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TITLE

"THE RIGHT OF FREEDOM TO EXPRESSION IN CYBERSPACE: LEGAL ASPECTS AND CHALLENGES"

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Dedication

To my family for its guidance through a challenging period in my life.

LIST OF ACRONYMS AND ABBREVIATIONS

A2K	Access to Knowledge
ACHPR	African Commission on Human and Peoples' Rights
ACPO	Association of Chief Police Officers
ACTA	Anti-Counterfeiting Trade Agreement
AFP	Agence France Press
APC	Association for Progressive Communications
Art.	Article
ccTLD	country code Top-Level Domain
CDMC	Committee on the Media and New Communication Services
CJEU	Court of Justice of the European Union
CMPF	Centre for Media Pluralism and Media Freedom
DDoS	Distributed Denial-of-Service
ECHR	European Convention on Human Rights
ECPA	Electronic Communications Privacy Act
ECPT	European Convention for the Prevention of Torture and

Inhuman or Degrading Treatment or Punishment

ECRI	European Commission against Racism and Intolerance
ECSR	European Committee on Social Rights
EDRi	European Digital Rights
ESC	European Social Charter
ETS	European Treaty Series
EU	European Union
EuroDIG	European Dialogue on Internet Governance
FCNM	Framework Convention for the Protection of National Minorities (FCNM)
FoE	Freedom of Expression
FTC	Federal Trade Commission
GAC	Governmental Advisory Committee
GC	Grand Chamber
GNI	Global Network Initiative
HRC	Human Rights Council
IBR	Internet Bill of Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology
IGF	Internet Governance Forum
IT	Information Technology
IWF	Internet Watch Foundation

NGOs	Non-Governmental Organizations
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
Rec.	Recommendation
RevESC	Revised European Social Charter
RFoM	Special Representative for the Freedom of the Media
RWB	Reporters without Borders
TMG	German Telemediengesetz (Telemedia Act)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
VPNs	Virtual Private Networks
WSIS	World Summit on the Information Society

ABSTRACT

The dissertation makes clear that the Internet is the catalyst for exercising all human rights, including the right to freedom of expression. In particular, the Internet promotes the respect and protection of human rights. In this quest, online freedom of expression is an important human right in itself and also it is a key enabler of the exercise of other human rights. Thus, the protection and safeguard of freedom of expression exercised online is of high importance. In protecting freedom of expression online there must be a main rule: what is permissible offline is permissible online as well.

On the other hand, the nature of the Internet, its special characteristics such as the ubiquity of the information posted and the impossibility of deleting information in cyberspace need to be seriously considered. In this context, the right to freedom of expression online is not an absolute right, as it subjects to several restriction, which are only allowed since they are in line with the rules for interference under the European Convention on Human Rights (ECHR). In this light, the dissertations answer questions with regard to the extent and limits of freedom of expression online. It throws light on what people are allowed to say online and how their ideas and the process of imparting and receiving information are protected.

Importantly, it is thoroughly analyzed that there are specific issues which put the online freedom of expression at risk. Filtering, defamation, net neutrality and child exploitation are some of online dangers, which are able to violate the freedom of expression in cyberspace. In the light of the fact that such dangers are nowadays on rise mainly due to the excessive Internet usage, online freedom of expression needs higher level of protection, notably stricter and more sufficient legislation at national and international level.

Keywords: freedom of expression, Internet, online, limitation of human rights, freedom of expression restrictions

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INTRODUCTION

Over the last decades, the Internet has changed peoples' lives in multiple fields, including the way they access, receive and share information. More significantly, the Internet has reinforced the exercise of the right to freedom of expression by allowing the access to diverse sources of information and secondly by democratizing the publishing of all information, that are available on the web. As such, due to the Internet accessibility, its capacity to store vast amount of information and its potential to facilitate the dissemination of information, it has become the public space of the 21st century at a global level.

In this light, the Internet is generally regarded as a highly participatory environment which contributes to the facilitation of broad-based participation within the free marketplace of ideas and information. Its universal nature and its characteristics have overwhelmingly increased the ability of individuals to express their opinions to the global community. Consequently, it can be said that the cyberspace is as diverse as human thought.

This explosion of Internet usage has turned the freedom of expression especially in the cyberspace and has brought new possibilities for exercising this right and protecting human rights as well. In practice, the Net with all opportunities it offers to its users to express themselves is an important enabler of the exercise of the right to freedom of expression. This means that the Net is the catalyst for its users to exercise their right to freedom of expression and opinion. The Net also is the enabler of the exercise of other human rights.

Freedom of expression is considered one of the main fundamental human rights, enclosed in many human rights treaties at national and supranational level. In the context of a democratic society and respect for human rights, the right to freedom of expression online is not only important in its own right, but it also contributes

essentially to the protection of other human rights under the Convention for the Protection of Human Rights.[1]

Furthermore, freedom of expression is a right in itself and apart from that it is a component of other rights protected under the Convention. However, the right to freedom of expression exercised on the online environment may conflict with other rights protected by the Convention like the right to private life as well as the right to respect to conscience and religion. When such conflict arises, the European Court on Human Rights strikes a balance between the conflicted rights for the purpose of setting the predominance of one right over the other conflicted. Further, in order the Court to balance the conflicting interests, takes into consideration the substance and the significance of the right to freedom of expression. Indeed, the Court has recognized ad nauseum that the right to freedom of expression "*constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfillment*".[2] Similarly, the Court has stated that "*the press plays a pre-eminent role in a State governed by the rule of law*".[3]

As noted above, the right to freedom of expression is entrenched in many human rights treaties. However, despite the fact that freedom of expression is enshrined in several legal treaties and legal instruments as well, the possibilities for human right violation, brought along by the excessive Internet usage without limits, have also grown exponentially.[4] The rampancy of Internet usage causes new challenges not only to the right to freedom of expression, but also to other human rights.[5] It also resulted in reactions in terms of governmental control. Therefore, states increasingly proceed to restrictions in Internet access and monitor Internet use and Internet content through sophisticated technologies. Most significantly, as they fear citizens' actions for social and political change, criminalize specific forms of expression. Therefore, despite the

[1] Jochen Abr. Frowein, "Freedom of expression under the European Convention on Human Rights", in Monitor/Inf (97) 3, Council of Europe.

[2] Lingens v. Austria, 8 July 1986; Şener v. Turkey, 18 July 2000; Thoma v. Luxembourg, 29 March 2001; Marônek v. Slovakia, 19 April 2001; Dichand and Others v. Austria, 26 February 2002

[3] Castells v. Spain, 23 April 1992; Prager and Oberschlick v. Austria, 26 April 1995

[4] La Rue F. (16 May 2011), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27, para. 22 and 23.

[5] See also Benedek W. (2008), "Internet governance and human rights", in Benedek W., Bauer V. and Kettemann M. C. (eds), Internet governance and the information society: global perspectives and European dimensions, Utrecht: Eleven International, pp. 31-49.

fact that the right to freedom of expression is protected by international treaties and instruments and national constitutions, freedom of expression exercised online has been a contentious policy area, simply because this right is being curtailed by certain states through governmental content control, censorship, and surveillance.

Therefore, based on the above, it is obvious that in the information society the Internet increases the potential to exercise our right to freedom of expression, but the other side of the coin includes a severe commitment; the Internet increases the potential to restrict freedom of expression online.

Furthermore, at a European level, as of late, it has been held that "*the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice, in accordance with Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights*".[6] Regarding human rights, the doctrine "what applies offline should also apply online" can provide general guidance. The Net's universal nature and its decentralized management needs to be taken into consideration though. As a result, the major challenge for freedom of expression in the cyberspace, as for other human rights, is to maintain the offline standards.

In this light, this dissertation takes on the challenge of introducing a subtly different approach to this central challenge by examining the effect of new technologies and their influence on human life. Also, we will examine the new opportunities offered by the Net conforming to freedom of expression online. As it will be seen, these new opportunities include online publications such as blogs, which allow the immediate sharing of often highly personal information. In this content, we will study through law cases that bloggers have been held accountable for the content which post on their blogs just like journalists.

Without doubt, these new opportunities offered online require responsible use, as obviously they give rights abusers new ways for hate speech, child abuse and provocation to terrorism. They also bring about new challenges for the regulation of freedom of expression exercised online.

[6] Human Rights Council (5 July 2012), The promotion, protection and enjoyment of human rights on the Internet, 20th Session, UN Doc. A/HRC/20/8.

In this framework, this dissertation addresses two key questions; firstly, which are the new challenges the Internet has caused for freedom of expression and secondly, how must the right to freedom of expression online be interpreted in order to maintain its integrity in the cyberspace?

Additionally, the dissertation addresses more key questions, which are so important as the ones above-mentioned. Most of them are related to issues as follows; How has the European Court of Human Rights reacted to the new challenges and what has been the response of other European and global human rights institutions? Particularly, while the Net has expanded the scope of expression and information, this expansion has had as result the creation of a new balance of rights and equivalent responsibilities. In turn, this may require stronger intervene by regulatory authorities and the state. Moreover, the dissertation addresses the following two questions: What kind of new regulations might be considered lawful, if not necessary, in response to the challenges to the reputation and rights of children in the Internet? Which are the restrictions imposed by certain states (especially by Chinese authorities) in order to control and monitor certain websites and Internet content in general?

With regard to one of the above key question, the dissertation shows thoroughly why children and young people need to enjoy special protection in the cyberspace. The variety of the challenges correlated to protecting the right to freedom of expression online can be perceived through our analysis regarding the role of Internet Service Providers. In particular, it will be seen that they have rendered essential actors as they can regulate the online content. To that effect, states e.g. China use them on a regular basis in order to police expressions. As a consequence, it will be seen through case studies that Internet Service Providers act as gatekeepers of online content and Internet-based information in general.

Furthermore, freedom of expression is not an unlimited right. As such, second chapter is devoted to possible restrictions of the right, putting emphasis on restrictions need to be provided for by law, especially by international law, seeking a lawful aim. In fact, as it will be seen, these restrictions must be necessary within a democratic society and proportional to the aim pursued.

FIRST CHAPTER

1. THE CONTENT OF FREEDOM OF EXPRESSION IN CYBERSPACE

1.1. A general overview of the freedom of expression online

In the modern digital era, the Internet has obviously expanded the potential for individuals to exercise the right to freedom of expression and as such this kind of freedom has evolved into the key human right of the information society.[7] In particular, it can be claimed that almost every act, which carried out in cyberspace, is considered an act of expression. This means that Net' s users have an immense expressive power. For example, they can participate in online chats, impart information by disseminating their own blogs, they can also create profile on social media (e.g. Facebook, Twitter) and through this act they clearly can generate transactional information and, lastly, the Internet's technology bestows on its users the opportunity to have access to overwhelming information and download files and even images. The right to freedom of expression covers any kind of expression, whether oral or written, including journalistic freedoms, whether that journalism is in print or online, and all forms of art. Most interestingly, Net's users are given the opportunity to move online around cities throughout the globe without frontiers and meet online with whomever they wish and simultaneously they can follow and join groups without having to disclose identities.

In this context, the right to freedom of expression in cyberspace as a human right is quite broad and covers more freedoms, such as the freedom of opinion and the freedom of information. Actually, regarding the latter right, namely the right to the freedom of

[7] Benedek W. (2013), "Menschenrechte in der Informationsgesellschaft" [Human Rights in the Information Society] in Schüller-Zwierlein A. and Zillien N. (eds), Informationsgerechtigkeit, De Gruyter, pp. 69-88 and Verpeaux M. (2010), Freedom of Expression, Council of Europe.

information, it is worth to mention that when the United Nations General Assembly met the very first time in January 1946, one resolution passed recognized freedom of information as a fundamental human right and "the touchstone of all the freedoms to which the United Nations is consecrated".[8] Further, one more main element of the right to the freedom of expression is the subsequent rights to the freedom of the press and the freedom of the media, whereas a potential freedom, related with international communication, has not yet found general support.

The right of the freedom of expression in cyberspace, as recognized by law, has been evolving over the decades at an international level. To put it another way, Article 10 of the European Convention on Human Rights (ECHR) regulates and ensures the examining freedom. In particular, Article 10 paragraph 1 of the ECHR reads: "*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*".

Similarly, Article 19 of the 1948 Universal Declaration of Human Rights (UDHR) of the United Nations indicates that: "*Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*".

1.2. Freedom of expression on the Internet as an internationally protected human right

Freedom of expression in cyberspace is considered a core human right, as already made clear. In more details, freedom of expression online is guaranteed under international law and virtually under constitutional law at a global level. The right to freedom of expression is fundamental for human development and admittedly fosters dignity, pluralism, non-discrimination, transparency and certainly is a prerequisite for promotion of democracy and good governance. Further, it encourages free debate about and between competing political parties and enables citizens from all over the world to

[8] UN General Assembly, *Calling of an International Conference on Freedom of Information*, 14 December 1946, UNGA Res 59(1), UN Doc A/229, A/261. [UN Res 59(1)]

raise concerns with authorities. Therefore, freedom of expression is the cornerstone of democracy and democratic values are at stake when information and ideas are restricted.

The importance of freedom of expression online has been highlighted in various ways. A vivid example is the joint statement by United Nations Secretary - General Ban Ki-moon and UNESCO Director-General Irina Bokova on World Press Freedom Day, 3 May 2014: "*This year, the international community has a once-in-ageneration opportunity to prepare a long-term agenda for sustainable development to succeed the Millennium Development Goals when they end in 2015. Successfully implementing that agenda will require that all populations enjoy the fundamental rights of freedom of opinion and expression. These rights are essential to democracy, transparency, accountability and the rule of law. They are vital for human dignity, social progress and inclusive development*".

As already noted, freedom of expression has been acknowledged in all of the main international and regional human rights treaties. Most importantly, the Universal Declaration of Human Rights (UDHR) guarantees the right to freedom of expression. Similarly, the freedom of expression is protected by the International Covenant on Civil and Political Rights (ICCPR), a formally legally binding treaty ratified by 168 States. Lastly, freedom of expression as a human right is also protected in regional human rights treaties, including the African Charter on Human and People's Rights, the American Convention on Human Rights and the European Convention on Human Rights.

The scope of freedom of expression is quite broad and as a human right freedom of expression belongs to everyone. This means that there are no distinctions on the basis of a person's race, color, nationality, sex, language, social origin or property. Moreover, the right to freedom of expression applies regardless of frontiers meaning that it protects the right to access information from abroad, whether in the form of broadcasting, newspapers, the Internet or speaking to someone in another country.

1.3. Main elements of the freedom of expression in cyberspace

As already noted, the right to freedom of expression includes any kind of expression, regardless of oral or written expression, and covers simultaneously the freedom of expression of any kind of journalism.

The provision of Article 19 par. 2 of the International Covenant on Civil and Political Rights (ICCPR) states the right to freedom of expression along the lines of Article 19 of the UDHR. In the frame of the European case law noteworthy is the jurisprudence of the European Court of Human Rights in the case Handyside v. UK, where the Court stated that that information or ideas which "offend, shock or disturb the state or any sector of population" are included in the right to freedom of expression[9].

Within the information society, the right to freedom of expression is now of high importance and in this context human rights and obligations, which Article 19 paragraph 2 states, have acquired new dimensions[10]. Even though this could not be foreseen at the drafting of the European Convention on Human Rights (ECHR) or any other treaties, which guarantee human rights, the phrase "through any media" in the Universal Declaration renders the right into a dynamic one. In other words, this right can not be restricted to specific technologies, which are already known at this period of time or even adopted.

