can be justifiably suppressed is in order to prevent harm from a clear and direct threat. Neither economic or moral implications, nor the speakers own well-being would justify suppression of speech.[28]

In Evelyn Beatrice Hall's biography of Voltaire, she coined the following phrase to illustrate Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it."[29] Hall's quote is frequently cited to describe the principle of freedom of speech.[30] In the 20th Century Noam Chomsky states that: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. Stalin and Hitler, for example, were dictators in favor of freedom of speech for views they liked only. If you're in favor of freedom of speech, that means you're in favor of freedom of speech precisely for views you despise."[31] Professor Lee Bollinger argues that "the free speech principle involves a special act of carving out one area of social interaction for extraordinary self-restraint, the purpose of which is to develop and demonstrate a social capacity to control feelings evoked by a host of social encounters." Bollinger argues that tolerance is a desirable value, if not essential. However, critics argue that society should be concerned by those who directly deny or advocate, for example, genocide (see Limitations, below).[32]

Democracy []

The free speech zone at the 2004 Democratic National Convention

The notion of freedom of expression is intimately linked to political debate and the concept of democracy. The norms on limiting freedom of expression mean that public debate may not be completely suppressed even in times of emergency.[8] One of the most notable proponents of the link between freedom of speech and democracy is Alexander Meiklejohn. He argues that the concept of democracy is that of self-government by the people. For such a system to work an informed electorate is necessary. In order to be appropriately knowledgeable, there must be no constraints on the free flow of information and ideas. According to Meiklejohn, democracy will not be true to its essential ideal if those in power are able to manipulate the electorate by withholding information and stifling criticism. Meiklejohn acknowledges that the desire to manipulate opinion can stem from the motive of seeking to benefit society. However, he argues, choosing manipulation negates, in its means, the democratic ideal.[33]

Eric Barendt has called this defence of free speech on the grounds of democracy "probably the most attractive and certainly the most fashionable free speech theory in modern Western democracies".[34] Thomas I. Emerson expanded on this defence when he argued that freedom of speech helps to provide a balance between stability and change. Freedom of speech acts as a "safety valve" to let off steam when people might otherwise be bent on revolution. He argues that "The principle of open discussion is a method of achieving a more adaptable and at the same time more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus." Emerson furthermore maintains that "Opposition serves a vital social function in offsetting or ameliorating (the) normal process of bureaucratic decay."[35]

Research undertaken by the Worldwide Governance Indicators project at the World Bank, indicates that freedom of speech, and the process of accountability that follows it, have a significant impact in the quality of governance of a country. "Voice and Accountability" within a country, defined as "the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media" is one of the six dimensions of governance that the Worldwide Governance Indicators measure for more than 200 countries.[36]

Social interaction and community []

Permanent Free Speech Wall in Charlottesville, VA

Richard Moon has developed the argument that the value of freedom of speech and freedom of expression lies with social interactions. Moon writes that "by communicating an individual forms relationships and associations with

others – family, friends, co-workers, church congregation, and countrymen. By entering into discussion with others an individual participates in the development of knowledge and in the direction of the community."[37]

Limitations []

According to the Freedom Forum Organization, legal systems, and society at large, recognize limits on the freedom of speech, particularly when freedom of speech conflicts with other values or rights.[38] Limitations to freedom of speech may follow the "harm principle" or the "offense principle", for example in the case of pornography, or hate speech. Limitations to freedom of speech may occur through legal sanction or social disapprobation, or both.[39]

Members of Westboro Baptist Church have been specifically banned from entering Canada for hate speech.[40]

In "On Liberty" (1859) John Stuart Mill argued that "...there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered."[39] Mill argues that the fullest liberty of expression is required to push arguments to their logical limits, rather than the limits of social embarrassment. However, Mill also introduced what is known as the harm principle, in placing the following limitation on free expression: "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."[39]

In 1985 Joel Feinberg introduced what is known as the "offence principle", arguing that Mill's harm principle does not provide sufficient protection against the wrongful behaviours of others. Feinberg wrote "It is always a good reason in support of a proposed criminal prohibition that it would probably be an effective way of preventing serious offense (as opposed to injury or harm) to persons other than the actor, and that it is probably a necessary means to that end."[41] Hence Feinberg argues that the harm principle sets the bar too high and that some forms of expression can be legitimately prohibited by law because they are very offensive. But, as offending someone is less serious than harming someone, the penalties imposed should be higher for causing harm.[41] In contrast Mill does not support legal penalties unless they are based on the harm principle.[39] Because the degree to which people may take offense varies, or may be the result of unjustified prejudice, Feinberg suggests that a number of factors need to be taken into account when applying the offense principle, including: the extent, duration and social value of the speech, the ease with which it can be avoided, the motives of the speaker, the number of people offended, the intensity of the offense, and the general interest of the community at large.[39]

The Internet and Information Society []

Jo Glanville, or of the Index on Censorship, states that "the Internet has been a revolution for censorship as much as for free speech".[42] International, national and regional standards recognise that freedom of speech, as one form of freedom of expression, applies to any medium, including the Internet.[7] The Communications Decency Act (CDA) of 1996 was the first major attempt by the United States Congress to regulate pornographic material on the Internet. In 1997, in the landmark cyberlaw case of *Reno v. ACLU*, the U.S. Supreme Court partially overturned the law.[43] Judge Stewart R. Dalzell, one of the three federal judges who in June 1996 declared parts of the CDA unconstitutional, in his opinion stated the following:[44]

