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Freedom of speech in international regulations in the face of digital media development

Abstract

In the face of technological development, the relationship between freedom, including freedom of speech, and security – especially its digital variety, namely cybersecurity – is a particularly difficult relation.

It should be pointed out that the international plane is an indispensable dimension of human rights protection, since it is in the international plane that new standards in the field of human rights are created, which are then brought into the system of domestic law and the practice of states. Meanwhile, the existence of international legal regulations increasingly often becomes a guarantee of the effectiveness of domestic legal systems. International institutions often become the institution of appeal for individuals and a lever to force state governments to respect fundamental human rights and freedoms. Support for individuals, communities or nations fighting for their rights, and their success in this struggle, contribute to the formation of a new democratic international order.

Key words: freedom of speech, cybersecurity, digital media, regulation, international law

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The contemporary process of penetration of the idea of natural rights of the individual into positive law being a formal legal expression of human rights highlights the special importance of eighteenth-century declarations, especially the „United States Declaration of Independence” of 4 July 1776 and the French „Declaration of the Rights of Man and of the Citizen” of 26 August 1789. This latter declaration, like the former, provides in Art. 1 that „Men are born and remain free and equal in rights”, while Art. 2 emphasises that „the aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, and Safety”¹.

To systematise and diagnose the instruments used today to protect the freedom of speech, it is first necessary to characterise the conditions of limitations, noting that this refers to limitations on the exercise of freedoms and not to limitations on the freedom itself. According to constitutional provisions, there are four categories of limitations: limitations that are necessary in a democratic state for the protection of its 1) security; 2) public order; 3) protection of the natural environment; 4) health and public morals; 5) freedoms and rights of other persons. In this respect, it is particularly important to address the issue of limitations of the freedom of speech on the grounds of security. The question of what nature of security is involved needs to be resolved. In particular, when it comes to digital media, the key question is whether we are dealing with broadly defined cybersecurity, or whether it is about specific cybersecurity of the state. The article attempts to present the conditions that change the concept of the protection of freedom of speech as a basic rule governing the digital world.

International regulations vs. human rights and freedoms

The idea of natural human rights and their protection has gradually pervaded emerging international law. On the progressive process of the internalisation of law Izabela Malinowska writes „entailed the need to regulate human rights by international law. A number of universal, regional and dedicated treaties have been adopted”², making up the international law on human rights and their protection. Many such treaties were concluded between World War I and

1 K. Motyka, *Prawa człowieka. Wprowadzenie. Wybór źródeł*, Lublin 2004, p. 34–35, 116–118, 119–121.

2 I. Malinowska, *Prawa człowieka i ich międzynarodowa ochrona*, Warszawa 2004, p. 5.

World War II³, but international law on human rights law noticeably developed after World War II⁴. This development was, on the one hand, the result of the traumatic experience of the war and, on the other hand, the expression of desires and aspirations of the entire international community to ensure that people will not have to go through such experiences in the future, to build a lasting foundation for freedom, justice and peace in the world – conditions that are necessary for a sustainable, comprehensive security system, closely connected with respect for human dignity and rights.

Among the endeavours undertaken in the sphere of the international protection of human rights and freedoms, the most effective are international protection systems, which consist of comprehensive instruments such as the legal basis, i.e., a document-convention that constitutes binding international law, an institution or a set of institutions to ensure compliance with the document by the states parties, and a set of methods, mechanisms and procedures that make it possible to monitor compliance by the states with the assumed obligations, and in the case of violations, to influence the states to act under the agreement. These endeavours, linking the issue of security with the respect for fundamental human rights and freedoms, are reflected, *inter alia*, in the United Nations' universal system for the protection of human rights and freedoms.

The first essential document was the „United Nations Charter”. Article 1.2 states that its purpose is: „To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”⁵. It also includes provisions outlining tasks for all nations and states in respecting fundamental human rights and freedoms. Furthermore, it provides institutional foundations for the development of an international system for the protection of human rights. Further elements of this system are formed by „The Universal Declaration of Human Rights, the Covenants on Human Rights”, as well as other conventions and declarations that explicitly highlight the problem of human dignity⁶.

3 K. Motyka, op. cit., p. 38.

4 Ibidem, p. 125; *Prawa człowieka. Dokumenty międzynarodowe*, elaborated and translated by B. Gronowska, T. Jasudowicz, C. Mik, Toruń 1993.

5 *United Nations Charter* [in:] ibidem, p. 14.