The fact that the above-mentioned phrase has not been enclosed in the European Convention on Human Rights (ECHR) is not of importance, while the absence of a reference to any certain media signifies that any form of media is covered. Therefore, the European Court of Human Rights often mentions the interpretation of Article 10 in the light of present-day conditions"[11].

[9] Handyside v. UK (7 December 1976), application No. 5493/72, para. 49.

[10] Cuceranu D., Aspects of regulating freedom of expression on the Internet, Intersentia, p. 179 et seq.

[11] E.g. Stoll v. Switzerland (10 December 2007), application No. 69698/01, para. 104.

In reality, the Net exceptionally affects conditions, under which individuals communicate. Accordingly, law cases associated with the Internet obviously fall within the general scope of Article 10. Considering that the Internet due to its special nature has already constituted a new medium, which gives the opportunity of information and opinion exchange at a global level, several relevant questions arise, mostly regarding the potential limitation of the right, which is recognized in Article 10 paragraph 2 ECHR and in Article 19 paragraph 3 ICCPR respectively.

The European Court of Human Rights has declared that "*freedom of expression constitutes one of the essential foundations for a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment*"[12]. Thus, undoubtly freedom of expression in cyberspace promotes democracy, while according to the Council of Europe leaders at meeting of Council of Europe, European Union and OSCE leaders on promoting and reinforcing freedom of expression and information at the pan-European level in Luxembourg[13], has fairly been called the "oxygen of democracy". Actually, the right of freedom of expression of individuals is ensured against state authorities, who possibly control or suppress expression.

The right of freedom of expression on cyberspace establishes a positive obligation for member states, while the latter are obliged to protect individuals against potential limitations of the above-mentioned freedom by private persons or institutions[14], as this has been judged by the ECHR. For this reasons, internal instruments directed from journalists have been developed in order to secure the exercise of this freedom.

Based on the doctrine "*what applies offline also applies online*", the main elements of the freedom of expression apply to the digital environment and as such this is about digital rights. For instance, the principles related to the interpretation of Article 10 are applied by the ECHR not only in online but also in offline cases, but in latter cases the specificities of the Net are taken into account. In more details, specificities of the digital

[12] E.g. Stoll v. Switzerland (10 December 2007), application No. 69698/01, para. 101.

[13] Institute of Mass Information <http://imi.org.ua/en/node/35589>, accessed 30 October 2021.

[14] Fuentes Bobo v. Spain (29 February 2000), application No. 39293/98, para. 38; also Dink v. Turkey (14 September 2010), application No. 2668/07 et al., para. 106.

environment, such as accessibility, durability and asynchronicity of information on the Internet, are taken into account by the Court takes into account in several cases.[15]

1.3.1. Freedom of opinion

As already noted, the right to freedom to hold opinions without the existence of intervention derived from the right to the freedom of online expression. Most importantly, as the European Convention on Human Rights recognized, the freedom to express an opinion is regarded as one of the most important parts of freedom of expression. Not only in the above-mentioned Convention but also in the Universal Declaration, the freedom of opinion is appeared together with the freedom of expression, while in Article 19 paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR)[16] is represented as a separate right.[17] The right to the freedom of opinion is an essential requirement for exercising the freedom of expression, which is correlated with opinions held by individuals or media.

At least at a European level, there are no laws, having been prescribed by governments of member states of Europe, which prohibit opinions of individuals. Indeed, Article 19 ICCPR recognizes that freedom of opinion cannot be restrained and it provides for the possibility of restricting the freedom of expression, in contrast. Accordingly, any reservations to freedom of opinion would not correspond to the purpose and the general scope of this freedom.[18] However, this does not mean that potential restrictions to the freedom of expression could be capable of affecting the freedom of opinion. For those reasons, the Net as a medium does not involve in as long as opinions are not expressed. Based on the above, freedom of opinion in cyberspace is at large essential as a part of freedom pf expression.

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[15] Vajic N. and Voyatzis P., "The Internet and freedom of expression: a 'brave new world' and the European Court of Human Rights' evolving case law", in Freedom of expression, essays in honour of Nicolas Bratza, 2012, at p. 399.

[16] The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entry into force 23 March 1976, in accordance with Article 49)

[17] Particularly, article 19 paragraph 1 states: "Everyone shall have the right to hold opinions without interference".

[18] Cf. Human Rights Committee (12 September 2011), General Comment No. 34, CCPR/C/GC/34, para. 5

1.3.2. Freedom of information

The freedom to generate any kind of information online in the sense of either receiving or sharing such information irrespective of frontiers has clearly expanded its scope through the Net and has evolved into a vast medium at a global level for people who have access to it.[19] In this content, it must be taken into account that the Internet due to its specific nature contributed mainly to the expansion of the scope of the freedom and thus it is now a modern means of imparting and receiving information.

Referring to this result, the Court went one step further in the case Yildirim VS Turkey by stating that the creation and sharing of websites in a group, managed by Google Sites, is a means of exercising freedom of expression.[20] Moreover, the Court recognized that Article 10 of the ECHR ensures that everyone has the right to freedom of expression. These provisions are not related only to the information's content, but also to the means by which it is spread. In addition, the Court highlighted that Article 10 guarantees the right to communicate information and the right of individuals to receive it as well.[21]

At the same time, it is worth to mention what the Court held in the case Mouvement Raëlien Suisse v. Switzerland. Particularly, the Court stated that the impact of the information is enlarged, when it is displayed in public with a reference to the address of a website, which is accessible to everyone through the Internet.[22]

In the light of the above, the Article 10 ECHR provides that a license for broadcasting, television or cinema enterprises is required, whereas the Article 19 ICCPR does not include this provision, and in the ambit of Article 10 online cases do not fall within. In the frame of case Megadat.com SRL v. Moldova[23], a quit large Internet Service Provider, based in Moldova, expressed complaints regarding the removal of its Internet

[19]COUNCIL OF THE EUROPEAN UNION, EU Human Rights Guidelines on Freedom of Expression Online and Offline <https://www.consilium.europa.eu/media/28348/142549.pdf> assessed 2 November 2021.

[20] Yildirim v. Turkey (18 December 2012), application No. 3111/10, para. 49.

[21] Ibid., para. 50.

[22] Mouvement Raëlien Suisse v. Switzerland, para. 54.

[23] Cf. Megadat.com SRL v. Moldova (8 April 2008), application No. 21151/04, para. 63

and telephone service licenses. In this case, the Court held that Article 1 of Protocol 1 has been infringed, and in particular the right to property, because the intervention of authorities was disproportionate to the goal pursued.

Moreover, the freedom of information encloses the freedom of the public to be informed, which is secured by both media and press, as is the dissemination of information, including reporting about hate speech.[24] In this context, the question of access to the Internet is of overarching importance for the full enjoyment of freedom of expression today, for both receiving and sharing information and ideas.

1.3.3. Freedom of the press and the media

The freedom of the press and the media plays a fundamental role in society. It is regarded as one of the pillars of a democratic society and an important precondition for guarantying the protection of peoples' other human rights. As such a free press and independent media can be characterized as cornerstones of any democratic society. In particular, critical media contribute to the furtherance of public discourse regarding serious issues, which a society has to cope with, and exactly in this way the democracy-fostering function is being fulfilled. [25] In this context, the free press has a monitoring function in the sense that it can monitor a forum for public discourse or a public debate and apart from that it has an accountability function. This function allows journalists to have access to public information.[26]

Freedom of expression covers a wide scope of journalistic activities. In a practical framework of journalism, conducted online, in Editorial Board of Pravoye Delo and Shtekel v. Ukraine, the Court stated that the lack of an adequate domestic legal framework, regulating how to utilize information, acquired from the Net, prevents the press from exercising its function as a public guardian[27]. Accordingly, the absence of the information in the legislative guarantees of journalistic freedom was regarded as potential unjustified interference with press freedom under Article 10. Therefore, the

[24] Jersild v. Denmark (23 September 1994), application No. 15890/89, para. 35
[25] Harris, O'Boyle and Warbrick (2009), Law of the European Convention on Human Rights, OUP, p. 465
[26] Lingens (8 July 1986), application No. 9815/82, para. 41.
[27] Editorial Board of Pravoye Delo and Shtekel v. Ukraine (5 May 2011), application No. 33014/05, para. 64.

obligation to create a sufficient regulatory framework in order to protect adequately and effectively the freedom of expression in cyberspace for journalists can be arisen as a finding in this context.

Yet, in Times Newspapers Limited vs United Kingdom (Nos. 1 and 2), the Court made the importance of the Internet in combination with the freedom for information clear, recognizing that due to its accessibility and its capacity to store extremely big amount of information, the Internet plays a fundamental role in facilitating the access of public to new information and enhancing the spread of news.

In general terms, journalistic freedom is greatly broad, meaning that it includes journalistic research, access to public fora and meetings as well as to publication of confidential information, even when the latter has been illegally gotten.[28] Also, the Internet because of its special nature has fostered the so-called "citizen journalists", who conduct research and report from all corners of the world, notably from zones where wars take place or zones which conventional journalists cannot approach due to specific circumstances (e.g. disturbances). Therefore, citizen journalists report human rights infringements with the use of videos and pictures in places where the access is limited, as mentioned. For instance, in 2012 and 2013 in Syria they reported violations of habitants' human rights as they were happening[29] and in 2011 appeared in the United Kingdom to report the riots, more widely known as the London riots.[30] However, they are not equipped with journalist's card neither are they members of press clubs. Additionally, they do not enjoy the protection and privileges which regular journalists benefit from. It can be said that they might become "journalists" only when they publish public-oriented videos and images. Similarly, in most cases bloggers fulfil the normal journalists' function especially when they present subject of concern in their blogs, that can barely be controlled.

[28] Karpenstein, Mayer (2012), EMRK-Kommentar, C.H. Beck, Munich, Article 10, para. 15

[29] Benedek W. and Rao M. (2013), Background paper, 12th Informal ASEM Seminar on Human Rights, "Human rights and information and communication technology" in Seoul 27-29 June 2012, ASEM, Singapore, 50 et seq.; see also Quinn S., "Mobile Journalism" (2013), in Bruck P. and Rao M., Global mobile: scenarios and strategies, Information Today Inc., Medford NJ. 59. Cf. Kulesza J. (2012), International Internet law, Routledge, p. 52

[30] Bethan Bell, Riots 10 years on: The five summer nights when London burned (BBC News, 6 August 2021) <https://www.bbc.com/news/uk-england-london-58058031> accessed 4 November 2021.

In the light of the above, several concerns arise in terms of the level of the quality of the news disseminated by individuals without having been trained professionally. These concerns raise the issue that basic principles of both journalistic freedom and journalistic responsibility should be expanded to the above analyzed functional journalists. As a result, when they get involved in this activity, should also apply fundamental ethical standards, which principally have to do with how digitally aware are as well as with their learning level. Therefore, to some extent, they should comply with the due diligence standards of the profession in order to enjoy the status of normal journalists[31].

Besides, the UN Special Rapporteur on the right to freedom of opinion and expression has stood for the new form of journalism. Indeed, he has highlighted its importance, while according to his statement this new form of journalism leads to a richer diversity of views and opinions and also it is considered a crucial instrument for countries where freedom of expression is lacking. At the same time the Rapporteur encouraged "citizen journalists" to follow ethical and professional standards.[32]

Based on all the above, the term of journalists is broad and thus includes journalists, bloggers and citizens as well. Further, non-governmental organizations (NGOs) can enjoy the freedom of the press as "social watchdogs" in the more dynamic blog-based publication landscape of the Internet age. [33]

In fact, protection is highly correlated with responsibility. In other words, protecting non- traditional journalists like conventional journalists mean that the first ones have to respect the same ethical principles and mainly to be subjected to the same legal framework.[34] In Stoll v. Switzerland, the Court made clear that "*all persons, including journalists, who exercise their freedom of expression, undertake duties and responsibilities, the scope of which depends on their situation and the technical means they use*".[35] As should be done, journalists, benefiting from Article 10 during their

[31] Cf. Kulesza J. (2012), International Internet law, Routledge, p. 52.
[32] La Rue F. (11 August 2011), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/65/284, para. 61 et seq
[33] Társaság a Szabadságjogokért v. Hungary (14 April 2009), application No. 37374/05, para. 27.
[34] Cf. White A. (2013), "Who should follow journalism ethical standards in the digital era?", in OSCE, The Representative on Freedom of the Media, The online media self-regulation guidebook, Vienna, pp. 63-9
[35] Cf. Stoll v. Switzerland, para. 102.

reports on topics of general interest, should act on trust and also "*provide reliable and precise information in accordance with the ethics of journalism*".[36] Last but not least, considering that in the modern digital era every person deals with vast amount of information, that circulated either via traditional or electronic media, it is now more essential for journalists to comply with journalistic ethics and standards.

1.3.4. Freedom of science

Freedom of expression encloses freedom of science as well even though such protection is not specifically provided in the ECHR or the ICCPR. Freedom of science is covered by the protection of freedom of expression, which includes the freedom to hold opinion, share and receive information and news without frontiers, as already thoroughly analyzed. Particularly, it encloses teaching, research and publication. [37] In more details, freedom of science covers value judgements taken place in cases of detecting deficits in the academic system, and scientific conferences, as the Court has declared in Sorguc v. Turkey.[38]

Apart from the above, academic freedom together with institutional autonomy are also supported by multiple UNESCO recommendations, particularly the recommendation on the Status of Higher Education Teaching Personnel.[39] However, based on the fact that more and more new digital media are being emerged, academic freedom raises new challenges. This means that unlike the previous dimension of academic work, nowadays Internet has significantly contributed to the increase in access to scientific information. At the same time, in the light of new media, the access to the possibilities for distribution of academic opinions and scientific results was clearly facilitated. Consequently, the association of freedom of science with the freedom of expression – as the first freedom is part of the second one- increases with the help of new and innovative communication tools, that the Internet provides.

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[36] Ibid., para. 103.

[37] Lombardi Vallouri v. Italy (20 October 2009), application No. 39128/05, para. 30 d; Wille v. Liechtenstein (28 October 1999), application No. 28396/95, para. 8, 36 et seq. See also Grabenwarter (2012), p. 312.

[38] Sorguc v. Turkey (23 June 2009), application No. 17089/03, para. 35 et seq.

[39] Cf. UNESCO (11 November 1997), Recommendation concerning the status of higher education teaching personnel.

1.3.5. Freedom of artistic expression

Freedom of expression broadens its concept to include art as well. More accurately, according to Article 19 of the ICCPR, it is explicitly established that freedom of expression "in the form of art" enjoys the same level of protection as other forms. Unlike this Article, Article 10 of the ECHR does not include any provision with regard to the subject. However, despite the fact that it remains silent, Article 10 is understood to protect freedom of artistic expression or cultural expression or even creative expression.[40]

Further, the European Court of Human Rights has held that to a large extent the creation of art and the rise of the number of working arts as well as the distribution of them worldwide redounds the exchange of ideas and opinions and thus is regarded as an essential instrument of any democratic society. In particular, in Müller and others vs Switzerland the Court stated that art is able to "*confront the public with the major issues of the day*". [41] To this effect, every work, coming from artists, is covered by the freedom of expression and the same privilege enjoy all activities of galleries and cinemas respectively.[42] However, to my point of view, striking a balance between different rights could be at some level hard in terms to freedom of artistic expression. For instance, in the above-mentioned case, namely Müller and others vs Switzerland, the European Court on Human Rights found that the freedom of expression, including artistic, can override the right of people to images of themselves.[43]

Admittedly, the association between freedom of expression in cyberspace and artistic freedom is apparent, while the first one is an important recondition for accessing to works of art, even art, which is not supported by official networks due to its perceived lower quality. As a matter of fact, acting online allows access to works of art, which is not conventional or even traditional.