"The Internet is a far more speech-enhancing medium than print, the village green, or the mails. Because it would necessarily affect the Internet itself, the CDA would necessarily reduce the speech available for adults on the medium. This is a constitutionally intolerable result. Some of the dialogue on the Internet surely tests the limits of conventional discourse. Speech on the Internet can be unfiltered, unpolished, and unconventional, even emotionally charged,

sexually explicit, and vulgar – in a word, "indecent" in many communities. But we should expect such speech to occur in a medium in which citizens from all walks of life have a voice. We should also protect the autonomy that such a medium confers to ordinary people as well as media magnates. [...] My analysis does not deprive the Government of all means of protecting children from the dangers of Internet communication. The Government can continue to protect children from pornography on the Internet through vigorous enforcement of existing laws criminalizing obscenity and child pornography. [...] As we learned at the hearing, there is also a compelling need for public educations about the benefits and dangers of this new medium, and the Government can fill that role as well. In my view, our action today should only mean that Government's permissible supervision of Internet contents stops at the traditional line of unprotected speech. [...] The absence of governmental regulation of Internet content has unquestionably produced a kind of chaos, but as one of the plaintiff's experts put it with such resonance at the hearing: "What achieved success was the very chaos that the Internet is. The strength of the Internet is chaos." Just as the strength of the Internet is chaos, so that strength of our liberty depends upon the chaos and cacophony of the unfettered speech the First Amendment protects."[44]

The World Summit on the Information Society (WSIS) Declaration of Principles adopted in 2003 makes specific reference to the importance of the right to freedom of expression for the "Information Society" in stating:

"We reaffirm, as an essential foundation of the Information society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that 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. Communication is a fundamental social process, a basic human need and the foundation of all social organisation. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits of the Information Society offers."[45]

According to Bernt Hugenholtz and Lucie Guibault the public domain is under pressure from the "commodification of information" as item of information that previously had little or no economic value, have acquired independent economic value in the information age, such as factual data, personal data, genetic information and pure ideas. The commodification of information is taking place through intellectual property law, contract law, as well as broadcasting and telecommunications law.[46]

Freedom of information []

Main article: Freedom of information

Freedom of information is an extension of freedom of speech where the medium of expression is the Internet. Freedom of information may also refer to the right to privacy in the context of the Internet and information technology. As with the right to freedom of expression, the right to privacy is a recognised human right and freedom of information acts as an extension to this right.[47] Freedom of information may also concern censorship in an information technology context, i.e. the ability to access Web content, without censorship or restrictions.[48]

Freedom of information is also explicitly protected by acts such as the Freedom of Information and Protection of Privacy Act of Ontario, in Canada.[49]

Internet censorship []

Main articles: Internet censorship and Internet censorship by country

The concept of freedom of information has emerged in response to state sponsored censorship, monitoring and surveillance of the internet. Internet censorship includes the control or suppression of the publishing or accessing of information on the Internet.[50] The Global Internet Freedom Consortium claims to remove blocks to the "free flow of information" for what they term "closed societies".[51] According to the Reporters without Borders (RWB) "internet enemy list" the following states engage in pervasive internet censorship: China, Cuba, Iran, Myanmar/Burma, North Korea, Saudi Arabia, Syria, Turkmenistan, Uzbekistan, and Vietnam.[52]

A widely publicized example of internet censorship is the "Great Firewall of China" (in reference both to its role as a network firewall and to the ancient Great Wall of China). The system blocks content by preventing IP addresses from being routed through and consists of standard firewall and proxy servers at the Internet gateways. The system also selectively engages in DNS poisoning when particular sites are requested. The government does not appear to be

systematically examining Internet content, as this appears to be technically impractical.[53] Internet censorship in the People's Republic of China is conducted under a wide variety of laws and administrative regulations. In accordance with these laws, more than sixty Internet regulations have been made by the People's Republic of China (PRC) government, and censorship systems are vigorously implemented by provincial branches of state-owned ISPs, business companies, and organizations.[54][55]

Najat Vallaud-Belkacem a French Socialist Minister of Women's Rights proposed that the French government force Twitter to filter out hate speech that is illegal under French law, such as speech that is homophobic. Jason Farago, writing in the *The Guardian* praised the efforts to "restrict bigotry's free expression."[56]

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- Free Speech Hosting Companies
- Speaking Out for Free Expression: 1987–2007 and Beyond
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- UN-Resolution 217 A III – (Meinungsfreiheit.org)
- Article19.org, Global Campaign for Free Expression
- Dissent gets dangerous in the USA (The First Post)
- Free Speech Debate
- Banned Magazine, the journal of censorship and secrecy.
- Free Speech Internet Television
- International Freedom of Expression Exchange
- Index on Censorship
- irrepressible.info – Amnesty International's campaign against internet repression
- Organization of American States – Special Rapporteur
- Original Meaning of Freedom of Speech (U.S.A)
- "Free Speech in the Age of YouTube" in the *New York Times*, 22 September 2012