



SPECIAL NORMS OF INTERNATIONAL AND EUROPEAN LAW IN THE FIELD OF REGULATION OF FREEDOM OF SPEECH ON THE INTERNET

Nizamova Iroda Eldorjon qizi

Master's student of the Tashkent State University of Law

<https://doi.org/10.5281/zenodo.11145250>

ARTICLE INFO

Received: 02nd May 2024

Accepted: 07th May 2024

Online: 08th May 2024

KEYWORDS

Freedom of speech, Internet, fake information, EU, Statute of the International Court of Justice, legal customs, civil society, big data, Convention, personal data.

ABSTRACT

This article explores the specific rules of international and European law that relate to the regulation of freedom of expression on the Internet. The author analyzes the main international and European regulations related to this topic and discusses their impact on the protection of fundamental rights and freedoms in the digital environment. Consideration of specific norms and their interpretation helps to better understand current trends in the regulation of freedom of expression on the Internet and to identify possible ways to balance the protection of fundamental rights and public safety in the online environment.

As technological developments create new ways of expression and access to information on the World Wide Web, including the media and various social networks, international organizations are taking action to clarify the application of the basic rules of freedom of expression to freedom of expression on the Internet. Guidelines and other advocacy documents have been developed for this purpose, as new opportunities arise and the risks associated with online misuse increase, requiring appropriate regulation.

For example, one of the most popular issues in regulating freedom of expression has been the spread of false news, so-called fake news. But while this has been a problem in the past, now that almost everyone has access to the Internet, the issue is taking on a whole new global dimension. The reason is that when false information is widely disseminated, people's ability to make informed decisions is jeopardized. This can create a dangerous environment in which people cannot freely express their ideas and opinions because they are based on false information. They can also be used as a tool of censorship. Governments and powerful individuals can use false information to silence dissent and oppress minorities. This is especially true in countries where freedom of speech is not protected by law or where the media is controlled by the state.

Another difficulty in regulating freedom of speech is determining who has committed an unlawful act on the Internet, as there are many ways to conceal information about the geographic location of the user who posted the information (e.g., popular VPN servers, which are a secure private network and allow the user to change information about his or her geolocation to any desired country when accessing Internet sites).



Finally, States have the right to impose restrictions on freedom of expression where there are adequate and justifiable grounds to do so. Nevertheless, in relation to freedom of expression on the Internet, such restrictions are often criticized, and states are accused of interfering in an inherently undemocratic manner to further their own interests. It is important to realize that, in addition to states, the actual regulators of freedom of expression online are also the operators of information resources themselves. Companies such as Facebook, Twitter, Google and other social media platforms have become de facto regulators of freedom of expression online.

To address the previously mentioned challenges, online platforms have implemented various measures to counter harmful content. These measures include content moderation, fact-checking, and the creation of community standards that define what is acceptable and what is not and should be automatically removed.

While these measures may be necessary to protect users from harmful content, they also raise questions about the impact on freedom of expression online. Many argue that online platforms have too much power in deciding what content can be published, and therefore have the ability to censor voices that disagree with their policies or financial interests.

In order to determine the legal status of these operators in 2018. The Committee of Ministers of the Council of Europe published the Recommendation¹, which contains human rights standards recognized by the international community and defines the grounds for restricting the activities of Internet intermediaries (up to and including blocking, removal of content and other measures).

This Recommendation sets out the obligations of States with respect to the activities of information resource operators.

These commitments are expressed as follows:

1. To evaluate the restrictive measures taken with regard to their compliance with human rights and, on the basis of this evaluation, to take only those measures that are necessary;
2. The measures taken shall constitute the minimum possible restriction of rights and freedoms;
3. Provide procedural safeguards to enable judicial review of the restrictions imposed;
4. Avoid shifting responsibility for controlling information published on resource operators' resources to the operators themselves. This practice is possible only if the operator is aware of the publication of unlawful content, but has not taken any action to resolve the situation;
5. Provide assistance aimed at self-regulation of Internet sites.

International legal customs occupy a special place in the exercise of freedom of speech on the Internet. According to Article 28 of the Statute of the UN International Court of Justice, these sources of normative character represent evidence existing in common practice and thus act as a rule of law².