6 Cf. A. Łopatka, *Deklaracja godności człowieka*, „Res Humana” 1999, no. 1, p. 3–8.

In the introduction to *the „Universal Declaration of Human Rights”* adopted on 10 December 1948, it is stated that „[...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Concluding that [...] the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and resulted in the advent of a world in which human beings shall enjoy the freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”.

Subsequent UN documents dated 1966 having a character of international agreements, which include the „International Covenant on Civil and Political Rights” with the „First Optional Protocol” and the „International Covenant on Economic, Social and Cultural Rights”, created an elaborate system for the protection of the rights of individuals. They represent the first ever international acts containing a rich catalogue of human rights and freedoms, obliging the states that ratified them to implement them. They, therefore, serve a similar function to constitutions in individual states.

UN bodies responsible for protecting human rights include the Human Rights Council, the Treaty Committees, the United Nations High Commissioner for Human Rights (UNHCHR) and the International Criminal Court.

To respect the rights stipulated in these and other documents⁷, the Economic and Social Council set up Committees. States Parties are required to submit periodic reports on the implementation of the provisions contained in these legal acts.

In the European system of protection of the individual, the „European Convention for the Protection of Human Rights and Fundamental Freedoms”, adopted in 1950, played a special role. Referring unquestionably to „the

7 Documents that make up the UN system: the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the Abolition of the Death Penalty, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention relating to the Status of Refugees, Standard Minimum Rules for the Treatment of Prisoners, the Declaration of Philadelphia, and the United Nations Millennium Declaration.

Universal Declaration of Human Rights”, it formulated its catalogue of guaranteed rights, the content and scope of which continue to be developed by subsequent optional protocols and bodies for the protection of those rights operating under established procedures⁸.

The primary body upholding the rights guaranteed by the „Convention for the Protection of Human Rights and Fundamental Freedoms” and the protocols thereto is the European Court of Human Rights, based in Strasbourg. When considering complaints, the Court examines the grounds for the limitations applied by the state, including legal regulations that could be dictated by security reasons. First, whether the interference was provided for by domestic law. According to the Court’s interpretation, the law should be understandable to the citizen and precise enough for the citizen to anticipate the consequences of a certain behaviour, and whether it is consistent with the rule of law. Second, whether the purpose of the interference was legitimate, e.g., protecting morals, security, and the rights of other persons. Third, whether the interference was „necessary” in a democratic society, or whether there was a strong social need for the limitation. Fourth, whether the interference was proportionate to the legitimate purpose.

Determinants of digital media development

The technological revolution, the first stage of which was the creation of the digital world, has entered another transformation process that clashes with issues that are crucial for democratic societies, as they relate directly to the foundations and axiology of freedom. The sense of uncertainty about tomorrow, stemming from the inability to assess and control the technological future, has recently taken real shape, as the new digital society is a community whose rules are unknown, and the new social order, without defining common values and

⁸ Other instruments for the protection of human rights developed in the system of the Council of Europe include: the European Social Charter (1961), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), the European Framework Convention for the Protection of National Minorities (1995), the European Convention on the Exercise of Children’s Rights (1996), the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997), the European Convention on Nationality (1997), the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, and the European Charter of Local Self-Government.

establishing protective norms, raises a concern. Technological corporations are becoming the decision-makers in matters that were previously the domain of public authorities and courts. This also applies to such an important sphere as freedom of speech and the digital media that operate based on it.

This is particularly important in relation to social media, as online communities are a powerful force with tremendous power of communication and expansion, as well as the potential for manipulation, due to the specific nature of online technologies. The term social media refers to computer technology that facilitates the sharing of ideas, thoughts and information through virtual networks and communities. Social media is based on the Internet and provides users with the fast electronic communication of digital content such as personal data, documents, videos and photos. Users access social media via computers, tablets or smartphones using software, or web-based applications. In 2021, 3.96 billion social media users were reported worldwide. In one day, 4.2 billion photos were „liked” on Instagram. On top of that, nearly 100 million new photos/posts are created on IG every day. The use of the „Story” function has increased by 100 million posts since 2017. Facebook is the seventh most visited site in the world. 78% of users have used Facebook to find new products and services. Facebook is the most popular marketing platform for any social media channel. Nowadays, media policy is developed predominantly based on online coverage and is changing the thinking about the impact of media messages on the recipient – the online user. This is influenced by the peculiarities of digital media, which include: the ease of commenting – everyone has access to a computer and this can be done practically at any time; the belief in anonymity; the stoking of emotions – gossip portals often use clickbait (usually headlines that have nothing to do with the truth), as they make money from the number of displayed ads accompanying the message; the cult of beauty and perfection.

