

Regional mechanisms to ensure freedom of expression and the right to information

Yuldosheva Shoxista Tolqinovna

Tashkent State University of Economics
Assistant Lecturer, Department of "Philosophy"
shoxista.pirimova@gmail.com

Abstract: Freedom of expression, or freedom of speech, is essential to a democracy. It means that everyone can participate in political debates, and the media holds those in power accountable. A free, independent and diverse media plays the role of "protecting the public interest" by informing the public and holding government accountable.

Key words: Freedom of speech, mechanism, international law, document, declaration, human rights.

Аннотация: Свобода выражения или свобода слова является неотъемлемой частью демократии. Это означает, что каждый может участвовать в политических дебатах, а СМИ привлекают к ответственности тех, кто находится у власти. Свободные, независимые и разнообразные СМИ играют роль «защиты общественных интересов», информируя общественность и привлекая правительство к ответственности.

Ключевые слова: Свобода слова, механизм, международное право, документ, декларация, права человека.

Introduction.

Important international legal instruments on human rights have been adopted: the Council of Europe (European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950), the Organization of American States (American Declaration of the Rights and Duties of Man of 1948, American Convention on Human Rights of 1969) and the Organization of African Unity (African Charter on Human and Peoples' Rights of 1981).

Europe has taken the most active steps to develop international human rights guarantees. Among the effective control mechanisms used by the Council of Europe are the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 2000 Charter of Fundamental Rights of the European Union, and Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the establishment of patients' rights in cross-border healthcare.

The European Convention for the Protection of Human Rights and Fundamental Freedoms, which entered into force on 3 September 1953, not only proclaimed fundamental human rights, but also created a special mechanism for their protection. Two bodies were established to implement the provisions - the European Commission of Human Rights (1954) and the European Court of Human Rights (1959).

Materials And Methods.

In the 1960s, all applications submitted by individual applicants or by member states to the Convention had to be examined in advance by the European Commission of Human Rights. It considered their admissibility and, if so, referred the case to the European Court of Human Rights for a final, binding decision. If the case was not referred to the Court, the Committee of Ministers decided. From 1 October 1994, applicants were given the right to refer their cases to the Court in the case of applications found admissible by the Commission.

The European Court of Human Rights is called upon to ensure strict compliance and implementation by the member states of the Convention. It carries out this task by considering and resolving specific cases that it receives for consideration on the basis of individual complaints from an individual, a group of individuals or a non-governmental non-profit organization. Citizens of our country have experience in applying to the European Court of Human Rights. Thus, in 2010, 10,450 Ukrainians filed complaints alleging violations of fundamental rights and freedoms.

Many journalists, media outlets, and individuals have fought for freedom of expression under the European Convention on Human Rights.

In particular, amendments were made to Malta's Media Act in 2018 following the European Court of Human Rights' consideration of the Falcon v. Malta case. The case was brought by Falcone after journalist Falcone was fined for criticizing a politician in his newspaper column.

In 2018, the Maltese government adopted a new Media and Defamation Act, which amended the existing definitions of defamation and insult with the primary aim of strengthening freedom of expression in the law. This included introducing the concept of "serious harm" to define defamation and decriminalizing it.

Another widely discussed precedent in Europe was the 2003 Ernst and Others v. Belgium case in Belgium, which led to reforms to protect media sources by increasing police powers over journalists.

This case affected all journalists working in Europe. It confirmed that freedom of information and maintaining professional standards of quality and accuracy constitute important solutions for journalists in Europe.

In 2005, the Belgian parliament passed a law on the protection of media sources. It made it illegal to obtain information about journalists' sources, especially through searches or seizures - in most cases¹.

Results and Discussions

In accordance with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Committee of Ministers of the Council of Europe monitors the execution of court decisions, which means that it monitors not only the timely payment of monetary compensation, but also how the State party to the Convention has remedied any discrepancies between its domestic law or case-law and the Council of Europe's standards. A court decision is legally binding only on the State party to the case. However, the significance of court decisions often extends beyond national borders, affecting the legislation and case-law of other States parties to the Convention.

At the heart of all the Council of Europe's work is a human rights instrument - the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). This regional instrument (also known as the European Convention on Human Rights) is binding on the member states of the Council of Europe, which undertake to protect the rights it sets out, including the right to freedom of expression. The European Convention on Human Rights is a legally binding treaty that has almost constitutional status in most countries on the continent. Membership of the Council of Europe is conditional on the adoption of the ECHR. A country cannot become a member of the Council of Europe if it has not ratified and implemented the ECHR in its national legislation, i.e. if it has not brought it into line with the ECHR. The standards and provisions of the Convention are not frozen, but are evolving in the broad legal norms developed by the European Court of Human Rights (ECHR) – the Court of Human Rights, which has the power to issue decisions that have legal force for the countries of the Council. Article 10 of the ECHR guarantees the protection of the right to freedom of expression in a very close interpretation to Article 19 of the UN Universal Declaration of Human Rights (UDHR): “Everyone has the right to freedom of expression. This right includes freedom to hold opinions without interference by public authority and to receive and impart information and ideas without any interference by public authority and regardless of frontiers.”