In the EU, the use of customary law has played a crucial role in the development of the legal framework governing freedom of expression on the Internet. Customary law has been

¹ Recommendation CM/Rec (2018) 2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries. 7 March 2018 // Council of Europe. - Текст электронный. - URL: <https://go.coe.int/CXCbe>

² Statute Of the International court Of justice, art. 28 - URL: <https://www.icj-cij.org/statute>



used to balance the need to protect individual rights with the protection of freedom of expression. For example, in cases of hate speech on the Internet, legal custom has been used to establish basic norms of behavior and to guide behavior regarding the use of hate speech. In some EU countries, hate speech is regulated by criminal law, and legal custom has been used to determine what is hate speech and what is not.

According to the researcher P.P. Polanski, the significance of custom is manifested in the fact that in order to apply any rules in the studied area, such rules must be widely spread in practice, i.e., must be certified by custom³.

Based on this logic, the problem of the difficulty of developing universal norms regarding the lawful use of the global in nature network is solved, as this issue is often associated with the lack of unanimity in the opinion of the legislators of individual States, when it is the cross-border regulation that is required.

Essential in establishing norms for Internet behavior is to determine the relationship between customary norms and written norms, which may take the following forms:

1. Written norms may be supplemented by references to customary norms (*consuetudo secundum legem*).
2. Customs may fill the existing gaps in legislation (*consuetudo praeter legem*);
3. It is possible that a customary rule may contradict the legislation in force (*consuetudo contra legem*).

For the best understanding of the manifestation of these forms of correlation, it is necessary to refer to practice and, with respect to the first group of cases, one of the most successful examples is the regulation of electronic commerce. Article 8 of The United Nations Convention for Contracts on International Sale of Goods⁴ contains a prescription on the need to take into account all circumstances, including custom. That is, it is a clear case when a norm of a legislative act refers to a customary norm.

An example of the second group is the application of the *Internet lex mercatoria* custom. This custom obliges the parties to ensure information security in transactions on the Internet.

And just this category of customs, supplementing the existing legislation, proves their expediency and good influence on the considered area of regulation of social relations, since there are still many gaps in the legislative resolution of disputes in this area, especially in the context of ensuring freedom of speech on the Internet.

For example, expert M. Kittiman argues that the right of states to impose certain restrictions on freedom of expression in the Internet space is based on the existence of a well-established custom, according to which states are obliged to maintain the stable functioning of the Internet on the basis of generally accepted principles of non-interference, prevention of unlawful behavior and international cooperation in this area. Finally, the application of customary law leads to the emergence of sufficient practice in the application of certain rules to be successfully enshrined in the form of legislation⁵.

³ Polanski P.P. Towards a supranational Internet law / Dr. Paul Przemyslaw Polanski // Journal of International Commercial Law and Technology. – 2006. – Vol.1. – Issue 1. – P. 3 (P. 1-9)

⁴ The United Nations Convention for Contracts on International Sale of Goods, art. 8 - URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf

⁵ Kettemann, M. C. The Future of Individuals in International Law. Lessons from International Internet Law / Matthias C. Kettemann. – Eleven International Publishing, 2013. – p. 168 (201 p.)



Another important for the development of legal regulation of social relations of the studied sphere of customs is the idea of participation of civil society and the private sector in the development of international legal documents regulating behavior on the Internet. Such a custom would allow the private sector to act as an equal participant in the democratic system of the state, i.e., to influence the way the Internet use is regulated.

An example of the successful implementation of such an idea can be seen in the emergence of a relevant custom at the Information Security Summits in 2003 and 2005.

Internet governance was defined in the discussions at that forum as the joint development and implementation by authorities, the private sector and civil society institutions of principles, rules, regulations, procedures and programs that will govern relations on the Internet⁶. The meetings also recommended the involvement of all stakeholders in the standard-setting process, and as a result, following this principle, subsequent discussions at the Summit included representatives from government, civil society and the private sector.

However, despite such an inexorable role of customs, it is worth recognizing that in certain areas of the hierarchy of sources of regulation, traditionally legislative norms are still of primary importance.

The most significant progress in this field has been achieved so far, in particular in the field of personal data management. The General Regulation on the Protection of Personal Data (hereinafter referred to as the Regulation), adopted in 2006, is the most important document in this field in the EU⁷.