Modern social media are creating a new reality, often conveying it differently than the factual situation requires, presenting only selected facts, masking some information, falsifying the message and manipulating public opinion. Such situations are key to the development of the phenomenon of post-truth and disinformation. Facts are becoming less important in shaping public opinion than appealing to emotions and beliefs. In the post-truth era, core values are under threat due to cynicism and the extreme breakdown of all once cherished media attributes, e.g., truth, honesty and journalistic integrity. It is also a process of arguing with beliefs rather than facts. With the abundance of information and the publication of various articles that are reprints

of foreign-language publications, it is more and more difficult for publicists and readers to verify sources. However, liberty and freedom of expression carry great responsibility and the need to use them by acting with due diligence, in good faith and by following professional ethics. All the phenomena indicated hereinabove, observed in the digital media space, have an impact on public opinion and the public sphere.

Redefining freedom of speech

An attempt to redefine freedom of the press was made by Jürgen Habermas, who introduced a definition of „public sphere”, recognising it as a domain of social life where public opinion can be formed. This public character applies both to the characteristics of the message itself and the audience, and to the functions of social media and their sphere of influence. Diversity, pluralism and the freedom of expressing an opinion and view allow for the analysis and selection of the best alternative. It is a privilege of the public sphere but also a duty of public authorities that at the times of digital transformation, relevant institutions using instruments legitimised by the will of societies be allowed to speak in defence of fundamental freedoms, including freedom of speech, against the decision-makers – the owners of online platforms, created as a result of the prevailing economy of digital messages. This is due to the obvious need to support the individual, the citizen, society as a whole, as well as individual social groups who, in the face of superseding the rules of the real world by the rules of the digital world, need to make their bones in both material and political areas, in their identity, in their language, as well as in their axiology and the democratic institutions that are close to them.

However, the principle of the freedom of social media still underpins the functioning of all digital players and determines the role of digital media in any society. The historical pedigree of this freedom dates back to the enactment of the Constitution of the United States of America, and after World War II the idea of the freedom of speech became a permanent component of the catalogue of rights and freedoms of the individual, a fundamental part of the standard of a democratic state. The inclusion of the idea in widely adopted international documents contributed to its dissemination, as well as the determination of its content. However, the attributes of freedom of speech are changing and the rule itself is not unlimited in the face of new threats that are emerging due

to the development of digital media and the expansion of audiences to previously unimaginable proportions.

One of the key provisions in the area of international regulations is Art. 19(1) of the International Covenant on Civil and Political Rights, which opened for signature in New York on 19 December 1966, (ratified by Poland on 3 March 1977, Journal of Laws of 1977, no. 38, item 167; hereinafter: „the Covenant”), which states that „Everyone shall have the right to hold opinions without interference”. Paragraph 2 of this article provides that „everyone shall have the right to freedom of expression”, while clarifying that 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”.

In turn, Art. 10 of the European Convention on Human Rights, „Freedom of Expression”, ensures that everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 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 for 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 authorities.

And in the sphere of EU law, Art. 11 of the EU Charter of Fundamental Rights (2010/C 83/02), „Freedom of expression and information”, introduces the rule that everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers, and the freedom and pluralism of the media shall be respected.

Like the documents indicated above, the Polish Constitution provides for the protection of civil rights and freedoms, including the freedom of speech (Art. 14 and 54 of the Polish Constitution). The Constitutional Court has repeatedly stressed that the provision of Art. 54 of the Polish Constitution encompasses three freedoms: the freedom to express opinions and to acquire and disseminate information.

The latter, i.e., the freedom to disseminate information, includes both making content available to entities individually chosen by the disseminator

and disseminating information, i.e., making it available to the public, meaning non-individualised addressees, especially through the mass media, that is social media. The principle of the freedom of speech and social media is a rule that encompasses both the privilege and the duty to disseminate information because a free press exercises the civic right to reliable and responsible information and it serves the entire society.

Limitations on the exercise of constitutional freedoms and rights may be imposed only by statute, and only when they are necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights. Thus, any limitations of this freedom must result from a legal norm and be justified by the indicated grounds enumerated in the constitution.

There is no doubt that international documents have guided the normative content of the idea of the freedom of speech in written constitutions; especially those that came into force during the period of an established catalogue of rights and freedoms in a democratic state. From the content of the provisions in international documents, it is clear that in the era of the digital revolution it is not only about the freedom of speech in the traditional sense, but a broadly defined freedom of expression, guaranteeing both the freedom of opinion and the freedom of form of expression, within the limits set by the legal norm and not by the principles of the self-regulation adopted by BIG tech.

