

The protection
of freedom of expression
in international human rights law

Freedom of expression in international human rights law

- Art. 19 Universal Declaration of Human Rights:

«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.»

- Art. 19 International Covenant on Civil and Political Rights:

“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.”

UN Human Rights Committee

- *General Comment* no. 34 of 2011:
 - Links between freedom of opinion and freedom of expression;
 - Freedom of expression as a precondition for full enjoyment of other human rights
 - No reservations to Art. 19(1) ICCPR
 - Horizontal and vertical effects
 - Restrictions admitted by Art. 19(3) must be envisaged by law, necessary and proportionate to aim pursued

UN Human Rights Committee – recent views

- *Andrei Sviridov v. Kazakistan* (5 September 2017, communication no. 2158/2012)
- *Yan Melnikov c. Bielorussia* (14 July 2017, communication no. 2147/2012)

Freedom of expression in regional human rights systems

- European Convention on Human Rights (Art. 10)
- American Convention on Human Rights (Art. 13)
- African Charter on Human and Peoples' Rights (Art. 9)
- Arab Charter on Human Rights (Art. 27)

Freedom of expression as shared value

- Bill of Rights (1688): “(...) the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament”.
- Declaration of the Rights of Man and of the Citizen, Art. 11: “La libre communication des pensées et des opinions est un des droits les plus précieux de l'Homme : tout Citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la Loi”.
- US Constitution, first amendment: “Congress shall make no (...) abridging the freedom of speech, or of the press (...)”.
- Italian Constitution, Art. 21 par. 1 and 2: “Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication.”; “The press may not be subjected to any authorisation or censorship”.

Freedom of expression in the ECHR

Art. 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.
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.

Freedom of expression in the ECtHR jurisprudence

- *Mehmet Hasan v. Turkey* and *Şahin Alpay v. Turkey* (20 March 2018)
- *Sinkova v. Ukraine* (27 February 2018)
- *Egill Einarsson v. Iceland* (7 November 2017)

Freedom of Expression in the American Convention on Human Rights

Art. 13: Freedom of Thought and Expression

1. 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.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. respect for the rights or reputations of others; or
 - b. the protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.»

Freedom of Expression in the IACtHR jurisprudence

- Preventive censorship: *“The Last Temptation of Christ” (Olmedo-Bustos et al.) v. Chile* (5 February 2001)
- Freedom of information: *Ivcher-Bronstein v. Peru* (6 February 2001) and *Herrera-Ulloa v. Costa Rica* (2 July 2004), *Granier et al. (Radio Caracas Televisión) v. Venezuela* (22 June 2015).
- Access to information: *Claude-Reyes v. Chile* (19 September 2006)

Freedom of expression in the African Charter on Human and People's Rights

Art. 9: right to receive information and free expression

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Freedom of expression in the African Court on Human and Peoples' Rights' Jurisprudence

Lohé Issa Konaté v. Burkina Faso, application no. 004/2013, judgment
of 5 December 2014

Freedom of expression in the Arab Charter on Human Rights

Article 27:

“Adherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law”.