[40] Grabenwarter C. and Pabel K. (2012), Europäische Menschenrechtskonvention, 5th edn, C. H. Beck, p. 307
[41] Müller and others v. Switzerland; see also Otto-Preminger-Institut v. Austria (20 September 1994), application No. 13470/87
[42] Cf. Verpeaux (2010), p. 213 and Grabenwarter (2012), p. 312
[43] Müller and others v. Switzerland (24 May 1988), application No. 10737/84

A vivid example is the video clip produced in the US on the Prophet Mohammed, which presented him in a way, that offended the religious feelings of Muslims. As such, the issue became widely known eventually when the movie trailer was broadcasted on YouTube and everyone had the access to this all over the world hence.[44]

In the light of the above, it can fairly be said that the film, coming with such an offensive content, was not produced as a piece of art, but rather as an incitement without existing the value, which characterizes the real art and normally impacts in a positive way on the society. Several countries with overwhelming Muslim majority such as Pakistan asked YouTube not to allow users the access to the contested film clip, but most states did not take any measures to block the access. As a consequence of the clamor, YouTube blocked the access to the movie trailer in some states, excluding Pakistan. In turn, the Pakistani Prime Minister demanded YouTube to be blocked overall until the movie trailer had been repealed. [45] In the aftermath of the Minister's order YouTube explained the ban in countries like Egypt and Libya by the fact that the trailer had led to violence there, apparently ignoring the violence which it had created in Pakistan.[46] Moreover, Google, as the owner of YouTube, did not accept the White House's request to remove the offensive movie trailer, giving poor explanations for rejecting this request. The argumentation of Google indicated clearly the problem of navigating between different perceptions of legitimate restrictions worldwide.

In this case and others similar to it, which are connected to a conflict of human rights[47], different margins of appreciation seem to be important to stay away from immense infringements of religious feelings. Accordingly, political authorities should play a fundamental role and take responsibility, as they need to strike a balance between sacrificing freedom of expression for extremism and avoiding violence.

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[44] The video clip on the film "The innocence of Muslims" had been produced in the US by a Coptic Christian.

[45] See "Anti-Prophet Muhammed film: Pakistan blocks YouTube as two killed in violence", The Times of India (17 September 2012)

[46] Pakistan blocks YouTube as two killed in Anti-Prophet Mohammed film, (The Times of India, 17 September 2012) <https://timesofindia.indiatimes.com/world/pakistan/Anti-Prophet-Muhammad-film-Pakistan-blocks-YouTube-as-two-killed-in-violence/articleshow/16439577.cms> assessed 5 November 2021.

[47] This case involved a conflict of freedom of expression with freedom of religion.

1.4. Corollary rights: right to anonymity and right to whistle- blowing

Several rights are highly correlated with the freedom of expression online such as the right to anonymity and the right to whistle- blowing.

1.4.1. Right to anonymity

Beginning with the right to anonymity, it is worth firstly to mention that anonymous or pseudonymous expression exists for a long time in the written press, mainly among books, written by authors, and reports, which have been critically analyzed. As a result, anonymity is closely related to freedom of expression and more accurately it is considered a part of the freedom of expression. This has been confirmed by the Special Rapporteur on Freedom of Opinion and Expression, in his report of 2011.[48]

Focusing on anonymity in cyberspace, it is clear that several problems often arise such as defamation and online stalking. Trying to prevent those problems, coming with anonymity, efforts have been put to impose obligations of registration and use of special software as well. For instance, in Iran people using cyber cafés are obliged firstly register, as private service providers require registration. Further, social network services like Facebook and Instagram require from users to share their identities in order to create a profile and continue to keep it. Indeed, Facebook insists on knowing the users' real name. In view of its real – name policy, Facebook went as far as deleting the account of the writer Salman Rushdie (of Satanic Verses fame), because his real full name was Ahmed Salman Rushdie. The name on his profile changed to "Ahmed Rushdie" afterwards.

Based on these facts, it is apparent that such a policy against anonymity could have immense impact on freedom of expression in cyberspace. In other words, there is the likelihood that dealing with illegal speech under the veil of anonymity, the right to anonymity online as part of freedom of expression may be eroded. Thus, potential restrictions need to respect the required criteria of Article 10 of the ECHR developed in the practice of the European Court of Human Rights.

[48] Cf. La Rue F. (16 May 2011), Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/HRC/17/27, para. 84.

1.4.2. Right to whistle-blowing

In general terms, the practice of whistle-blowing has gained much support mainly by certain governments, as it is regarded as a sufficient way to identify shortcomings in business or government. For this reason, it is expected to benefit a functioning democracy by revealing corrupt practices. Indeed, even the Parliamentary Assembly, in its resolution of 2010 on protection of whistle-blowers, acknowledged the positive effect of whistle-blowers within a democratic society, as they contribute to the fight against corruption and mismanagement.[49]

At European level, the light to whistle blowing is protected through the Directive (EU) 2019/1937 of the European Parliament and the Council with regard to people who report breaches of Union law.[50] The Whistleblower Protection Directive entered into force on 16 December 2019 and EU member states had to transpose this Directive into national legislation by 17 December 2021. Regarding the implementation of the Directive, it is required member states to implement legislation obliging all companies, in which 50 or more workers are occupied, in order firstly to adopt appropriate reporting channels to enable those workers to report breaches of EU law. Putting in place those reporting channels, according to the Directive, the confidentiality of the whistleblower will be secured. The second goal is to guarantee that persons making whistleblowing reports are legally protected against retaliation for having done so.

In this light, the reporting person should be able to choose the most appropriate reporting channel depending on the individual circumstances of the case. Besides, it is important public disclosures to be protected, considering democratic principles like transparency and fundamental rights such as freedom of expression.

Needless to say, the protections for whistleblowers need to cover reports that are made with regard to breaches of fields of EU law specified in the Directive (e.g. public financial services, products and markets, and prevention of money laundering and terrorist financing, protection of privacy and personal data, and security of network and

[49] See Council of Europe, Parliamentary Assembly (29 April 2010), Resolution 1729 (2010) on Protection of "whistle-blowers"; see also Recommendation 1916 (2010) to the Committee of Ministers.

[50] DIRECTIVE (EU) 2019/1937 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 October 2019 on the protection of persons who report breaches of Union law.

information systems). Therefore, people who report information associated with anyone of those issues (for example harm to the public interest) make use of their right to freedom of expression. As already noted, the right to freedom of expression and information includes the right to receive and impart information as well as the freedom and pluralism of the media. Thus, this Directive is based on the case law of the European Court of Human Rights on the right to freedom of expression.

In the light of the above, it is important this Directive to be implemented in line with fundamental principles and rights securing full respect for, inter alia, freedom of expression and information.

On the other hand, exercising the freedom of expression in such way could be controversial especially when state secrets are at risk. As there is hardly any way to fully prevent classified information being published on the Internet, it is a matter of responsibility where to draw the line. Put it another way, publishing information in cyberspace, which might cause danger on the lives of dissidents or diplomats, could clash with the objective of revealing malpractices.

In the direction of a better understanding, it is worth to mention the jurisprudence of the European Court of Human Rights in whistle-blowing cases. In particular, the case Heinisch vs Germany[51] is a case – milestone, as it can effectively give guidance on this topic. In any case, a total prohibition of whistle-blowing would surely limit the freedom of expression in cyberspace. Lastly, in Guja v. Moldova (GC)[52], the Court held that the disclosure of confidential information, by a civil servant denouncing illegal conduct or wrongdoing at the workplace, was covered by Article 10, due to the strong public interest, brought into play.

It is also worth to refer to the case of WikiLeaks. In particular, when WikiLeaks, namely an online whistle-blowing site, released classified US cables in 2010, several concerns were raises regarding whether publishing secret or classified information can be regarded as a human right. Besides, during the 2008-2009 financial crisis, prosecutors relied much on insiders for the purpose of providing them with information on crimes

[51] Heinisch v. Germany (21 July 2011), application No. 28274/08, para. 93.
[52] Guja v. Moldova (GC) (12 February 2008), application No. 14277/04, para. 72.

and wrongdoing. Contrary to the most EU member states, the United Kingdom and the United States have adopted legislation which protects whistle-blowers.

SECOND CHAPTER

2. LEGAL PROTECTION AND ASSURANCE OF ONLINE FREEDOM OF EXPRESSION

In view of the catalytic function of the Internet for all human rights, the legal protection and subsequently the promotion of the right to freedom of expression is of fundamental importance. For this purpose, several international actors, involving the most influential international organizations have significantly contributed to the assurance of online freedom of expression. In this light this chapter presents an overview of selected international promotion activities.

Before mentioning international frameworks on freedom of expression, it is crucial to mention the position of The UN Human Rights Council, which has held that '… *the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice*', in relevance to article 19 of the International Covenant on Civil and Political Rights (ICCPR). In other words, it is argued that the right to freedom of expression was not conceived to fit any particular medium or technology. No matter how it is exercised, either online or offline, it is regarded as an internationally protected right to which almost all countries of the world have committed themselves.

2.1. International standards on freedom of expression online

2.1.1. The Universal Declaration of Human Rights (UDHR)

The history of the right of freedom of speech and expression precedes the era of the internet. The right's beginnings lie in the both the Universal Declaration of Human

Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Having been recognized the dignity and respect for all human beings, the ICCPR and UDHR ensure, *inter alia*, the right to freedom of expression.

In particular, as noted above, freedom of expression is ensured in Article 19 of the Universal Declaration of Human Rights (UDHR), which holds 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*".

The UDHR, as a UN General Assembly Resolution, is not directly binding on states. However, it is well-established that parts of it, including Article 19, are widely considered as having acquired legal force as customary international law since it was adopted in 1948.[53]

2.1.2. The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) elaborates upon and gives legal force to many of the rights articulated in the UDHR.[54] As such, freedom of expression is also enshrined in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right in the following terms: "*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*".

As the text of the right makes clear, it seems that the ICCPR guarantees the right to freedom of expression in terms similar to those of Article 19 of the UDHR.

Lastly, as a binding treaty, the ICCPR has more value in international law compared to that of UDHR.

[53] See, Filartiga v. Pena-Irala, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd circuit).
[54] International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976.

2.1.3. ASEAN Human Rights Declaration

In addition to the international treaties, there are more regional charters which ensure the right to freedom of expression. In particular, in Asia there is no established regional human rights body. However, the ten countries which are parts of the Association of Southeast Asian Nations, namely ASEAN, formally established the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009. Under these circumstances adopted this group the ASEAN Human Rights Declaration. Therefore, in Asia, both the ASEAN Charter[55] and the ASEAN Human Rights Declaration[56] guarantee the right to freedom of expression.

In detail, the ASEAN Charter, among its principles, has incorporated the "*respect for fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice*." Indeed, under Article 14 of the Charter "*ASEAN shall establish an ASEAN human rights body*". Moreover, the ASEAN Human Rights Declaration, which was adopted in 2012, holds in Article 23 that "*every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice*". As it is seen, the right to freedom of expression encompasses many activities and it can be exercised in both written and oral form and in many other forms (e.g. audio-visual and electronic).

2.1.4. Freedom of expression as stated in the Indian Constitution

[55] The ASEAN Charter has been fully ratified (or accepted in Member States without Parliament or when such ratification cane be done through a Cabinet decision) in all the 10 ASEAN Member States. Singapore was the first to deposit its instrument of ratification with the Secretary-General of ASEAN, on 7 January 2008; Thailand was the last, on 15 November 2008.

[56] ASEAN Human Rights Declaration (Association of Southeast Asian Nations, November 2012) <https://asean.org/asean-human-rights-declaration/> assessed 12 January 2022.

The right to freedom of expression is one of the most fundamental freedoms protected by the Constitution of India under Article 19(1)(a). As it has already explained, this is not an absolute right. In particular, under Article 19(2) the right to freedom of expression and speech is subject to specific restrictions. The high importance of this right lies in the fact that it is considered the fountain which gives birth to numerous other rights, that which come under its ambit. Indeed, these further rights, arisen by freedom of expression, have been reiterated by the Supreme Court in various cases over time such as the right to information, the right to freedom of the press and the right to freedom of opinion.

Furthermore, in India, the right to freedom of expression has facilitated the circulation of productive criticism of the government and its policies as well political campaigns specifically during elections. Despite these benefits, there is also the negative light especially by those in power, while they characterize any comment against them as antinational.

2.2. Other international Conventions on the right to freedom of expression and human rights

In addition to the above international treaties and regional charters, there are more Conventions that guarantee the right to freedom of expression. Firstly, it is worth to mention the American Convention on Human Rights.[57] Under Article 13(1) of such Convention it is held that "*everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice*".

Last but not least, as already explained, at a European level, the European Convention for the Protection of Human Rights and Fundamental Freedoms, namely the European Convention[58], safeguards the right to freedom of expression in Article 10(1), under

[57] AMERICAN CONVENTION ON HUMAN RIGHTS, adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969.

[58] The European Convention on Human Rights was signed on 4 November 1950 in Rome. Over the last 50 years, the Convention has evolved, both through the interpretation given to its texts by the European

which "*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*".

The European Convention on Human Rights is regarded as an important form of expression of the commitment of the member states of the Council of Europe to the values of democracy, peace and justice, and, through them, to respect for the fundamental rights and freedoms of the individuals living in these societies.[59]

2.3. Legislative initiatives at international level

Besides the promotional activities of international organizations and bodies, individual states have taken important initiatives that can be considered as examples of good practice

2.3.1. Initiatives by individual states

Individual states have taken important initiatives which contributed to the stronger safe-keeping of online freedom of expression. Definitely, these initiatives can be regarded as examples of good practice.

Firstly, the Sweden's initiative should be highlighted. This action was taken for the work of the Special Rapporteur on the right to freedom of opinion and expression when drafting his fundamental reports of 2011. In turn, the state supports other international activities such as the Conference on Freedom of Expression of UNESCO in Marrakesh in 2013 and, since 2012, it has organized a yearly international Internet Forum in

Court of Human Rights (the Court) and the European Commission of Human Rights (the Commission), and through the work of the Council of Europe.

[59] Introduction to European Convention on Human Rights – Collected texts, Council of Europe Publishing, Strasbourg, 1994.

Stockholm bringing together stakeholders coming from around the world, in particular also from the South.[60]

Apart from Sweden, the Netherlands, in 2011, started an international coalition of countries which defend the right to freedom of expression on the Internet. The state initiated this Freedom Online Coalition with a conference taken place in The Hague, whereas next conferences carried out in Kenya in 2012 and Tunisia in 2013 respectively. Surprisingly, the Netherlands declared that it would spend €6 million on freedom of expression exercised online, as there were initiatives to support bloggers and cyber activists operating under repression.[61] All these initiatives resulted in a "digital defenders' partnership". Last but not least, 18 members from around the world participated in the Freedom Online Coalition by 2013, including the United States.[62]

An important initiative also was that of Austria, which was the head sponsor of a resolution of the UN Human Rights Council with regard to the safety of journalists, adopted in 2012. In the context of such resolution, a preparatory meeting in Vienna took place aiming to support a study carried out by UNESCO on specific threats to women journalists. Under these circumstances found the resolution 67 sponsors and was adopted by consensus.[63]

THIRD CHAPTER

3. RESTRICTIONS ON FREEDOM OF EXPRESSION IN CYBERSPACE PROVIDED BY INTERNATIONAL LAW

3.1. Principles and problems

Regarding restrictions of freedom of expression exercised on the web, firstly it has to be mentioned that there are several challenges in practice like censorship through

[60] Internet Freedom for Global Development (Stockholm Internet Forum, 2021) <www.stockholminternetforum.se.> assessed 11 January 2022.