However, it adds two important elements to the provisions of the UDHR. First, Article 10 of the ECHR clearly states that the right to freedom of expression does not prevent States from establishing licensing mechanisms in the broadcasting sector: “This article shall not prevent States from licensing radio, television or cinematographic broadcasting enterprises”².

Secondly (in its second part), Article 10 contains a detailed provision on limitations on the right to freedom of expression. According to this limitation clause, which also applies to the regulation of the media, the exercise of freedom of expression may be subject to “such duties and responsibilities, as are prescribed by law and are necessary in a democratic society, such formalities, conditions, restrictions or sanctions as are necessary in the interests of national security, for the maintenance of territorial integrity or public order, 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.”

This paragraph is interpreted as a three-pronged test, according to which any restrictions must:

- be prescribed by law;
- pursue one of the stated aims;
- be necessary in a democratic society.

¹ Постановление и пресрелиз Европейского суда по правам человека

<https://www.coe.int/ru/web/impact-convention-human-rights/-/search-and-seizure-must-be-justified>

² Под лицензированием кинематографических предприятий ЕКПЧ понимает существующую в ряде стран Европы практику лицензирования кинопрокатных организаций и киностудий, в основном с целью защиты общественной нравственности и морали.

He emphasized that the first requirement is fulfilled only if the relevant law exists and is "drafted with sufficient precision to allow the citizen to regulate his own behavior."

The second criterion concerns whether the interference must be for one of the purposes listed in Article 10(2). This list is exhaustive and therefore any interference that does not pursue one of these purposes violates Article 10. The third condition is that the interference must be necessary in a democratic society. The word "necessary" means that the interference must be determined by a "pressing social need". The reasons given by the State to justify the interference must be "relevant and sufficient" and, in addition, must show that the State interference is proportionate to the aim pursued. In order to be lawful, any regulation of the media in the Council of Europe countries must pass this test.

Conclusions.

Many other documents have been adopted within the framework of the Council of Europe: conventions, resolutions, recommendations, which are examined in other chapters of the book. Conventions, in particular the Convention on Access to Official Documents, are generally treaties that become binding once they have been signed and ratified.

The main document defining the rights and freedoms of citizens of Ukraine is its Constitution. It establishes the inviolability and inalienability of human rights, drawing attention to the incompleteness of the rights and freedoms of man and citizen established therein. In accordance with the Constitution of Ukraine, parliamentary control over the observance of constitutional rights and freedoms of man is carried out by the Commissioner for Human Rights of the Verkhovna Rada and his local representatives. The Commissioner for Human Rights of the Verkhovna Rada is an institution for the extrajudicial protection of human rights and freedoms. The powers of the Human Rights Commissioner extend to all cases of violation of the rights and freedoms of citizens by executive authorities. He may demand the initiation of administrative proceedings against civil servants who have violated the constitutional rights and freedoms of citizens. He also has the right to inspect the observance of these rights in the institutions of the penal system (the system of institutions where convicts serve their sentences: prisons, colonies, etc.), in the army, in institutions of the Ministry of Internal Affairs. The speech of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine Nina Karpachova on January 14, 2011 contains the following key information:

During the existence of this institution in our country, more than one million people have applied to the Commissioner for Human Rights of Ukraine,

in 2010, more than 82 thousand Ukrainian citizens. Poverty in Ukraine remains the most serious form of human rights violation. Violations of the constitutional rights of a person to health care and free medical care are of a systemic nature. In recent years, special attention should have been paid to protecting the rights of Ukrainian seafarers.

It is urgent to ensure equal rights and freedoms for women and men in Ukraine. Ukraine should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families³.

In conclusion, the processes of global integration of the international community confirm the increasing role of the international system for the protection of human rights. The problem of human rights, which has not only a legal, but also a political and moral nature, thus becomes one of the important sections of international and domestic law aimed at strengthening the ideology of human rights in society.

If we look at the world community, each nation and people has a regional mechanism. The work being done to improve freedom of speech also stems from the mechanisms that have been developed. While we see that stronger attention is paid to it in some regions and stronger requirements and laws and regulations are being developed. In some countries, we can see the opposite. We can see a clear example of this in the example of countries that are members of the Universal Declaration of Human Rights and those that are not members. The most important thing is the presence of attention to human dignity and personality.

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³ <https://sof.uz/news/show/12851-aybsizlik-prezumpsiyasi>

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