

## **FREEDOM OF SPEECH IN THE CONDITIONS OF HYBRID WARS: INTERNATIONAL EXPERIENCE**

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**Abstract.** The purpose of the article is to study the issue of international standards and foreign experience in ensuring the right to freedom of expression. Research methods: the chosen topic of scientific research requires various scientific methods and approaches to obtain qualitative results. Therefore, the following research methods were used to solve the tasks: analysis; system method; analytical, etc. Results: Freedom of expression is a fundamental human right that must be upheld in democratic societies. Governments unjustifiably restrict freedom of speech, and target journalists, protesters, and others deemed to disagree with the government's views. Today, there is a tendency where, even in Western democracies, laws reduce protest activity and threaten freedom of the press and speech through mandatory metadata storage schemes. Civil societies around the world must be vigilant in protecting freedom of expression. This is necessary to improve people's lives and create and maintain strong, healthy democratic societies. Discussion: The right to freedom of expression is the right to preserve opinions without interference, and cannot be subject to any exception or limitation. However, this right is not absolute, it entails special obligations and may be restricted for several reasons. For example, restrictions may include filtering access to certain websites, calling for violence, or classifying artistic material. The right to freedom of expression extends to any media information, including written and oral communications, mass media, public protest, broadcasting, artistic works, and commercial advertising.

**Keywords:** human rights, freedom of thought, freedom of expression, protection of rights, enforcement of rights.

Statement of the problem and its relevance. The right to freedom of expression is the right to hold opinions without interference, and cannot be subject to any exception or limitation. However, this right is not absolute; it entails special obligations and may be limited for several reasons. For example, restrictions may concern filtering access to certain Internet sites, calls for violence, or classification of fiction material. In the modern world, artificial intelligence technologies play an increasing role in ensuring or limiting this right. For example, AI algorithms can automatically identify and block content that is subject to banning, or, conversely, help spread information that encourages open discussion. Artificial intelligence is also used to analyze speech on social networks, and its decisions can have a significant impact on the implementation of freedom of expression. At the same time, it is important to ensure that such algorithms operate transparently and do not

violate basic human rights. The right to freedom of expression extends to any form of media, including written and oral communications, mass media, public protest, broadcasting, artistic works, and commercial advertising.

Analysis of research and publications on the problem. The study is based on scientific and theoretical works of domestic and foreign experts in the field of law.

The object of the paper is to study the issue of international standards and foreign experience in ensuring the right to freedom of expression.

Presentation of the main research material. International standards of freedom of expression are enshrined in Article 19 of the Universal Declaration of Human Rights, which states 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 regardless of frontiers [1].

The International Covenant on Civil and Political Rights (ICCPR) in Article 19 guarantees that: 1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 3 of this article carries with it special duties and responsibilities[1].

It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: a) Out of respect for the rights or reputations of others; b) For the protection of national security or public order, or public health or morals [1].

Article 9 of the African Charter on Human and Peoples' Rights stipulates that every individual has the right to receive information and every individual has the right to express and disseminate his opinions within the framework of the law [1].

The European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees in Article 10: 1) that everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television, or cinema enterprises. 2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety; for the prevention of disorder or crime; for the protection of health or morals; for the protection of the reputation or rights of others; for preventing the disclosure of information received in confidence; or for maintaining the authority and impartiality of the judiciary American Convention on Human Rights [1].

Article 13 of this normative legal act establishes that: 1. Everyone has the right to freedom of thought and expression. This right shall include 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 media of one's

choice. 2. The exercise of the right provided for in the preceding paragraph shall not be subject to prior censorship but shall be subject to further penalties expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; b) the protection of national security, public order, public health or morals. 3. The right to express opinions may not be restricted by indirect methods or means, such as the abuse of public or private control over newsprint, radio frequencies or equipment used for the dissemination of information, or any other means that impede the transmission and dissemination of ideas and opinions. 4. Notwithstanding the provisions of paragraph 2 above, public entertainment may be subject to prior censorship by law to regulate access thereto for the moral protection of childhood and adolescence. 5. Any propaganda for war and any propaganda of national, racial, or religious hatred that constitutes incitement to lawless violence or any other similar action against any person or group of persons on any grounds, including race, color, religion, language or national origin, shall be considered offenses punishable by law [1].