[61] Wolfgang Benedek and Matthias C. Kettemann, FREEDOM OF EXPRESSION AND THE INTERNET, (Council of Europe Publishing, 2013), p.169-170.

[62] Ibid.

[63] Ibid.

filtering or even blocking online content, which are thoroughly analyzed in the next Chapter. The fact that the Net is ubiquitous, its accessibility from any corner all over the world and the impact it has on information, published in the cyberspace, as well its extremely wide potential have all to be considered. In spite of the Internet's nature and all its characteristics, the rules for restrictions remain the same in accordance with the doctrine "what applies offline applies online as well". This doctrine was verified in July 2012 by the Human Rights Council in its revolutionary resolution on the protection, promotion and enjoyment of human rights in the cyberspace.[64]

More analytically, strictly restrictions to the right of freedom of expression online have been set. In particular, not only regional but also international human rights conventions, courts and mechanisms as well have acknowledged that freedom of expression in the cyberspace is subjected to limitations by law under specific prescribed circumstances. It is important to note that such restrictions on the exercise of freedom of expression online may not endanger the right itself. Besides, the UN Human Rights Committee has several times pointed out that the relation between the right of freedom of expression and the restriction and between the norm and the exception must not be reversed.[65]

Regarding obligations, arising from Article 19 of the ICCPR, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, stated in his report, conducted in 2011, that as the offline content, any limitation of online material to be implemented as an exceptional measure must meet the following requirements: First, the restriction must be provided by the law[66] and at the same time the principles of predictability and transparency must be met. Second, any restriction to the right of freedom of expression must be in line with the purposes provided under Article 19 of the ICCPR. For instance, a potential restriction must be imposed in favor of the protection of rights or reputation of others or in defense of protecting national security or public order and safety, territorial integrity, health or morals.[67] Third, any

[64] UN Human Rights Council (5 July 2012), Resolution A/HRC/20/8 on the promotion, protection and enjoyment of human rights on the Internet.
[65] Council of the European Union, Human Rights Guidelines on Freedom of Expression Online and Offline, p. 4.
[66] Gawęda v. Poland, judgment of 14 March 2002 and The Sunday Times v. the United Kingdom, 26 April 1979
[67] See Observer and Guardian v. the United Kingdom, 26 November 1991.

restriction to the right of freedom of expression must comply with the principle of proportionality in the sense that it must be necessary and the least restrictive means for the attainment of the pursued goal.[68]

In accordance with Article 10, paragraph 2 of the European Convention on Human Rights, domestic authorities in contracting states may intervene in the exercise of freedom of expression in the case the above-mentioned criteria/conditions are met. Thus, those criteria, noted above, conform at large to ECHR Article 10 paragraph 2, apart from that the lawful grounds are fewer and there is no reference to a democratic society.

Further, according to Article 20, paragraph 2 of the ICCPR member states are obliged to prohibit by law "*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence*". It is necessary these restrictions to be in proportion to the aim sought though.

Moreover, the legislation establishing the relevant restrictions on freedom of expression must be applied by an independent body without finding any discrimination and at the same time it is necessary sufficient remedies against unlawful application of the above-mentioned legislation to exist.[69] This is enclosed in more details in the General Comment of the UN Human Rights Committee on Article 19 of the ICCPR, focused on its case law.[70]

Given that due to the Internet's nature any information uploaded renders available on anyone globally, being in this way omnipresent, it is subject to multiple international, national or supra-national rules, coming from different states, that can cause different treatment. At this point, a vivid example is the existence of different regimes in terms of freedom of expression in Europe and the United States. In particular, considering the enclosure of free speech in the First Amendment to the US Constitution, the prescribed

[68] Długołęcki v. Poland, 24 February 2009 and Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995.

[69] La Rue F. (16 May 2011), Report of the Special Rapporteur on freedom of opinion and expression, para. 69.

[70] . Human Rights Committee (12 September 2011), General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34. See also the commentary by the rapporteur of the UN Human Rights Committee for this; O'Flaherty M. (2012), "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No. 34", in Human Rights Law Review 12:4, pp. 627-654

scope of freedom of expression in the United States is wider and more significant than at European level. In more details, in Europe, forms of expression, that are regarded as unlawful under the ECHR, in America are being protected like racist or hate speech, containing Nazi propaganda.[71] This stance of the United States justifies the fact that the country has some doubts regarding Article 20 of the ICCPR on the prohibition of hate speech and for this reason the U.S. did not sign the Additional Protocol to the Cybercrime Convention, concerning criminalization of acts of a racist and xenophobic nature committed through computer systems.[72]

On the other hand, even at European level Europe standards may differ. This can be led to several jurisdictional problems. Conflicts of jurisdiction for human rights infringements in the cyberspace is a common phenomenon.[73] The French Yahoo case proves this frequent phenomenon impressively. Particularly, French Yahoo had to correspond to French law, that forbade Nazi memorabilia, while its US head office did not have such an obligation.[74]

Apparently, the global nature of the Net leads to difficulties in applying restrictions and at the same time the Internet's nature gives birth to circumvention regarding such restrictions, which however may result in an overreaction by governments.

3.2.Criteria for restrictions and the practice of the Court in Internet cases

The right to freedom of expression is not an absolute right. Article 10, paragraph 2, refers to duties and responsibilities that arise from the exercise of freedom of expression. In a similar manner, Article 19 of the ICCPR refers to "special duties and responsibilities" occurred by exercising freedom of expression. Both duties and

[71] In Retrospect, (Internet & Jurisdiction Observatory, February 2012) <https://www.internetjurisdiction.net/uploads/pdfs/Retrospect-print/2012-in-Retrospect-Internet-Jurisdiction.pdf> assessed 20 December 2021

[72] Council of Europe (28 January 2003), Additional Protocol to the Cybercrime Convention concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, ETS No. 189.

[73] See Heissl, Gregor (2011), "Jurisdiction for human rights violations on the Internet", European Journal of Law and Technology, Vol. 2, No. 1, pp.1-15; see also Chapter 5.

[74] Wolfgang Benedek, Freedom of expression and the Internet, p. 110-111.

responsibilities render the right subject to several restriction, that are, for Article 10 of the Convention, demarcate in paragraph 3.

3.2.1. Criteria for restrictions (the three-part test)

It is absolutely necessary that any measure implemented to restrict freedom of expression must be justified. For this reason, three criteria have to be satisfied. In particular, the measure imposing such restriction a) has to be prescribed by law[75], which means that legality is the first requirement, b) secondly must strive to attain one or more of the legitimate aims, meaning that the second requirement is the legitimacy[76], and thirdly the measure must be necessary in a democratic society in the sense that necessity implies proportionality to the legitimate aim pursued.[77]

In this light, Article 10, paragraph 2, of the ECHR encloses a list of potential reasons of restrictions of freedom of expression, including national security, territorial integrity or public safety as well as prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary. These possible restrictions reveal the worries existed in 1950, namely when the Convention was passed. However, the Court will find that restrictions do not infringe the Convention's principles and guarantees as long as they in fact prescribed by law, are necessary in a democratic society to achieve these goals, as mentioned. As a result, in order to find whether restrictions violate or not the Conventions, we base on the above – mentioned three requirements.[78]

Further, the European Court of Human Rights applies its practice, which has well-established over the decades, to the Internet as well. In other words, cases law, that has emerged over time[79], apply also to cases associated with the web. In this framework, the Court takes the nature of the Net into consideration especially when it has to cope with measures implemented by governments that restrict the Internet.

[75] Gawęda v. Poland, judgment of 14 March 2002 and The Sunday Times v. the United Kingdom, 26 April 1979.
[76] Observer and Guardian v. the United Kingdom, 26 November 1991.
[77] Długołęcki v. Poland, 24 February 2009 and Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995
[78] That is to say, the three-step test of legality, legitimacy and necessity.
[79] Verpeaux M. (2010), Freedom of expression, Council of Europe.

3.2.2. The practice of the Court

In the light of the above, at this point it is crucial to refer the practice established by the Court with regard to restrictions of freedom of expression online. Particularly, in the case of Ahmet Yildirim v. Turkey in 2012[80], the Court critiques whether interference on the right of the applicant to freedom of expression meets three criteria: to wit, whether it was prescribed by law, pursued legitimate aims and was necessary within a democratic society, as required by Article 10 paragraph 2 ECHR. Under the review of this case, the Court considered the fact the Net had been one of the vital means of exercising the right to freedom of expression and information, fact which was at certain an aggravating factor in determining the illegality of the measures taken by the Turkish authorities. The Court did not dispute that there had been a lawful reason for the restriction according to Turkish law in terms of the website being reviewed, but it held that the relevant restriction had been disproportionally excessive by having an effect on the right to freedom of expression of a third person. Needless to say, the Court found that such restriction was not necessary to achieve the legitimate result.[81]

Significantly, as the freedom of expression is of high importance within a democratic society, potential restrictions have to be construed rigorously. Considering the case law of the Court, it is worth to mention that intervention with the freedom of expression exercised online is necessary only within a democratic society in the sense that it can take place when it corresponds to a "pressing social need". Therefore, based on the Court's finding, before limiting the freedom of expression, it must be determined whether such limitation is proportionate to the legitimate aims pursued and whether the reasons provided by authorities of states are both relevant and sufficient.[82]

National authorities have a margin of appreciation when defining whether there is in fact a pressing social need for limitating freedom of expression, while the Court find them as best placed to judge social realities. This margin is reduced though, as it is

[80] Yildirim v. Turkey (18 December 2012), application No. 3111/10.
[81] Ibid., paras. 66-68.
[82] Mouvement Raëlien Suisse v. Switzerland, First Section, para. 49, referring to Stoll v. Switzerland, para. 101.

applied under the supervision of the Court.[83] In another case, i.e. in Ovchinnikov, the Court held that despite the fact that specific information was available on the web, the restrictive measure of Russian Court was accepted for the purpose of protecting the privacy of a child.

Further, the Court has dealt with many cases whose assessment required the latter to strike a balance between the right to freedom of expression in cyberspace and other rights, mostly those correlated with private life. In fact, the issue of Internet privacy and freedom of expression raises much concern at an international level, especially in international debates.[84] Regarding this issue, in the case of K.U. v. Finland, the Court held the following: "*users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others*". [85]

In this case, the rights of others reflected the right and respect for private life, which actually is protected under Article 8 of the ECHR.[86] In more details, an unknown person posted an advertisement with sexual content in the name of the applicant, without the latter being aware of this act, on an Internet dating site. The applicant was underaged (12 years old). The person revealed some details of the child and additionally stated online that he was looking for an intimate relationship with a male. This person included also a link in the post to his webpage with his picture and telephone number.

When the applicant realized what really happened, addressed police and then much effort was put in order the identity of the person to be verified. However, the service provider refused to disclose because of confidentiality rules. Under these circumstances denied national courts to order the service provider to reveal the person's identity, while no explicit legal provisions existed. After that, the Court held that there was infringement of the right to private life due to the potential threat to the physical and mental welfare of the young person at his vulnerable age. Also, it was held that the

[83] Cf. Aleksey Ovchinnikov v. Russia (16 December 2010), application No. 24061/04, para. 46.
[84] See Mendel T., Puddephatt A., Wagner B., Hawkin D. and Torres N. (2012), Global survey on Internet privacy and freedom of expression, UNESCO Publishing, p. 50 et seq
[85] K.U. v. Finland (2 December 2008), application No. 2872/02
[86] Guide on Article 8 of the European Convention on Human Rights (European Court of Human Rights, 31 August 2021) <https://www.echr.coe.int/documents/guide_art_8_eng.pdf> assessed 28.12.2021.

government has the responsibility to establish immediately a system for the purpose of protecting children from pedophiles while it was well known that the Internet was used by people to commit criminal activities. As a matter of fact, the Court stated that: "it is nonetheless the task of the legislator to provide the framework for reconciling the various claims which compete for protection in this context."[87] Obviously, this statement indicates that the Court focuses on the protection of the private life and reputation of minors and young people, especially when they are in risk meaning that their names and identities are published online.[88] This is because the engagement of underaged people or even young children in cyberspace increases the risk being targeted by online predators or becoming victims of other forms of child abuse.

Therefore, states are obliged to protect, respect and guarantee all human rights exercised on the web. The protection of childrens' human right may implicate Internet intermediaries forcing them to reveal information in order prosecutions to be feasible. This may lead to limitation of freedom of expression of the parties, but under Article 10 freedom of expression can be restricted and this interference is judged by the fact that it pursues the legitimate goal of safeguarding the rights of others.

In another case, i.e. in Perrin v. the United Kingdom, the applicant had asserted his right to freedom of expression to publish obscene material on a website. In this case, the Court took into consideration the need for protecting morals and the rights of others, especially those of children. As such, for the sake of this protection the criminal conviction for the publication of a freely accessible preview webpage with no age checks is justified, while it is quite possible minors to find obscene or offensive pictures on the web.[89]

Last but not least, in Neij and Sunde Kolmisoppi v. Sweden the Court held that protecting the plaintiffs' copyright to the material that was under review was a lawful aim pursued by the restriction. In this context, all convictions which followed pursued the legitimate aim of the protection of others' right and achieved the prevention of crime.[90]

[87] K. U. v. Finland (2 December 2008), application No. 2872/02, paras. 41-50.
[88] Ovchinnikov v. Russia (16 December 2010), application No. 24061/04, paras. 49-50
[89] . Perrin v. the United Kingdom (18 October 2005), application No. 5446/03, Decision on Admissibility.
[90] Neij and Sunde Kolmisoppi v. Sweden (19 February 2013), application No. 40397/12, at 10

As detailed above, we can draw the conclusion that on the one hand the Net has not changed from the root the nature of freedom of expression or the restrictions to its protection. Besides, freedom of expression is a fundamental core for numerous human rights. On the other hand, the Internet heightens infringements of human rights and intensifies their harm. As such, it is considerably necessary the legislation and the practice of limitations to be developed respectively. Besides, the legal regime regulating legitimate restrictions to freedom of expression exists and also the three criteria, analyzed thoroughly above, apply also in cases with an online connection. Needless to say, what is legal offline is legal online as well. However, the global nature of the Internet together with its amplifying and globalizing effects have to be seriously considered.

Accordingly, the European Court of Human Rights in its law cases has to respond effectively to upholding its standards developed in its jurisprudence on freedom of expression and applying them to the cyberspace and secondly to take into consideration the Internet's character and its ubiquity, asynchronicity and its empowering potential as well. By addressing these challenging, the coming years the Court will demarcate the concept of freedom of expression online more clearly and effectively.

