



Human rights - There is no speech nor
language, where their voice is not heard:
Freedom of expression

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Human Rights in Europe - Freedom of
expression

History

- *„I disapprove of what you say, but I will defend to the death your right to say it.“*
- *„Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.“*
- Why it was number one?

Instruments

- UDHR Article 19 (!): *„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. “*

Instruments:

■ ICCPR:

„Article 19

- 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 in print, in the form of art, or through any other media of his choice.*
- 3. 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 restrictions, 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.*

Article 20

- 1. Any propaganda for war shall be prohibited by law.*
- 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*

Instruments:

- ECHR:

- *„Article 10*

- *Freedom of expression*

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. - outfashioned*
- 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."*

Instruments:

- EU Charter:

„Article 11

Freedom of expression and information

- 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*
- 2. The freedom and pluralism of the media shall be respected."*

Is there any difference between EU and ECHR?

Structure

- Freedom to hold opinions (a contrario newspeak and crimethink)
- to receive information and ideas (*Open Door Counselling v. Ireland 1992* or ECJ - *Grogan*)
- to impart information and ideas
- + to request information (*Guerra and others v. Italy 1992* in scope of Art. 8 to get information about chemical factory)?

Forms of expression

- What forms can you think about?
- Forms in ECHR
 - Written and spoken word (freedom of speech), particularly newspaper (tradition) *Observer and Guardian v. U.K.* (1991)
 - TV programmes: *Hodgson v. U.K.* (1987)
 - Radio broadcasting: *Autronic AG v. Switzerland* (1990)
 - Movies: *Wingrove v. U.K.* (1996)
 - Paintings: *Müller v. Switzerland* (1988)
 - Clothes: *Stevens v. U.K.* (1986)
 - Nonverbal acts of protest: *Steel v. U.K.* (1998)
 - Symbols: *Chorherr v Austria* (1993)



Human Rights in Europe - Freedom of expression

Forms of expression



- Vajnai v. Hungary (2006) – what was it about? ECHR as the lowest common denominator? Why he did not succeeded at ECJ?

Content of expression

- Which one is on the top? Artistic (Wingrove, Otto-Preminger-Institute v. Austria 1994) v. commercial (Markt Intern and Beermann v. Germany 1990) v. political (Lingens v. Austria 1986 – central concept of democratic society; Castells v. Spain 1992)...?

Limitations

- *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.*

Limitations

- Prescribed by law:
 - Silver v. U.K. 1983 – prisoners;
 - Sunday Times v. U.K. 1979 – Thalidomin, only House of Lords case law

Limitations

- "necessary in a democratic society"
 - Explicitly or implicitly including proportionality test:
 - Is there a legitimate purpose (pressing social need like in *Sunday Times v. U.K.* 1979 - Thalidomin)?
 - Necessity (is there alternative measure less intrusive and equally effective?)
 - Balancing (costs and gains)

Limitations

- national security, territorial integrity or public safety
 - Spycatcher: Observer and Guardian v U. K. 1991 (not proportional),
 - Arrowsmith v U.K. 1980 (pacifist in Ulster – proportional punishment)
- prevention of disorder or crime
 - Janowski v Poland 1999 (critique of policemen „when on duty“ making order in riots - „hlupki“)
- the protection of health or morals
 - Almost unlimited, is there a „European morality“? Only Open Door Counselling v Ireland 1992 was too much for ECHR (unproportional)
 - Otto-Preminger Institute v. Austria (1994), Wingrove
 - Handyside v. U.K. 1976 - The Little Red Schoolbook (O.K.)

Limitations

- the protection of the reputation or rights of others – most often, best for balancing
 - *Lingens v. Austria 1986: "In truth Mr. Kreisky's behaviour cannot be criticised on rational grounds but only on irrational grounds: it is immoral, undignified" (+ Wiesenthal + Peter)*
 - *„The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues." (42)*

Limitations

- **Lingens v. Austria 1986**
 - *„In this connection, the Court has to recall that freedom of expression, as secured in paragraph 1 of Article 10, 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-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society" (Handyside judgment...)."* (46)
 - *„In the Court's view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof. The Court notes in this connection that the facts on which Mr. Lingens founded his value-judgment were undisputed, as was also his good faith."* (41)
- **Facts and value-judgments**

Limitations

- preventing the disclosure of information received in confidence
 - Goodwin v. U.K. 1996 – release your information source (unproportional)
- maintaining the authority and impartiality of the judiciary
 - Sunday Times v. U.K. 1979 – Thalidomin („trial by newspaper“)
 - Schöpfer v. Switzerland 1998 (punishment of advocate criticizing penal trial)
 - De Haes and Gijssels v. Belgium 1997 (critique of judges in pedophile case)
 - Who, by whom, when, where, how?

Limitations in steps

- ECHR judgment of 25 November 1996, *Wingrove v. United Kingdom*, application No. 17419/90
- Question for discrimination (is the law on blasphemy discriminating?) and universalism: Do you feel offended
 - as humans (dissenting Pettiti: Dante, Tolstoy)
 - as Christians/Hréstians
 - as lawyers?
- 1. Are we in scope of Art. 10?
- 2. Is there a violation?
- 3. Was it "prescribed by law,,?"
- 4. Did the interference pursued a legitimate aim? (which one?)
- 5. Was the interference "necessary in a democratic society"?