The meaning of this act is the protection of such a sensitive area for each person as his/her personal data. The importance of this document is due to the fact that in the modern information economy, stimulated by the development of digital data processing technologies, the collection, storage and processing of "big data" (big data) is increasingly frequent. Despite the fact that the main objective of this Regulation is to protect the circulation of personal data, it also touches upon the peculiarities of the EU regulation of freedom of expression. Experts note that one of the most serious threats to the EU's more active involvement in digital lawmaking is that so far many of Brussels' attempts have been counterproductive⁸. This was manifested, for example, in the fact that the Regulation not only abolished most of the previous protections by including facial recognition for the first time, but also created a number of loopholes and exceptions that made its application much more difficult. K. Letaru notes that the act promotes a system in which criticism of the government for its interference will be classified as unlawful⁹.

Thus, it seems possible to come to the following conclusions on the basis of the foregoing:

⁶ Internet Governance \ Chair's paper (Document WSIS-II/PC-3/DT/10(Rev.4)-R, Tunic, 30 September 2005 year). - URL: <https://digitallibrary.un.org/record/558023?v=pdf>

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). - URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

⁸ Leetaru K. As GDPR Turns One Is It A Success or A Failure? // GDPR. 06.05.2019. - URL: <https://www.forbes.com/sites/kalevleetaru/2019/05/06/as-gdpr-turns-one-is-it-a-success-or-a-failure/?sh=327b90d846ae>

⁹ Leetaru K. The EU Will Be the End Of Free Speech Online // Forbes. 06.06.2019 - URL: <https://www.forbes.com/sites/kalevleetaru/2019/06/06/the-eu-will-be-the-end-of-free-speech-online/?sh=7bd1cb956a88>



Freedom of expression is a very complex category within the framework of international and national law. With the advent of information and communication technologies, which provided everyone with the opportunity to create and disseminate information, the problem of ensuring freedom of expression has become more complex due to the increasing amount of information that can be controlled.

In general, it can be seen that the main criteria for restricting freedom of expression are requirements of necessity, which mainly include requirements to protect the legitimate rights and interests of others, as well as requirements to ensure national security. At the same time, these criteria are rather vague, which leaves a wide scope for free interpretation at the national level.

It remains unclear to what extent existing legal norms can meet the ethical requirements associated with the use of the Internet. It should be noted that due to the novelty and complexity of the regulated subject matter, such as Internet relations, there is still no sufficient number of international or national legal norms regulating certain aspects of such relations, which is why customary norms are of particular importance.

The basic rules governing freedom of expression apply to freedom of speech on the Internet, but it is clear that special legislation will need to be developed in this area in the future, as freedom of speech on the Internet is a special subject of regulation.

References:

1. Recommendation CM/Rec (2018) 2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries. 7 March 2018 // Council of Europe. - Текст электронный. - URL: <https://go.coe.int/CXCbe>
2. Statute Of the International court Of justice, art. 28 - URL: <https://www.icj-cij.org/statute>
3. Polanski P.P. Towards a supranational Internet law / Dr. Paul Przemyslaw Polanski // Journal of International Commercial Law and Technology. – 2006. – Vol.1. – Issue 1. – P. 3 (P. 1-9)
4. The United Nations Convention for Contracts on International Sale of Goods, art. 8 - URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf
5. Kettemann, M. C. The Future of Individuals in International Law. Lessons from International Internet Law / Matthias C. Kettemann. – Eleven International Publishing, 2013. – p. 168 (201 p.)
6. Internet Governance \ Chair's paper (Document WSIS-II/PC-3/DT/10(Rev.4)-R, Tunic, 30 September 2005 year). - URL: <https://digitallibrary.un.org/record/558023?v=pdf>
7. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). - URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>



8. Leetaru K. As GDPR Turns One Is It A Success or A Failure? // GDPR. 06.05.2019. - URL: <https://www.forbes.com/sites/kalevleetaru/2019/05/06/as-gdpr-turns-one-is-it-a-success-or-a-failure/?sh=327b90d846ae>
9. Leetaru K. The EU Will Be the End Of Free Speech Online // Forbes. 06.06.2019 - URL: <https://www.forbes.com/sites/kalevleetaru/2019/06/06/the-eu-will-be-the-end-of-free-speech-online/?sh=7bd1cb956a88>