FOURTH CHAPTER

4. CHALLENGING LEGAL ISSUES ON FREEDOM OF EXPRESSION ONLINE

The Net has definitely a substantial impact on all fields of human activity and has increased the possibilities to communicate with other people at a global level, exchange ideas and share information. This chapter is focused on some specific aspects of freedom of expression exercised online. These issues provide us a clearer picture of the challenge of guaranteeing freedom of expression.

The analyze of these arisen issues will answer several important questions, have been gradually set, such as "do we need content regulation at all?", "What should legislators take into consideration when considering legislation that may inhibit freedom of expression?".

4.1. Child protection under the scope of freedom of expression

A specific issue that may arise enjoying the right to freedom of expression is the impartation of ideas which may be unsuitable for certain age groups. This means that children expressing their freedom of expression in the cyberspace may deal with offensive information. As a consequence, from my point of view, it is important freedom of expression to be subjected to more effective and strict limits notably when this freedom is expressed by children, which are vulnerable because of their age and as such they must be fully protected.

In this context, it is worth to mention two noteworthy cases of the European Court of Human Rights, which contribute to setting the stage for balancing freedom of expression and the need to protect children who express this right online. Regarding the first case, namely in Perrin v. UK[91], the European Court did not accept the complaint of a person who was the owner of a website and had been convicted on charges for obscenity. The Court's refusal lies in the fact that this person could have implemented measures in order minor not to be exposed to offensive and obscene pictures. In more details, the Court held that the owner of the website could have used age checks on the free preview page. Considering this case law, it is apparent that states have to become more active in the field of setting a suitable legislation in order children to be more protected. Furthermore, in the second noteworthy case, namely in K.U. v. Finland[92] a person had revealed personal details of a minor (12 years old child) on a dating website. The publication of child's details put the latter in danger, while the child could be a victim of sex predators. As Finnish law in this period of time did not let police to ask Internet service providers to make the identity of website owner known, it was acknowledged that this reveal was violation of the right to privacy in accordance with the Finnish legislation.

Therefore, as the anonymity, which characterizes communication on the Net at a large extent, makes it harder for police to guarantee human rights of victims of privacy violations, at a European level member states have to set an adequate legal framework

[91] Perrin v. the United Kingdom (18 October 2005), application No. 5446/03.
[92] K.U. v. Finland (2 December 2008), application No. 2872/02, paras. 41-50.

to pierce the veil of anonymity in cases like the ones above. Furthermore, underaged people are significantly vulnerable in social networks. This is because they contact unknowingly with other people, who may be sex predators, and more importantly they share personal information, fact which have negative consequences. Apart from these, it is very often for children, acting online, to get involved in harmful behaviors or even come across harmful and abusive content such as pornography. As such, children can easily become victims. Moreover, cyber-bullying and cyber-grooming are two important and frequent dangers for children. Although children, notably older children, should use social networks in order to develop their personalities and self-identities, social network service providers need to set safeguards.[93]

4.2. The specific issue of child pornography

4.2.1. Definition of child pornography under provisions of EU instruments

To begin with a concise definition of child pornography, this term refers to any content which shows sexually explicit activities involving a child. Visual depictions of child abuse enclose photographs, videos, that digitally or through computer systems generated. This material depicts a crime scene, involving a child, and the documentation is then circulated for the purpose of personal consumption.

In more details, in Council of Europe's Cybercrime Convention 2001[94] is defined as child pornography the pornographic material, which visually depicts an underaged person engaging in sexually explicit conduct or "*a person appearing to be a minor engaged in sexually explicit conduct*" or "*realistic images representing a minor engaged in sexually explicit conduct*". Apart from this Convention, Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse defines child pornography[95] as "*any material that visually depicts a child*

[93] In the case they do not succeed in doing so, then states need to intervene by enforcing legal framework, see K.U. v. Finland, as analyzed above.

[94] Convention on Cybercrime (Council of Europe, 2001) <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm> assessed 2 November 2021

[95] Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Council of Europe, 2007) <https://rm.coe.int/1680084822>, assessed 2 December 2021.

engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes."[96]

Lastly, in terms of what child pornography constitutes the United Nations' Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography[97] defines this phenomenon as "*any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes*".[98]

Child pornography can be committed both online and offline. As it is analyzed below, sexual abuse and exploitation of underaged people is now a quite frequent phenomenon, as it increasingly takes place on the Internet or at least with some contact with the online environment. As child exploitation, committed offline, can take place in many forms, so can online abuse of minors as well. It should initially be noted that online child sexual exploitation requires the use of the Internet, which is regarded as a means to exploit vulnerable and unsuspecting children sexually. As such, online child pornography entails every act of a sexually exploitative nature, committed against an underaged person, and have a certain link with the cyberspace. Indeed, online child pornography includes any use of information and communication technologies, namely ICTs, leading to sexual exploitation or causing a child to be sexually exploited or causing images or other material documenting such sexual abuse to be produced, bought, sold, possessed and distributed.[99]

4.2.2. The crime's dimension

Child pornography is a phenomenon which predates the Internet age, but the advent of Internet and subsequently technological advances have increased the production and distribution of this type of pornography throughout the globe. As noted above, the

[96] See Article 20(2)

[97] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly resolution, (United Nation Human rights office of the High Commissioner, January 2002) <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx>, assessed 2 December 2021.

[98] See Article 2(c)

[99] Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (Interagency Working Group in Luxembourg, January 2016, <https://ecpat.org/wp-content/uploads/2021/05/Terminology-guidelines-396922-EN-1.pdf>, assessed 2 December 2021

childrens' right to freedom on the web, which is exercised without limits, could lead to various issues, one of them is the child pornography, when children imparting information with sexually abusive content or contacting with pedophile, who try to approach them in many ways.[100] The widespread of the Net made images to be produced, copied and finally delivered extremely rapidly, whereas in the past this material had to be processed and delivered.

Undoubtedly, child pornography is a global issue and has raised various issues at a global level. The United States is one of the largest producers and consumers of child sexual abuse and exploitation content worldwide.

In the light of the above, as the nature and pervasiveness of the crime of child pornography are quite serious, there is the need to address this crime urgently and states have to take one step further and implement sufficient measures to provide a protection for exploited children.

Minors, who express their right to freedom in cyberspace, are nowadays being exposed to live-streaming sexual abuse. This type of abuse has recently skyrocketed. Under these circumstances pay individuals to watch video showing sexual abuse of a child, committed in real time, via streaming service.

Unfortunately, this type of child abuse is exceptionally difficult to be detected because of the nature of the crime, given that it is committed online and indeed in real time, and the lack of digital evidence left behind following the crime. In practice, the majority of technology companies use automated tools in order to find images and videos, which have already been set down by authorities and recorded as child sexual abuse material, but they have difficulty in tracing new, previously unknown material and as such their investigation depends on users' reports. This difficulty of the detection of relevant material lies also in the fact that distributors and consumers of the material have developed complicated strategies to avoid the detection. It is often to use popular platforms or to create profiles on social media to find a community of child sexual predators to whom they can promote the abusive material using coded language. Then, they lead those, who are interested in deploying the material, to more private channels

[100] Alin Teodorus Drăgan, Child Pornography and Child Abuse in Cyberspace, 2018, p.54-55.

where they can access to the material, often using encrypted messaging application or poorly policed file-sharing services.[101]

4.2.3. Legal provisions criminalizing child pornography

Considering the right of children to freedom of expression on the web together with their protection from sexual abuse and exploitation, child pornography, that takes place online, has been acknowledged as an international increasing problem.[102] For this reason, important policy initiatives at the supranational, regional, and international levels have been developed in order to regulate the problem and confront the illegal Internet content, showing sexually exploited children, hence.[103] Some of these initiatives are the following: the European Union's Framework Decision on combating the sexual exploitation of children and child pornography[104], the Council of Europe's Cybercrime Convention 2001[105], The Council of Europe's more recent Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse[106] and the United Nations' Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.[107]

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[101] Child sexual abuse images and online exploitation surge during pandemic (BBC News, April 2020) https://www.nbcnews.com/tech/tech-news/child-sexual-abuse-images-online-exploitation-surge-during-pandemic-n1190506 assessed 2 December 2021

[102] Note the following instruments regarding the need to extend particular care to children: Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959; the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10). See further the Convention on the Rights of the Child, adopted, and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989.

[103] See generally Akdeniz, Y., Internet Child Pornography and the Law: National and International Responses, Ashgate, 2008 (ISBN-13 978-0-7546-2297-0).

[104] Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (see OJ L 013 20.01.2004, p. 0044-0048).

[105]CONVENTION ON CYBERCRIME (COUNCIL OF EUROPE, 2001) <https://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf>, assessed 5 January 2022.

[106] Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (COUNCIL OF EUROPE, 2007) <https://rm.coe.int/1680084822>, assessed 5 January 2022.

[107]Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by

According to the above – mentioned legal instruments states are required to criminalize production, distribution, dissemination or transmission of child pornography, supplying or making available of, and the acquisition or possession of child pornography among other child pornography associated with crimes. It is crucial that these international agreements provide for up to ten years of imprisonment for cases of the most severe crimes of production and distribution, whereas it is provided for up to five years of imprisonment for less serious offences (e.g. possession).

At European level, an additional agreement aiming to fighting sexual abuse of children is the Directive 2011/93/EU.[108] In 2009, the European Commission (EC) proposed a directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA. This directive was adopted in 2011 (Directive 2011/93/EU). The Directive was originally intended mainly to replace the provisions established in the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, namely the Lanzarote Convention. However, the Directive went much further in many aspects, including in the provision of minimum sanctions, common offence definitions, and provisions for victims' protection.

In more details, as the phenomenon of child sexual abuse at EU level is increasingly intensified, the Child Sexual Abuse Directive encloses provisions on criminal procedure and judicial cooperation. Regarding its provisions, it is worth to mention that the Directive copes with administrative and policy measures. Significantly, the Directive sets minimum rules associating with the delineation of criminal offences and sanctions. In addition, the Directive encloses provisions to boost the deterrence of those crimes and protection of exploited victims as well. Therefore, the Directive introduces specific innovations, while it spreads the scope of the offences.[109]

More recently, namely on 24 July 2020, the European Commission presented the EU strategy for the purpose of establishing a more sufficient prevention against child sexual

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General Assembly resolution A/RES/54/263 of 25 May 2000 (United Nation Human Rights, January 2002), <https://www.ohchr.org/en/professionalinterest/pages/opsccrc.aspx> assessed 5 January 2022.

[108] European Parliament, Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

[109] Ruelle E., 'Sexual violence against children – The European legislative framework and outline of Council of Europe conventions and European Union policy', in Protecting children from sexual violence. A comprehensive approach, Council of Europe Publishing, 2010, Chapter 3.

abuse for the period 2020-2025.[110] This strategy intends to provide a legal framework for adopting a strong response to child sexual abuse both in its online and offline form. Among the articulated key actions of this EU strategy is to guarantee the implementation of the Directive 2011/93/EU, that has already mentioned, wholesale. Moreover, this initiative intends to identify legislative gaps and apply better practices and actions. Lastly, this EU strategy aims to reinforce law enforcement efforts at national and EU level in terms of the prevention of child sexual abuse.

4.3. Freedom of expression in social networks

Social networking sites (SNSs)[111] play an important role in rising the Internet's value as a means of discourse and more importantly they have revolutionized modern communication. In particular, they facilitate the exercise of human rights, notably the freedom of expression in cyberspace and thus it could be said on the one hand that social networks can be the core of democratic participation and democracy. On the other hand, social networks may act as a threat of human rights. As the Council of Europe's Council of Ministers' Recommendation on the protection of human rights in combination with social networking services[112] has stated, threats can arise due to the lack of legal safeguards, regulating the process, which can cause the exclusion of social networks users. Additionally, these threats lie in the fact that it is provided deficient protection for children and younger people against harmful and offensive or abusive content or even behaviors. This lack of some limits, that could protect at least partly users of social networks lead to the lack of respect for others' rights (e.g. lack of transparency regarding the purposes of which personal data of users collected and lack of setting protecting users' privacy).[113]

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[110] EU STRATEGY FOR A MORE EFFECTIVE FIGHT AGAINST CHILD SEXUAL ABUSE (European Parliament, December 2021) <https://www.europarl.europa.eu/legislative-train/theme-promoting-our-european-way-of-life/file-eu-strategy-to-fight-child-sexual-abuse> assessed 5.1.2022.

[111] See Noor Al-Deen and Hendricks (eds), Social Media: Usage and Impact (Lanham, MD: Lexington Book, 2012); and Boyd and Ellison, 'Social Network Sites: Definition, History and Scholarship' (2008) 13 Journal of Computer-Mediated Communications 210.

[112] . Council of Europe, Committee of Ministers, Recommendation CM/Rec(2012)4 on the protection of human rights with regard to social networking services.

[113] Ibid., para. 3.

Moreover, freedom of expression online can be threatened by terms of service that do not allow specific content due to economic considerations. An indicative case is associated with the regulation of content on the social networking site Facebook.com. (current Facebook.com/meta).[114] User behavior and the treatment of content uploaded to Facebook sites are covered by the Facebook Principles[115], the social network's Statement of Rights and Responsibilities[116] and the Facebook Community Standards.[117]

However, Facebook Principles do not make an allusion to humans' dignity or human rights and further do not refer to any human rights codification, but it is mentioned that users have the freedom to share and connect. In other words, this kind of freedom means that people should have the freedom to share any information they want in any medium.

Anyone who has a profile on Facebook and thereby use or have access to this network agrees to the Statement of Rights and Responsibilities, that encloses prohibitions on harassing other users, who have a profile on Facebook as well, in a discriminatory manner or acting in a way that violates someone else's rights or differently infringes the existed legislation. Moreover, people who have convicted for sex offences many not be allowed to use Facebook. As such, a Facebook's user who infringes "the letter of Facebook's Statement", or even causes troubles or serious risks or creates potential legal exposure, there is likelihood to be penalized by the company by stopping to provide all or a part of its services to that user. Further, according to company's policies, users have to comply with all applicable laws when deciding to create a profile and then use it or at least access to the network.

Apart from the above-mentioned, in the Facebook Community Standards, Facebook moves to the removal of posts, which are considered a "*direct threat to public safety*". Indeed, organizations having in their record criminal activities correlated with terrorist or violence are not allowed to use the network anymore. Also, it is worth to mention

[114] Facebook has extremely expanded last years, as each month more than a billion users at a global level are actively engaged with this network, see Lee, Facebook Surpasses One Billion Users as It Tempts New Markets (BBC News, 5 October 2012), < http://www.bbc.co.uk/news/technology-19816709> accessed 4 December 2021. Six hundred million users are accessing the site via a mobile device. Facebook has overtaken Myspace, with twenty-five million registered users, as the leading SNS.

[115] Facebook's Privacy Principles <www.facebook.com/principles.php> assessed 6 December 2021

[116] Facebook, Statement of Rights and Responsibilities <www.facebook. com/legal/terms> assessed 6 December 2021

[117] Facebook, Community Standards <www.facebook.com/communitystandards> assessed 6 December 2021.

that in accordance with Facebook Community Standards any encouragement given of self-mutilation or eating disorders or hard drug abuse as well is strictly prohibited. Facebook does not accept also hate speech, a term which is examined in the next chapter, and indeed the network distinguishes it from "*humorous speech*". This means that Facebook tends to apply an anti-discrimination law and therefore possible attacks based on race, ethnicity, national origin, religion, sex, gender, sexual orientation, disability or medical condition are not allowed. It is also important that Facebook has a strict policy against pornographic content shared on the site and generally any sexual content in which underaged people or younger children get involved. An additional issue, has been regulated in Facebook Community Standards, is the issue of the display of nudity. Put it another way, Facebook has imposed relevant restrictions in order any image or video or any else content displaying nakedness to be removed. What happens in this case is that when users report images and videos and posts as well as offensive or abusive, then outsourced content-moderation teams check the reported content and applying Abuse Standards they confirm the abuse and delete the content or they do not confirm there is the need of removal of the reported content and in this case decide to let the content on the site.