The right to freedom of thought and expression is also contained in Article 20 of the International Covenant on Civil and Political Rights (ICCPR) [2]. In addition, Articles 4 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) [3], Articles 12 and 13 of the Convention on the Rights of the Child (CRC) [4], and Article 21 of the Convention on the Rights of Persons with Disabilities (CRPD) [5].

General Comment No. 34 [6] of the UN Human Rights Committee on the ICCPR notes that the right to freedom of expression includes, for example, political discourse, commentary on one's own and public affairs, campaigning, discussion of human rights, journalism, cultural and artistic expression, teaching and religious discourse. It also covers expressions that some may consider deeply offensive, verbal as well as non-verbal communications, and all modes of expression, including audiovisual, electronic, and Internet modes of communication.

In terms of Article 19(3) of the ICCPR, the right to freedom of expression contained in Article 19(2) may be subject to certain limitations: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain limitations, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (ordre public), or of public health or morals."

Concerning restrictions on the right to freedom of expression under Article 19(2) of the ICCPR, a three-part test is used to assess whether such a restriction is justified: (i) the restriction must be provided by law; (ii) it must pursue a legitimate aim; (iii) it must be necessary for the legitimate aim. (4) This test applies in a similar way to restrictions on the right to freedom of expression under other legal instruments, including the African Charter [7].

Article 19(2) of the ICCPR also provides that the right to freedom of expression applies regardless of frontiers and through any media of one's choice.

General Comment No. 34 further explains that Article 19(2) includes online modes of communication.

In a 2016 resolution, the UN Human Rights Council affirmed that: “The same rights that individuals have offline must also be protected online, in particular freedom of expression, which applies regardless of frontiers and through any media of one’s choice, following Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights” [8].

In 2016, the African Commission on Human and Peoples’ Rights (ACHPR) [9] called on states to respect and take legislative and other measures to guarantee, respect, and protect the rights of individuals to freedom of information and expression through access to internet services. This was complemented in 2019 by the Declaration of Principles on Freedom of Expression and Access to Information in Africa [10] adopted by the ACHPR, which recognizes the role of new digital technologies in realizing the rights to freedom of expression and access to information, and asserts that the same rights that people have offline must be protected online in line with international law and human rights standards.

Although freedom of expression is protected by a significant body of treaty law, it can be regarded as a principle of customary international law, given how frequently the principle is enunciated in treaties as well as other soft law instruments. Most human rights treaties, including those protecting the rights of specific groups such as women, children, and people with disabilities, also make explicit reference to freedom of expression.

It should be emphasized that expression and exchange of opinions increasingly take place online, including through social media platforms, websites, and search engines.

The right to freedom of expression is balanced by the responsibilities of government, the media and technology, and citizens. It is not an unlimited right and is subject to legal limitations. Although the UN General Assembly recognized in December 1948 that freedom of expression is a fundamental right of national protection [11], subsequent international agreements have recognized that there may be limitations on this right. For example, the European Convention on Human Rights (ECHR), adopted in 1950, understood that the right may be limited by law [12]. Article 10 of the Convention states that “everyone has the right to freedom of expression,” but this freedom may be subject to limitations for various reasons, including to protect the rights of others.

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

In the UK, the Human Rights Act 1998 implemented Article 10 of the ECHR into domestic law [13].

UK criminal or civil law applies both online and offline and may be relevant to communications and activities on the Internet. The right to freedom of expression is subject to several restrictions in UK law, including:

The Harmful Communications Act 1988 [14] and the Communications Act 2003 [15], which criminalize "indecent or grossly offensive" communications and threats.

The Public Order Act 1986 [16], which contains offenses for incitement to hatred on the grounds of race, religion, or sexual discrimination,

The Terrorism Act 2006 [17], which criminalizes the publication and distribution of material that could be considered to encourage acts of terrorism.

Further information on laws that may be relevant to freedom of expression can be found in Section 2 of the House of Lords Communications and Digital Technology Committee's report, 'Free for All? Freedom of Expression in the Digital Age [18].

Today, several well-known regulators play a role concerning different forms of online activity in the UK. These include Ofcom, the Competition and Markets Authority, and the Advertising Standards Authority. For example, this may relate to the use of individuals' data or information and tackling misleading or age-inappropriate online advertising.

However, there are concerns about the lack of appropriate regulation, particularly regulation covering social media and search services in the UK. This was highlighted by the government in the explanatory notes to the Online Safety Bill [19], which noted that "currently, most user and search services operating in the UK are not subject to any user safety regulation". The exception is the statutory video-sharing platform regime, which requires service providers to protect individuals from certain harmful content and is enforced by Ofcom.