In the light of the above, it is clear that Facebook standards, despite the fact that for example they do not allow images and videos with sexual activities, they allow pictures showing people including same-sex individuals kissing each other or groping. Also, it is not allowed users to "*describe sexual activity in writing, except when an attempt at humor or insult*". Significantly, Facebook allows images showing marijuana use "*unless context is clear that the poster is selling, buying or growing it*". The company bans racial comment and any kind of discrimination, as noted showing at the same time "*support for organizations and people primarily known for violence*".

It is deduced from the above that most of the prohibitions, included in the Standards, do not keep up with human rights standards, if applied to the public sphere. As such several problems arise. In particular, the first problem is that Facebook seems to single out and accept certain content without referring to human rights. Secondly, although Abuse Standards of Facebook have been published, they are not officially known to the public. Accordingly, people do not know against which standards their postings are measured. So, from my point of view, the application of those Standards is problematic.

From an international freedom-of expression perspective, Facebook Abuse Standards section with the title "IP Blocks and International Compliance" is of high interest. Definitely, the posted content found has to be "*escalated"* and then forwarded to a higher-ranking Facebook content controller for review. In this context, it is worth to mention the Court's decision in the Yildirim case, in which it is held, after the fact that Turkish authorities had blocked access to specific Google sites, that the limitation of access of the Internet without the existence of a strict legal framework regulating the scope of the ban constituted infringement of freedom of expression.[118] Lastly, the deletion of negative posts is in a direct line with the European Court of Human Rights' case law.

While the scope of Facebook as an international forum of communication and exchange of ideas is increasingly expanding, its Abuse Standards are de facto the law in force in relation with the freedom of expression within an essential international forum. However, this raises many concerns, as it is not possible that problems not to be arisen when leaving the establishment of freedom-of expression standards to a private company, which the assurance of the freedom of expression is not its priority. Yet, a document such as the one of Abuse Standards, created by a social networking company, has to be reviewed explicitly against the international law on freedom of expression.

4.4. Technological neutrality and freedom of expression

In July 2012, the UN Human Rights Council, namely the HRC, adopted a key resolution on the promotion, protection and enjoyment of human rights in cyberspace.[119] In paragraph 1 of the resolution is stated that "*the same rights that people have offline must also be protected online*". This means that human rights exercised online are the same as offline and only the challenges, which arise on the web, are new.

The Human Rights Council in its resolution in terms of online human rights makes mention to freedom of expression and refers to the language of Article 19 of the Universal Declaration of Human Rights (UDHR), which provides that everyone has the

[118] Yildirim v. Turkey (18 December 2012), application No. 3111/10.

[119] UN Human Rights Council (5 July 2012), Resolution A/HRC/20/8 on the promotion, protection and enjoyment of human rights on the Internet. In more detail see Cf. Kettemann M.C. (1/2012), "The UN Human Rights Council Resolution on Human Rights on the Internet: Boost or Bust for Online Human Rights Protection", Human Security Perspectives, pp. 145-169

"*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*".

Considering the Article 19's language, it is clear that it is based on technological neutrality ("*through any media*") and additionally the importance of participation in processes of seeking and receiving information and ideas at a global level is highly acknowledged ("*regardless of frontiers*"). Similarly, Article 19 of the ICCPR guarantees freedom of expression being not dependent on borders. Also, as already noted, paragraph 2 of the above-mentioned Article enshrines the right to freedom of expression, including the "*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 [one's] choice*". As a consequence, we find the dual preconditions of technological neutrality – "through any [media] of [one's] choice" – and the universality of the information processes – "regardless of frontiers".

This commitment to the technological neutrality of human rights is based on the Universal Declaration of Human Rights, enclosed in the ICCPR, has been verified by the Human Rights Council resolution. As such, it is regarded as a part of international human rights law.

4.5. Network neutrality and freedom of expression

Network neutrality is considered a design paradigm in accordance with which the network must not prioritize some information over other. Network neutrality can be infringed by blocking certain online content, monopolistic pricing, preferential treatment to certain providers and failures in transparency. Particularly, certain commercial uses may be prioritized over others and an addition problem is that certain Internet service providers may wish to penalize users of file-sharing services by decelerating their connections.

In 2010, the Council of Europe's Committee of Ministers stated that any exceptions to network neutrality must be in line with the human rights protection framework.[120]

[120] Council of Europe, Committee of Ministers (29 September 2010), Declaration of the Committee of Ministers on network neutrality, Declaration of the Committee of Ministers on network neutrality, para. 9, (Council of Europe, 2010)

Actually, both states and private Internet companies have to keep their human rights obligations in terms of freedom of expression exercised in cyberspace. However, this does not mean that network operators are not allowed to manage Internet traffic. Certainly, it is important specific management methods to be developed in order to ensure quality of service and network stability. Accordingly, as police must regulate traffic for the purpose of ensuring a safe travel for all drivers without discriminations against certain drivers, network managers as a principle must not deviate from network neutrality.

Exceptions from the above can be allowed only when "overriding public interests" are at risk. Under these circumstances, have to consider states not only the protective scope of Article 10 but also the cases law of the European Court of Human Rights. Yet, restrictive measures need to meet the three criteria, namely the three-past test, as detailed in previous chapter, which are provided by law. To that effect, the Council of Europe recommended that any measures that infringe network neutrality should be subjected to review and kept only for a necessary period. In this context, network operators have to inform Internet users when, under which circumstances and for which reasons they infringe network neutrality and in turn states need to provide for adequate avenues to challenge network management decisions.[121]

In practice, the human rights issues that arise once companies violate network neutrality made clear when Deutsche Telekom, Germany's most important Internet access provider, declared that it would reduce for future clients the downstream transfer speed to 384 kBit/s after transfer volumes of 74 to 400 GByte had been reached. This reduction brings about several problems as Telekom can restrict users' access to Google's YouTube, Amazon's Lovefilm and ProSiebenSat1's Maxdome services.[122] The company's announcement was subjected to criticism and at the same time it shows apparently how the lack of a cohesive international framework for securing net neutrality raises concerns and problems.

<https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805ce58f> assessed 24 January 2022.

[121] Council of Europe, Committee of Ministers (29 September 2010), Declaration of the Committee of Ministers on network neutrality, para. 8.

[122] World Economic Forum, The future of net neutrality (Global Agenda, 2015) https://www.weforum.org/agenda/2015/02/the-future-of-net-neutrality/ assessed 21 January 2022.

4.6. Conflicting with online hate speech

Hate speech is not a phenomenon, which emerged the last decades. This phenomenon, in contrast, predates the Internet age.[123] It appears in many forms, notably in the form of blasphemy, xenophobia and discrimination against minorities and immigrants.[124] Hate speech is present both online and offline. Indeed, Internet accessibility, the nature of the Internet as well as the transparency in the cyberspace make online hate speech easier for authors of such online abuse and more difficult for authorities to deal with it[125] by establishing an adequate legal regime or by strengthening the effectiveness of the current legal framework, that can fight the phenomenon sufficiently and protect victims.

The biggest challenge which lies beneath the confrontation against online hate speech is to find the balance between the right of persons to express their opinions, which sometimes offend and disturb others, and the right to others not to incur offensive and abusive messages of hate. To that effect, the Court in Erbakan[126] held that tolerating and respecting the dignity of all human beings lead to a "democratic pluralistic society". However, it is not possible in our society all opinions to be based on tolerance and respect for the equal dignity of human beings, but opinions going over offense and disturbance and subsequently "spreading, inciting, promoting or justifying hatred based on intolerance", as the Court stated in Erbakan, can to be punished in democratic societies.

As already noted above, the Internet has rendered the engagement with online hate speech easier because of its nature and the rapid technological advance. In more details, according to the Special Rapporteur's, namely Frank La Rue, report, published in 2012, the Net allows anyone to become the author of hate speech anonymously[127] and as such

[123] Cf. Council of Europe, Committee of Ministers, Recommendation No. R 97 (20) on "hate speech" and Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe on blasphemy, religious insults and hate speech against persons on grounds of their religion
[124] Council of Europe, Committee of Ministers, Recommendation No. R 97 (20) on "hate speech"
[125] See Akdeniz Y. (2010), Racism on the Internet, Council of Europe
[126] Erbakan v. Turkey (6 July 2006), application No. 59405/00, para. 56.
[127] La Rue, F., Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Doc. A/67/357 of 7 September 2012, at 30

the Net contributes to the increase of the visibility of hate speech. Indeed, in the wake of the immigration increase and the appearance of terrorism, the visibility of online hate speech is becoming more intense. Thus, in the above-mentioned report it is highlighted that national laws enclose "*flawed national security and anti-terrorism laws and policies, such as racial profiling, demagogic statements by opportunistic politicians and irresponsible reporting by the mass media*".[128]

Further, it is worth to mention that the Court, in its jurisdiction, has built parameters in the purpose of distinguishing between merely offensive opinions, which are legally protected, and hate speech, which is prohibited. In this context, the Court developed these main parameters without referring to the Internet. Despite that, parameters can be applied to the cyberspace. Online hate speech is not protected by Article 17 of the ECHR, that prohibits the infringement of rights, or by an application of the limitations contained in articles 10 and 11, namely restrictions considered necessary in the interests of national security, public safety, the prevention of disorder or crime, the protection of health or morals and the protection of the rights and freedoms of others.

In Féret v. Belgium[129] the Court held that aggressive political slogans, handed out on leaflets, could provoke racial discrimination. Indeed, they could have strong impact on election. The Court's reference to the impact of political slogans on election can have an effect on assessing the limits of Article 10 on the Internet, as publications, taken place online, can have stronger resonance than offline publications.

Moreover, in Jersild v. Denmark[130] the Court referred on an existed difference in the treatment of authors of racist comments and those, who disapprove such abuse and as such report it. More accurately, in Jersild, a Danish journalist created a documentary, which included a footage showing people making racists comments. In this case, it was found that the journalist did not exceed the limits of freedom of expression. So, this difference, arisen from this case, between racist remarks, which can be prohibited and punished, and reporting on racist remarks is essential notably since citizen journalists and bloggers have become active, as already noted in previous chapter. The Danish

[128] Ibid., at 24.
[129] Féret v. Belgium (16 July 2009), application No. 15615/07
[130] Jersild v. Denmark (23 September 1994), application No. 15890/89

court's punishment of the journalist was referred as infringement of his right of freedom of expression in the form of his critical presentation of people making racist comments.

Furthermore, the Court has also held that severe and prejudicial imputation, associated with sexual orientation, could be considered as a serious form of discrimination as those discriminations based on other grounds. In the light of this, the Court, in Vejdeland and Others v. Sweden[131] , ruled that it was correct for Swedish authorities to punish the author and distributor at a school of an anti-homosexual leaflet.

Moving towards a further form of hate speech, which is prohibited both online and offline, is that based on religion. In Norwood v. the United Kingdom[132] the Court held that authorities could legitimately criminalize expressions, correlated with a religious group (Islam), to terrorism. Similarly, in Pavel Ivanov v. Russia[133], according to the Court's rule, authorities could legitimately criminalize expressions linked with provocation of hatred towards Jewish people. In more details, in the first mentioned case, namely the Norwood case, the applicant had placed a poster in his window appearing the Twin Towers in flames with the caption "*Islam out of Britain – Protect the British People*". The Court held that he could not be protected under Article 10 against this conviction of aggravated hostility towards a religious group by the British authorities. What applies to placing such a poster in a window with a caption with the above-mentioned content must apply online, specifically to posting a message on anyone's social network profile. In the event that his/her profile is not open for anyone in the sense that merely a limited number of people can see the posting, the final conclusion may be different.

Having just referred social media, it is worth to mention that they have facilitated political activism on a larger extent than in periods when the Internet was not widely widespread. This fact is quite important as it enables to assess whether expression can be considered a threat of public order. To that effect, in Karatas v. Turkey[134], the Court found that the higher the impact of speech, the higher its potential to disrupt public order is.

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[131] Vejdeland and Others v. Sweden (9 February 2012), application No. 1813/07

[132] Norwood v. the United Kingdom (16 November 2004), application No. 23131/03, admissibility decision

[133] Pavel Ivanov v. Russia (20 February 2007), application No. 35222/04, admissibility decision.

[134] Karatas v. Turkey (8 July 1999), application No. 23168/94, para. 52.

As the Internet expands its dynamic more and more, the possibility for expressing various forms of hate speech is also enlarged. For this reason, the Council of Europe has developed an initiative to deal with cybercrime and fight racist or xenophobic acts, expressed online. As such, in 2003, it adopted an Additional Protocol to the Convention on Cybercrime in terms of the criminalization of racist and xenophobic acts, taken place through computer systems.[135] In particular, Article 2 paragraph 1 of the Protocol considers racist and xenophobic acts as "*any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors*".

Member states which acceded to the Protocol have accepted to adopt legislative and other measures, enclosed in the Protocol, that consider necessary in order racist and xenophobic material committed through computer systems to be established as criminal offences under domestic law. Additionally, Articles 4 and 5 of the Protocol define that member states have to criminalize racist and xenophobic acts, incited by threats and insults. Also, under Article 6 member states, respecting international human right laws, commit to setting adequate legislation to criminalize the denial, gross minimization, approval or justification of genocide or crimes against humanity, as defined by international law and recognized by final and binding decisions of an international court established by relevant international instruments and whose jurisdiction is acknowledged by the state.

In the aftermath of the above-mentioned Protocol, in 2008 the Council of Europe set Framework Decision 2008/913/JHA resulting in the confrontation of specific forms of racism and xenophobia by means of criminal law, namely CDF[136]. In this context, this Decision seeks member states to be motivated to set laws and regulations regarding certain offences associated with xenophobia and racism. Particularly, member states were obliged to comply with the provisions enclosed in the Framework Decision by 28

[135] Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (Council of Europe, 2003) <https://rm.coe.int/168008160f>, assessed 1 December 2021

[136] Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

November 2010.[137] In more details, the CDF is based on criminalizing racist and xenophobic hate speech and further it obliges member states to guarantee that for other offences, which have been already regulated by member states, a racist or xenophobic motivation is referred as an exacerbating factor.[138]

4.7. Defamation, reputation and freedom of expression online

While negative rumours, which in reality prosper in the cyberspace, harm someone's reputation, internet platform providers and bloggers have to avoid engaging in defamation and more significantly journalists have to choose carefully which content they publish in the sense that that they have to be careful not to publish defamatory content. This is because it is quite difficult and sometimes very costly to prove the real truth.[139] For example, a customer on a travel forum might claim that a certain hotel, which he/she visited, was not a good choice due to the lack of cleanliness and broken appliances. The customer's statement encloses his/her opinion, as he/she says that this hotel was a bad choice, and it also includes a fact, namely broken appliances. In this event, if the specific hotel asks the website owner to repeal the customer's post, arguing that it is defamatory, the owner has to choose from deleting the post and infringing in this way the right to freedom of expression of its users or keeping the post and thus, having owned up to it, risking a defamation-based suit by the hotel. The risk related to the defamation, which arises in this case, is how to prove the veracity of the statement. Although the post may help, it is not easy for the website owner to prove that at a certain period of time the appliances were faulty and the hotel room was not clean.

Definitely, expressing value judgments online cannot be the same as defamation. Just statements of fact can be defamatory. At this point, it is worth to mention the Lingens case, in which the European Court of Human Rights held that "*the existence of facts*

[137] The European legal framework on hate speech, blasphemy and its interaction with freedom of expression, (European Parliament, 2015) <https://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU(2015)536460_EN.pdf> assessed 1 December 2021

[138] Accurately, Article 4 of CFD defines: "*necessity to consider racist and xenophobic motivation as an aggravating circumstance or to ensure that courts take such motivations into account in the determination of penalties*".

[139] Cf. Dario M. (2008), Defamation and freedom of speech, Oxford: Oxford University Press.

can be demonstrated, whereas the truth of value judgments is not susceptible of proof".[140] However, the Court directs its attention to the context of a statement in order to find whether it is a true opinion or differently a statement of fact, which seems to be a value judgment.

It is worth to mention that sometimes the right to freedom of expression and the right to reputation as a weapon against defamation conflict. The European Convention on Human Rights refers to reputation in Article 10 paragraph 2 merely as a legitimate aim which would permit a limitation of the right to freedom of expression, as follows: "for the protection of the reputation or the rights of others". In many cases, for instance in Pfeifer v. Austria[141], the Court has mentioned the right to reputation with regard to Article 8 and particularly has developed this right as a part of an individual's right to respect for private life.[142] In another -more recent-case, namely in Karakó v. Hungary[143], the Court argued that "*factual allegations of a seriously offensive nature with an inevitable direct effect on the applicant's private life*" ensure the relevant protection. Similarly, in Polanco Torres and Movilla Polanco v. Spain, the Court had the same position as the above one in the Karakó v. Hungary.[144] The Polanco Torres case is especially interesting for freedom of expression in cyberspace. In particular, the reason behind this case was an article asserting illegal dealing and dirty money that was published first in the El Mundo newspaper. Based on this, the Court held that the journalist had verified the veracity of allegations, enclosed in the article, regarding the unlawful activities. Indeed, as the Court ruled, the right to share information for the sake of general interest was considered to have more weightiness than the right of reputation. More importantly, the article under review was republished by another newspaper, fact which was deemed as accusation due to defamation. Unlike the first newspaper the second one was convicted of it in the national courts, while it was assumed that journalists at the second newspaper had just copied the already published article from the first newspaper (El Mundo) without verifying the veracity of allegations, included in the article. The Court held that there was no fault with the

[140] Lingens v. Austria (8 July 1986), application No. 9815/82, para. 46.
[141] Pfeifer v. Austria (15 November 2007), application No. 12556/03
[142] . Cf. Smet S. (2011/1), "Freedom of expression and the right to reputation: human rights in conflict", American University International Law Review 26, pp. 183-236.
[143] Karakó v. Hungary (28 April 2009), application No. 39311/05.
[144] Polanco Torres and Movilla Polanco v. Spain (21 September 2010), application No. 34147/06.

national decision regarding the second newspaper. What it is concluded regarding the protection of freedom of expression online that merely republishing defamatory allegations without ensuring their veracity is explicitly problematic.

Further, considering that the legal treatment of online publications may differ from offline ones, the lack of application of protective measures is an infringement of Article 10. To that effect, newspapers do not need to render people aware of possibly defamatory information. In Mosley v. the United Kingdom[145] the Court found that the United Kingdom could not be accused for not providing a public figure, whose sexual activities had been recorded and published in the form of images and videos on a newspapers' website, the possibility of an injunction to prevent publication, even if such publication infringed the public figure's right to public life.

In the light of the above, it is important that journalistic deontology has to be developed and be in line with radical and rapid challenges of electronic media as well as the increasing number of media actors.[146] Given that the vast majority of journalists deploy new media more and more and considering that many of them routinely use nowadays social media like Twitter, the Court has to deal with the question whether a statement published by a journalist on his real-name social media account is a factual statement, that should be taken into account against journalistic ethics. Based on that, the Court, in Fatullayev v. Azerbaijan, did not accept to differ journalistic writings in newspapers from writings of a journalist published on an online public forum. Regardless of the medium used any time, the Court found that "*accusing specific individuals of a specific form of misconduct entails an obligation to provide a sufficient factual basis for such an assertion*".[147]

While the Net is an international network, authors who publish statements including defamatory content, may have to deal with a more stringent jurisdiction. At this point, it has to be said that the Strasbourg Court often leaves to the national judiciary to encounter the "*fine balance [to be] struck between guaranteeing the fundamental right to freedom of expression and protecting a person's honour and reputation*" and

[145] Mosley v. the United Kingdom (10 May 2011), application No. 48009/08.
[146] Stoll v. Switzerland (10 December 2012), application No. 69698/01, para. 149.
[147] Fatullayev v. Azerbaijan (22 April 2010), application No. 40984/07, para. 95

therefore member states develop different ideas of proportionality and balancing of interests.

4.8. Internet filtering

Regarding interference with the right to freedom of expression exercised online, multiple challenges are traced in practice such as censorship through filtering or blocking of Internet content. Definitely, freedom of expression online may be affected by these restrictions.

In this content, in specific cases defined by law or when there is an order by authorities of a state, Internet service providers, the so-called "gatekeepers of the Internet", are obliged to monitor online content and traffic data. In such cases, Internet service providers have the responsibility to render information available regarding risks of encountering illegal or harmful content, in particular concerning children, notably online pornography, glorification of violence and racist expressions and various forms of harassment.

It is important that any filtering or blocking of services of Internet service providers must be lawful and transparent and further it must take place solely after verification of the illegality of the content.

Furthermore, at a European level, both blocking and removal of material found online is frequently carried in a similar way out. In this context, there are two categories of national regulatory models. The first one refers to countries that do not have any specific legislation on blocking, filtering and takedown of illegal internet content. This means that these countries do not have a legislative or other regulatory system clarifying requirements to be satisfied by those who get involve in blocking and filtering of online content.

As such, in the absence of a specific legislative activity, those countries rely on the existed legal framework, which regulates general issues and definitely is not specific to Internet affairs, in particular to blocking and filtering online material. This has been observed in countries like Germany, Austria, the Netherlands, the United Kingdom, Ireland, Poland, the Czech Republic and Switzerland. Due to the lack of legislative

intervention in the area of both blocking and filtering some of the above-mentioned countries such as the Netherlands and Germany rely on the domestic courts to guarantee that the necessary balance between freedom of expression on the one hand and safety of the internet and the protection of other human rights on the other hand is preserved to the largest extent.[148]

The second category refers to jurisdictions, in which the legislator has engaged for the purpose of establishing a legal framework aimed at regulation of the internet including the blocking, filtering and removal of internet content as well. Vivid examples of such jurisdictions are the following countries: Finland, France, Hungary, Portugal and Spain.[149]

At European and international level, what really happens is that states are worried about their sovereignty to control what kind of information, ideas and content is imparted and processed by citizens of these states.[150] Accordingly, new technologies based on the Net have been adopted by states in order the latter to monitor Internet traffic in the form of connections and content. These techniques, developed by states, have the potential to uncover the anonymity of the author of the content, which specific states prefer to forbid. To these technologies belong the so-called Virtual Private Networks (VPNs) and anonymizers. This fact indicates that activities online and the Internet in general raise several questions, correlated with the right to freedom of expression and the appendant right to receive and share information irrespective of frontiers.

Moreover, states impose further restrictions for the purpose of controlling the Internet access and filtering the search results. These restrictions appear basically as a result of state monopoly. More accurately, with regard to state practice, the Chinese Government is an example of limiting its citizens' access to information available on the Net and censoring specific content. Its policy is a very effective way of censorship and indeed it is called the "Great Firewall". Further, other countries such as Iran have the trend to provide its citizens access merely to an Iranian intranet, prevent them from using the

[148] Filtering, blocking and take-down of illegal content on the Internet (Swiss Institute of Comparative Law) <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168068511c> assessed 5 January 2022.
[149] Ibid.
[150] See Mueller, Milton L. (2010), Networks and states, the global politics of Internet governance, MIT Press

World Wide Web hence. At an international level again, North Korea is one more disturbing example. Before the North Korean authorities launched at first time a local version of the Internet 2004, just a few state's citizens had access to the Internet. These restrictions had implemented by North Korean authorities clearly for political reasons. Yet, at a European level, European governments have many times made reports for blocking and filtering according to the biannual Google Transparency Report on removal requests[151] Furthermore, it is notable to mention that there have been proposals by governments that Internet users should have just one open IP address, which would be easily have a "chilling" impact on their freedom of expression, exercised online.

FIFTH CHAPTER

5. CASES LAW REGARDING RESTRICTIONS ON ONLINE FREEDOM OF EXPRESSION UNDER SUPRANATIONAL LAW AND IMPLICATIONS OF STATES' POLICIES AND PRACTICES

5.1. The Tunisian Republic's example

In the light of the above, a vivid example is the Tunisian Republic restraint, as it intervenes in the freedom of expression online through filtering or blocking online content. In particular, Tunisian Republic implements an Internet filtering regime for the purpose of blocking essential online materials, including, among other, political opposition and human rights as well. In other words, Tunisia uses the SmartFilter software to block websites on political opposition, criticism of the state's human rights practices, independent news and non-governmental organizations focused on human rights.[152] In accordance with the OpenNet Initiative[153], all efforts of Tunisian government regarding filtering online material are considered really effective.[154] The

[151] Google, Transparency report <www.google.com/transparencyreport> assessed 2 December 2021
[152] Internet Filtering in Tunisia in 2005, <https://opennet.net/sites/opennet.net/files/ONI_Tunisia_Country_Study.pdf> assessed 15 December 2021
[153] Ibid.
[154] Nevena Ružić, Freedom of Expression on the Internet, p. 66

software, namely SmartFilter software, was produced by the U.S. company Secure Computing in order to focus and deter the access of certain online material like the "*political opposition to the ruling government, sites on human rights in Tunisia, tools that enable users to circumvent these controls, and pages containing pornography or other sexually explicit content*."[155]

At certain, the Tunisian government regards the Net as an immense social and economic force and for this reason it has made large investments in telecommunications infrastructure and has established contemporary telecommunications legislation. More importantly, Tunisian state has developed the Net in a way which applies a multi-layered architecture of control. This means that all of the state's Internet Service Providers (ISPs) obtain access from Tunisia's Internet Agency, which undertakes filtering at the central network. Therefore, the state through this performance gains greater control.

What is more, Tunisia's strategy regarding the Internet is linked with several restrictions the state imposes on other media. Particularly, laws criminalizing defamation of public officials or spreading false news push journalists to censor their reporting. Tunisian government develops ways of economic controls like directing subsidies and advertising to friendly outlets, and informal pressures, such as violence against critics, in order to guarantee that media remain within prescribed boundaries.

In the light of these, the strategy of Tunisian government gives birth to the following deduction: This state which controls information through several legal economic and technic methods rebuts the principles of the World Summit on the Information Society, which has stated that "*everyone can create, access, utilize and share information and knowledge*," and each person has the right "*to seek, receive and impart information and ideas through any media.*"[156] As such, the contradiction between basic principles of free expression and communication in cyberspace and the reality of censorship and surveillance practices throughout the world is apparent. This is simply because Tunisian Republic has a developed software, produced by Western corporations that is deployed

[155] Ibid.

[156] World Summit on the Information Society, Declaration of Principles - Building the Information Society: a global challenge in the new Millennium, <https://www.itu.int/net/wsis/docs/geneva/official/dop.html> assessed 15 December 2021

for the purpose of restricting the access to information and limiting the freedom of speech.

5.2. State control – the case of China

5.2.1. China's domestic restrictions on online content

As already noted, China is a more disturbing example in terms of state practice. Actually, the country is the most well-known for being the most restrictive towards Internet access. The country achieves its Internet-monitoring and censorship efforts by deploying very sophisticated technology, resulting in both filtering and blocking Internet content. The filtering contains words like 'human rights', 'democracy' and 'freedom'.

More accurately, as the Net technology is being expanding more and more and the online culture is developing, China managed to establish a vast international Internet connection in the 2000s. By the end of 2009, China had about 384 million Internet users and up December of next year (2010) the number of Internet users reached 457 million, exceeding the United States, which since then was supposed to be the country with the most people online.[157] Nowadays, the number of Chinese Internet users is estimated at about 990 million.[158] This rapid increase in Internet lies in various factors such as China's swift economic growth, the intense effort of the government to incorporate technology into the economic and governmental infrastructure and lastly the people's response to the technology.

This rapid spread of Internet usage was pronounced and thus the Chinese government took it seriously into consideration. In the past, the Communist Party of China, namely CPC, controlled and censored political dialogue, which was jeopardizing the party rule.

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[157] Statistical Report on Internet Development in China (China Internet Network Information Center (CNNIC), 2011) <http://www.cnnic.com.cn/IDR/ReportDownloads/201209/P020120904420388544497.pdf> assessed 18 December 2021

[158] Statista (2020), 'Number of internet users in China from December 2008 to December 2020', www.statista.com/ statistics/265140/number-of-internet-users-in-china, (accessed 10.1.2022).

Perceiving the government that the new communications medium expanded rapidly the power of any speaker, the CPC tried to bridle it. Actually, from the very beginning the Chinese government realized that the Net could be used as a medium in order anti-government messages to be spread. Based on this strategy of Chinese government, all this immense effort to monitor online activities is known as "Great Firewall of China."[159] Despite the criticism, coming from the international community, against China's effort to control Internet, the government insists on putting more efforts to control content and communications at Chinese user's expense.

More accurately, the Chinese government aimed to keep control as much as possible over the online material and activities, carried out in cyberspace by domestic users.[160] It is worth to mention that in 1995 China had adopted a filtering technology seeking to block specific websites. Among these websites there were ones associated with the Economist, CNN, the New York Times, human rights groups, dissidents, pro-democracy groups, and the Falun Gong.[161] More importantly, there was the requirement for Internet users to submit a lengthy application in which they had to reveal their personal information. Every applicant was bound not to use the Internet in a different way from which the party demanded.[162] Nowadays, in general terms, government's filters block all websites including Chinese government opposition, gay and lesbian information and sexual content. Needless to say, the blocking of all sexual content is not limited to just pornographic sites. In reality, China blocks all websites including the word "sex" existing in the text. More surprisingly, gay and lesbian bloggers have been accused of corrupting the Chinese Net by expressing and imparting liberal and immoral ideas. To that effect, the CPC has deployed technological, legal and regulatory as well as psychological/social tools, seeking to control online material and discourse.[163]

Moreover, in China not every citizen has Internet or even computer access at home. As a consequence, people who do not have the privilege of owning a computer or accessing to the Net, turn to Internet cafes, that are exceedingly popular for that reason. As such,

[159] Miriam D. D'Jaen, Breaching the Great Firewall of China: Congress Overreaches in Attacking Chinese Internet Censorship, 31 SEATTLE U. L. REV. 327, 330 (2008).
[160] See Ronald J. Deibert, Dark Guests and Great Firewalls: The Internet and Chinese Security Policy, 58 J. SOC. ISSUES 143, 147 (2002).
[161] Ibid.
[162] Ibid p. 148.
[163] Yutian Ling, Upholding Free Speech and Privacy Online: A Legal-Based and Market-Based Approach for Internet Companies in China, p. 177

considering the vast number of Chinese citizens using Internet cafes, the government has set several restrictions, censors, and blocks for the cafe users. In view of this fact, when internet cafes deviate from severe web standards, the government will intervene. This means that through censors, placed on computers, and the wireless web inside these cafes, a signal or alarm is sent to a database every time someone accesses or creates a web site with confined content. The database is repeatedly being checked and as such any suspicious activity, carried out in Internet cafes, is immediately reported to Chinese authorities, who rally taking care of those illegal -according to China's legislation- activities.