The government introduced the Internet Safety Legislation to improve regulation, arguing that "in light of the serious harm that online content can cause to users, broader and more comprehensive regulation of online services should be introduced."

At one time, Boris Johnson's government sought to address the issue of freedom of expression online through the Internet Safety Bill [20]. The bill aims to: preserve and enhance freedom of speech online; improve user safety online; improve the ability of law enforcement to combat illegal content online; improve the ability of users to keep themselves safe online; improve public understanding of the harm landscape, etc.

Boris Johnson's government has also set out its strategy for regulating freedom of expression in the digital landscape in several policy documents, including:

"Digital regulation: driving growth and unlocking innovation", published in July 2021. The document sets out the government's overall vision for digital governance. It sets out three aims: promoting competition and innovation, keeping the UK online, and promoting a prosperous, democratic society.

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governance. It sets out three aims: promoting competition and innovation, keeping the UK present in the Internet, and promoting a prosperous, democratic society.

"A New Pro-Competition Regime for Digital Markets: A Consultation Paper" published in July 2021. The government set out its plans to reform the digital market. It included proposals for the Digital Markets Unit (DMU) and how it should work with other regulators. It also proposed that statutory powers be given to the DMU. The DMU was established in non-statutory form within the Competition and Markets Authority in April 2021 to support the rapid establishment of a statutory competition regime for digital markets.

"Online Media Literacy Strategy" published in July 2021. The strategy and accompanying action plan set out the government's three-year plan to coordinate media literacy education and equip users with the skills they need to make safe choices online.

On 22 July 2021, the House of Lords Communications and Digital Committee published its report "Free for All? Freedom of Expression in the Digital Age"[18]. The report focused on how public policy can protect the right to freedom of expression online and how it should be balanced with other rights. It considered: how competition between platforms can be increased to benefit freedom of expression; how the government should ensure that illegal content is removed and legitimate opinions are not censored; how the design of online platforms and digital citizenship education can support inclusive debate and the exchange of information, ideas and opinions.

The Committee believed that while freedom of expression was a "distinctive feature of free societies", it was not an "unimpeded right". It argued that "one person's abuse of his right to freedom of expression" could have a "chilling" effect on others, "leaving them less able to express themselves freely" [18].

The committee found that the internet had given people unprecedented power to express and share their views. It welcomed this and wanted freedom of expression to be strengthened online. However, the committee found that the digital environment was dominated by a small number of private companies with too much control. The committee criticized the freedom of companies to ban anyone and anything they wanted and to design their platforms to encourage and amplify certain types of content over others. The committee argued that social media platforms were not "neutral means" for communication. At the same time, the way they were designed "shapes what users see, what they say and how they interact". The committee suggested that platforms were "too often" driven by "concerns about their commercial and political interests". It stressed that "the benefits of freedom of expression should not be curtailed by these companies".[18]

The committee argued that the government should create a new regulatory approach. In particular, the rights and benefits of individuals should be underpinned by a new, unified regulatory approach that brings together competition policy, data, design, law enforcement, and child protection. In this way, the committee said, the UK has an opportunity to lead the world and set a standard to which other democracies can aspire.

The committee said the harm users can suffer online had received increased attention in recent years and welcomed several proposals put forward in the draft online safety bill to address the issue. These included requiring platforms to remove illegal content and a government focus on protecting children from harm.

However, it disagreed with some other proposals in the bill, such as measures to remove legal content that could be harmful to adults. The Committee argued that there were alternative approaches that would be more effective and better at protecting freedom of expression online. It made recommendations for measures in three areas: content regulation on social media platforms; empowering users; facilitating choice and the like.

The committee found that the largest platforms “monopolized” the market and had “unprecedented control” over what the public could say via Internet with their power to censor views. It acknowledged that moderating views on social media was difficult, particularly because algorithms could not understand context. However, the committee argued that moderation decisions were “often unnecessarily inconsistent and opaque” and sometimes influenced by commercial and political factors.[18]

The committee made several recommendations [18]:

1) Platforms should be required to be impartial in moderating political content. Any definition of content of democratic significance should ensure that contributions to all political debates are covered. Therefore, the definition will not be limited to debates initiated by politicians and political parties about public policy. Protection should include the content of the platform’s terms and conditions.

2) Platforms should not be seen as "arbiters of truth". Content should only be removed in exceptional circumstances.

3) Freedom of expression should be a core principle of the duty of care approach. Digital regulatory frameworks should be flexible and able to adapt quickly to change. Frameworks should set "clear expectations" for platforms.

4) Platforms should be required to remove illegal content. Ofcom should set strict time limits within which platforms must remove such content. A platform will not be compliant if it systematically fails to remove illegal content or systematically removes legal content.

5) The government must ensure that all pornographic websites comply with the internet safety regime and meet the highest standards. The committee argued that "an acceptable failure to provide age verification [was] no excuse". It suggested that technological advances in age verification tools "suggest that this was a missed opportunity for the government to make clear on the face of the [Internet Safety] Bill" that websites hosting pornographic content would be blocked for children.

6) Content that is seriously harmful to adults should be defined and criminalized through primary legislation. Content that is legal but may be harmful to adults should be addressed through strict regulation of platform design, digital citizenship education, and competition regulation. The Committee did not support imposing a duty on platforms to remove content that was legal but may be harmful

to adults. It argued that this could lead to “unprecedented interference” with freedom of expression.

7) A general committee of parliament should be established to scrutinize the work of digital regulators, the independence of Ofcom, and the legislative tools for digital regulation.

The committee argued that greater competition was critical to advancing freedom of expression online. It thought that in a more competitive market, platforms would have to be more responsive to users' concerns about freedom of expression and other rights.

The Committee made the following recommendations in this area:

1) The Government should provide statutory powers to the Digital Markets Unit (DMU)[21]. The Commission suggested that this was more important than the Internet Safety Bill because of the “impact of competition on freedom of expression and privacy standards”.

2) The DMU should have the power to carry out structural interventions to enhance competition, including working with international partners to block mergers and acquisitions, forcing companies like Google to share click and search data with competitors, and preventing companies from paying to be the default search engine on mobile phones. He also said the DMU should include human rights in its assessment of consumer welfare.

3) Ofcom should be required to take into account and report on competition in the market.

4) The government should introduce a category in its regulatory regime for platforms based overseas and with very few UK users, such as local newspapers and classifieds for people with niche interests. There would be less pressure on these platforms to actively prove their compliance with the new safety regime. It would prevent these smaller platforms from choosing to block access from the UK to avoid the burden of regulations.

5) A mandatory bargaining code should be introduced to ensure fair negotiations between platforms and publishers. The code should include how platforms use publishers' content. The code should include the possibility of independent arbitration.

The government published its response to the report in October 2021.[22] The government said it welcomed the report and was “committed to supporting a free, open, and secure internet” in line with “our democratic values”.

In setting out its strategy to improve user safety and protect pluralism online, the government outlined several measures. These included:

1) The Internet Safety Bill, designed to combat illegal content, protect children, and empower users while protecting freedom of expression online.

2) Developing a media literacy strategy and safety by design guidelines [23] that empower users to make safe choices online while supporting companies to create safety on their platforms.

The government published the results of its consultation on a new pro-competition regime for digital markets in May 2022 after the committee published

its report. He confirmed plans to put the DMU on a legislative footing with the primary aim of "promoting competition in digital markets within and outside the UK for the benefit of consumers". The government said it would bring forward legislation to implement the reforms when parliamentary time allowed.

The government also published its digital strategy in June 2022 [24], which set out the government's vision for "building a more inclusive, competitive and innovative digital economy". As part of the strategy, the government published an initial framework for monitoring the performance of digital regulation and sought stakeholder views on how to measure regulatory outcomes. The outcomes it seeks to measure include: promoting competition and innovation; keeping the UK safe online; promoting thriving democratic societies through digital technologies that support democratic interaction and preserve freedom of expression and human rights.

**Conclusions.** In conclusion, it is worth pointing out that freedom of expression is a fundamental human right that must be upheld in democratic societies. The situation when governments unjustifiably restrict freedom of expression, targeting journalists, protesters, and others who are perceived to disagree with the government's views, must be controlled. Today, there is a trend where even in Western democracies, laws curtail protest activity and threaten freedom of the press and freedom of speech through mandatory metadata retention schemes. Civil societies around the world must be vigilant in protecting freedom of expression. This is necessary to improve people's lives and to build and maintain strong, healthy democratic societies.

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