5.2.2. Internet censorship and emergency laws during COVID-19

The Chinese government's intervention with online freedom of expression became more intense under the pandemic COVID-19. This restrictive approach affects detrimentally the ability of Chinese citizens to realize other human rights, enclosing their right to access to information as well as the right to freedom of opinion and thoughts.

Particularly, during the pandemic emergency measures and governments actions restricting the right to freedom of expression in cyberspace can be witnessed in China, Bangladesh, India, Indonesia, Malaysia, Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam. Actually, China and many other countries in the region put pressure on social media and other digital platforms in order to fight 'misinformation' on their sites. For example, in Vietnam state-owned telecom companies limited traffic to Facebook and at the same time restricted the access to this platform until Facebook agreed to remove content which the Vietnamese government found anti-state.[164]

Further, during the pandemic, specifically since mid-March 2020, governmental authorities of Bangladesh have arrested several people under the Digital Security Act

[164] Nguyen, A. (2020), 'Vietnam's Government is Using COVID-19 to Crack Down on Freedom of Expression', Slate, 8 May 2020, https://slate.com/technology/2020/05/vietnam-coronavirus-fake-news-lawsocial-media.html

2018 because they had made comments about the coronavirus. Among the arrested people, there were students, opposition activists and a doctor.[165]

Similarly, in the Philippines, the government passed Republic Act No. 11469, which make the spread of false information on social media and other similar platforms criminal.[166] In the aftermath of the implementation of such legislation, the government arrested 47 people as it was deemed that they violated the law.[167]

Lastly, on 25 February 2021, the Indian government established new rules regulating social media. Particularly, according to its new legal regime, social media companies are required to remove misinformation or illegal or violent content within 24 hours. As a matter of fact, the establishment of new rules has been criticized by groups of people, claiming that the government's power over content on social media platforms increased.[168]

5.3. Google, Yahoo, and Microsoft cooperating with China repress Free Speech Online

5.3.1. American Search Engine Companies contributing to China's censorship

In the light of the above, China obliges both domestic and foreign Internet companies, which are minded to become active in China to censor content and reveal the private information of users upon request. This happens simply because China could not accomplish this monitoring and control by itself. As such, the state co-operates with both domestic and foreign Internet businesses, as already said, in order the latter to

[165] 0 Human Rights Watch (2020), 'Bangladesh: End Wave of COVID-19 'Rumor' Arrests', Human Rights Watch, 31 March 2020, www.hrw.org/news/2020/03/31/bangladesh-end-wave-covid-19-rumor-arrests

[166] Joaquin, J. J. B. and Biana, H. T. (2020), 'Philippine crimes of dissent: Free speech in the time of COVID-19', Crime, Media, Culture, pp. 1–5, doi: 10.1177/1741659020946181.

[167] Ibid.

[168] See for example Indian authorities tighten control over online content (Access Now, February 2021) www.accessnow.org/indian-authorities-tighten-control-over-online-content. Assessed 11 January 2022.

provide their help with China's censorship efforts.[169] To that effect, the country requires companies to censor sensitive affairs and forces them not to spread information which disseminates superstition or obscenity and puts the government's security and social stability at risk.[170] Gigantic companies like Yahoo!, Microsoft, Google and Skype have submitted to the CPC's demands for the purpose of trading with China.[171]

Such corporations between China and Us-based companies in their majority are known as transnational corporations, namely TNCs, and they are notably able to infringe human rights without punishment of such offence. Whether and how TNCs can be regulated is a matter quite problematic, as international community is still struggling to settle it up. Indeed, the United Nations has put serious efforts to regulate TNCs by developing the Global Compact and debating passing norms on the responsibilities of transactional corporations regarding human rights.[172].

Based on the above, if someone tries to search words like human rights or democracy on the Chinese version of Microsoft's blog tool, a white background will appear across the screen of the computer, showing the words "Unauthorized Search" or "Error". Significantly, China imposes fines on people who create media outlets, that are not firstly authorized by the government. The above-mentioned media outlets vary within websites including content opposed to government, and unauthorized radio shows. The fine reaches 17,000 U.S. dollars.

5.3.2. The America's stance

However, the United States seemed to be much opposed that US-based companies were servile to Chinese government and in particular to Chinese censorship demands and afterwards Congress held hearings to interrogate the conduct of the above-mentioned companies.[173] Further, Congress also took into account the Global Online Freedom Act

[169] Justine M. Nolan, The China Dilemma: Internet Censorship and Corporate Responsibility, 4 ASIAN J. COMP. L. 1, 4 (2009).
[170] See e.g., Ben Elgin & Bruce Einhorn, The Great Firewall of China, BUSINESS WEEK (Bloomberg, 2006) <https://www.bloomberg.com/news/articles/2006-01-22/the-great-firewall-of-china> assessed 18 December 2021.
[171] Ibid 92.
[172] Surya Deva, UN's Human Rights Norms for Transnational Corporations and Other Business Enterprises: An Imperfect Step in the Right Direction?, 20 ILSA J. INT'L & COMP. L. 493, 494 (2004).
[173] See The Internet in China: A Tool for Freedom or Suppression? J. Hearing Before

(GOFA)[174] that relates to US-based Internet companies, doing business abroad. This bill set a governmental strategy to fight for state sponsored internet jamming and persecution of internet users. Yet, US-based companies were trapped beneath demands of the Chinese government and criticisms of the US government and human rights organizations.

The American government thinks that the end of censorship, especially in China, would benefit web-censored societies throughout the world. What the U.S government believes can also be applied to other internet-censored countries as well apart from China. So far, in spite of American beliefs and the country's policy, Google, Yahoo, and Microsoft carry on helping foreign governments in stifling freedom of speech through Internet censoring.

5.3.3. Voices remaining silenced

Since Google has penetrated into China, many cases have been reported that eventually have been silenced. In more details, the entry of Google into the Chinese government emerged 49 cyber dissenters and 32 journalists, whose reports were anti-government.[175] However, these cases were not only that have been detected. One more notable case involves Yahoo, which in response to Chinese government's asking provided without coercion data in order to hand over a cyber dissident named Shi Tao.[176] As a result of the evidence supplied by Yahoo, this person was sent to prison for 10 years, as he was accused of supposedly speaking out against the communist government.[177] In fact, Yahoo contributed to the repression of free speech and the conviction of an innocent person. Obviously, in this case an American company aided Chinese government in censoring, fact which had frightening results, as noted.

Despite the fact that the U.S. is supposed to be an independent nation, in reality the country is not free from influence, control and guidance by other nations like China, as

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the Subcomm. On Afr. Global Human Rights and International Operations and the Subcomm. on Asia and the Pacific of the Comm. on International Relations, 109th Cong. 109-157 (2006); Global Internet Freedom: Corporate Responsibility and the Rule of Law: Hearing Before the Subcomm. On Human Rights and the Law, I10th Cong. J-1 10-93 (2008)

[174] In 2003 the U.S. House of Representatives passed the Global Online Freedom Act.

[175] Brittany Alexander, Google, Yahoo, and Microsoft Suppressing Free Speech Online, p. 12.

[176] Ibid.

[177] Ibid.

mentioned, in matters of expressing free opinion and having priorities. Thus, from my point of view, considering that China censors its citizens and controls online material in accordance with its own standards and as a result online blocks and filters are in the jurisdiction of the Chinese government only, perhaps this could be construed for America as insulting. Besides, representatives from China stated that it is the country's own choice to control and censor what they consider as appropriate for this purpose whether it is placed on television or it is available on the Internet or on newspapers.[178]

5.3.4. China's prerogative

Over the past few decades, China has evolved through industrialization and modernization and nowadays is emerged as a major economic power worldwide. In addition, it is an independent country, regulating its own rules and setting its own regime. Based on these, American companies, having realized the foreign country's profit potential, willingly invest in this growing giant since China started to industrialize. And that is exactly China's prerogative. In other words, if the country wants to use services of Google, Microsoft and Yahoo for the purpose of achieving better ways of controlling and monitoring Internet contents, it definitely can do so. Therefore, Google, Microsoft and Yahoo recognized that they would have valuable opportunities by cooperating with China as they would increase their wealth offering their services to Chinese citizens and in general to Chinese government. This means that the companies' desire to expand their markets to gain much more profit was the main reason of cooperating with China.

As already noted, the number of Internet users in China is overwhelming and definitely it increases constantly. Google, Microsoft and Yahoo are capable of gaining more customers due to their wide scope. These companies gain an important profit through advertisements placed on their websites. Companies which want to be advertised via the above-mentioned gigantic companies are willing to pay much money just for one advertisement on those companies' pages, as they know that this advertisement would have an immense resonance. Companies pay even more money when an internet user clicks on their advertisement. Every click on an advertisement in the cyberspace US-based search engines companies make significant profit and that is the reason that

[178] Ibid.

Google, Yahoo and Microsoft make billions of dollars per year. As a matter of fact, these American companies will multiply their profit if they lunch their services in a new country. This is because companies, based on foreign countries, pay Google, Microsoft and Yahoo in order to advertise on their web pages, offering more profit for such gigantic companies.

At this point, it is worth to mention that American companies (Google, Yahoo and Microsoft) have agreed with Chinese government that they comply with the standards and regulations set by Chinese government, even if this compliance means direct limitation of free speech in the cyberspace. Indeed, Google, Microsoft and Yahoo have admitted that helping the foreign country allows them to gain more overseas profits and also bond with "former closed-door countries".

5.3.5. Concise conclusion regarding companies being under China's influence

Concluding the matter with regard to US-based companies, which contribute to China's censorship, it is worth to say that in the past, international law used to cope with state actors only.[179] Traditionally, all business attempts were regarded as extensions of the state.[180] However, while global trade is expanding, business corporations evolve and become larger, richer and more powerful and definitely less controlled by the state in which they are based. Nonetheless, controlling and monitoring content, available on the web, together with enforcement remains an immense problem worldwide.

5.3.6. International implications of China's position on online freedom of expression

Through the above-mentioned practices of Chinese government, the latter seeks to become a technological superpower in the coming years. Put it another way, China aims to become a leading power in the development of super-apps, 5G, smart cities and

[179] Carlos M. Vasquez, Direct vs. Indirect Obligations of Corporations Under International Law, 43 CoLUM. J. TRANSNAT'L L. 927, 932-933 (2005).
[180] Ibid.

surveillance technology. China's aim included also to form the rules in terms of technology governance at a global level. Indeed, China is exporting more and more its own approach to technology governance worldwide through the intension of 'cyber sovereignty'. This can be achieved by constant control of internet gateways, data localization and intense limitation of online freedom of expression.

In reality, government's ability to shape global technology governance has been substantially extended in the past 10 years. In the international context, this expansion lies in the following factors: 1. China's growing presence and influence at the UN and 2. its provision of digital infrastructure in an important number of countries around the world as part of the 'Digital Silk Road' initiative.[181] Therefore, China's approach to online freedoms, involving freedom of expression in cyberspace, is a significant factor for the future of the internet.

CONCLUSION AND RECOMMENDATIONS

The internet and new information communication technologies are nowadays an inextricable part of everyday life of the vast majority of people from around the world. The main reason is that they provide the opportunity people to express their opinion, voice their oppositions, which in turn cultivate the improvement of openness and public debate in the society.

Further, the Internet has rendered "*the public space of the 21st century – the world's town square, classroom, marketplace, coffeehouse, and nightclub*".[182] It can be described as a room where opinions are articulated and as such there is the urgent need authorities to apply a sufficient legal regime to protect the Internet. This protection for Internet users is provided by human rights law, Article 19 of the UDHR and the ICCPR and, in the Council of Europe area, Article 10 ECHR.

In the quest to adopt a people-centred and development-orientated information society, freedom of expression plays an essential role. As the Internet considers the tool for the

[181] Chatham House, Restrictions on online freedom of expression in China, 2021, p.17.
[182] Ibid.

exercise of human rights, so freedom of expression is regarded as an enabler of civil and political, economic, social and cultural rights.

As this dissertation has made clear, the eruption of human activity has a regulatory backlash as a consequence and as such an important number of states deal with Internet freedom as something that provokes fear. Indeed, these states interpret the online expression as a destabilizing force. In this light, this dissertation has aimed to examine how the right to freedom of expression is protected in the cyberspace by human rights law both in practice adopted by states and through cases law of, in particular, the European Court of Human Rights.

Furthermore, this dissertation has set out to throw light on multiple challenges and specific issues, arisen by the exercise of the right to freedom of expression on the web. The challenges of regulating Internet content in a way, that is consistent with human rights, are essential. Liberal minded states would consider that Internet content regulation is already an infringement of freedom of expression. On the other hand, from a human rights-based point of view, we are led to the deduction that states are obliged to respect, protect and ensure human rights online, just as they do offline. In order this to be done, states need to pass adequate laws and then apply them in practice or otherwise adapt their legalization in judicial practice.

The above-mentioned issues encompass the essential precondition to exercising freedom of expression online, that is the right of access to the Internet. In reality, Internet access together with its content and its infrastructure is regarded as a human right. Another key issue, examined in the dissertation is technological neutrality. In other words, it is examined that Internet service providers are not allowed to treat transmitted data packets in a different was due to the content enclosed therein. In this context, it is necessary states to adopt adequate legislation in order to ensure network neutrality.

With regard to challenges analyzed in Chapter 3, it is worth to mention that fighting online hate speech is quite difficult considering the characteristics of freedom of expression in cyberspace, enclosing the self-moderated nature of free speech, the possibility of self-publishing and universal access to opinions as well. One more specific issue, explained in the same Chapter, is the child exploitation due to online dangers. As they vulnerable specifically in social networks, it has been established that

children are in special need of protection from those dangers. At this point, the Court's jurisprudence has held that states from around the world are required to protect children as part of their right to private life and in this way interfere legitimately with the right to freedom of expression.

In addition to the specific issues challenging the right to freedom of expression in cyberspace, social networks can also endanger the right, as they have evolved into central spaces for Internet users to congregate, aggregate opinions and articulate them. In particular, online freedom of expression is being jeopardized in social networks by terms of service indifferent to human rights, specifically when these are not transparent and do not provide any human rights-based safeguards around processes of exclusion of users or censorship of content.

To recapitulate, as technology becomes increasingly pervasive in peoples' lives and the providers of such technology become international, the specific issues that challenge significantly the right to freedom of expression online, will be on rise. Further, the values informing that technology increasingly dictate how free, fair and inclusive the society using the technology can be, as well as the balance of power between the state and individual citizens. In this context, a state-controlled internet causes negative consequences not only on the right to freedom of expression online but also on any individual human rights exercised online. As such, at a time when state control of online freedom of expression is becoming tighter and challenging Internet- based freedom of expression is now a daily issue, there is the need to be developed an open, stable and secure internet for the purpose of protecting online freedom of expression and other human rights, arisen by the latter right, as well.

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