It should be emphasised that the freedom of social media was considered a fundamental element of politics that allowed the balance between the governed and the ruled, and any unjustified, unregulated encroachment into this sphere by law violated the democratic principles of the rule of law. Today, however, digital democracy, which has resulted in the development of digital media, is also a kind of instrument for generating threats.

Freedom of expression is one of the foundations of a democratic society, a condition for its development and the self-realisation of individuals. This freedom must not be limited to information and views that are received favourably or perceived as harmless or indifferent. The role of journalists is to disseminate information and ideas concerning matters of public interest and public importance. This is in close connection with the right vested in the public to receive information. As indicated above, freedom of expression may be affected by limitations. However, there is no doubt that the most elementary condition for limiting this freedom is the requirement of statutory regulation. Consideration of the fundamental role of freedom of speech

in a democratic state under the rule of law dictates particularly strict scrutiny of the precision of the provisions of laws introducing limitations in the exercise of this freedom. It should be noted that the Committee of Ministers of the Council of Europe has determined that legislator's intervention is not the most appropriate means of reconciling media freedom with other rights and values. Modern media plays a special social role in the information and culture-making spheres. Opinion-forming and creative functions are also important as regards moral values and attitudes. In the face of information development, it is important to emphasise its importance as a „transmitter” of a certain system of values, dictated by public interest needs. Freedom of the press was considered „the palladium of all civil, political and religious rights” (Junius), „a necessary feature of the nature of a free state (Blackstone), „a conversation between the government and the people” (Hegel), „a thought provoker” (Voltaire). „Freedom of the press has allowed England to become a uniquely modern society that has blurred the traditional boundaries between stability and confusion, truth and falsehood, the real and the possible”⁹. The need to guarantee free media and freedom of speech stems from the media's role in the public sphere, where public discourse occurs and public opinion is formed.

However, it should be emphasised that freedom of communication is one of the consequences of civil and personal freedom in the broadest sense, encompassing all forms of communication between people, while the secrecy of correspondence is a much narrower concept, related primarily to the right of everyone to respect his or her private life, and to his or her right to keep secret the content of communications addressed to other persons or institutions. Such a concept of the right to correspondence is influenced primarily by the content of Art. 8 (1) of the European Convention on Human Rights, which links the right to respect for correspondence with the right to respect for private life, family life and the home. This right is indirectly connected with the right of secrecy of correspondence. The secrecy of correspondence is also violated when, as a result of the loss of someone else's correspondence, real conditions (danger) have been created that allow, with a high degree of probability, third parties to become acquainted with its contents. Such violation of the secrecy of correspondence may take place with respect to the correspondence of a person deprived of liberty. The court also stated that the secrecy of

9 Cf. J. Keane, *Media a demokracja*, London 1992, p. 26.

correspondence applies to all situations and places, including cyberspace. In the context of the aforementioned provisions of the Constitution and the European Convention on Human Rights, it should be assumed that this right can be limited by law. However, within the limits to which it was granted, no one may violate it, in particular by preventing correspondence from reaching the addressee¹⁰.

However, despite changing the paradigm of the role and the importance of the freedom of speech, ethical principles pertaining to the profession of journalism are still crucial. The job of a journalist is to serve the public and the state. A journalist has a duty to act in accordance with professional ethics and principles of community life, within the limits prescribed by law. A journalist has the right to refuse to execute an official order if he or she is expected to publish something that violates the principles of integrity, objectivity and professional diligence. A journalist may refuse to publish press material if changes have been made to it that distort the sense and meaning of his or her version. These rules are still relevant in the digital world.

The right of access to the Internet

Modern states are not indifferent to many aspects of new media activity, due to their responsibility for all elements of economic and social life, at every stage of the development of a community, they significantly influence the regulation of the media market. In implementing their strategies, public authorities use certain instruments of law. The role of public authorities in the period of social transformation that is taking place as a consequence of the ongoing processes of social media digitisation is related, in particular, to regulation and regulatory functions. Social changes in the face of globalisation as well as national identity are categories external to the organisational principles of the development of a network society, adopted by a given state, contrasting its message with the cult of technology, the power of flow and the logic of markets. Sometimes,

¹⁰ Last year, a huge amount of Facebook data circulated publicly, splattering information from some 533 million Facebook users across the Internet. The data includes such things as profile names, Facebook ID numbers, email addresses and phone numbers. Data of more than 35 and a half million Facebook users from Italy leaked to the network, followed by the French (19.8 million), the British (11.5 million), the Spanish (more than 10 million) and the Germans (6 million). The persons affected include 2.5 million Internet users from Poland.

however, it is precisely such values that can be used in a way that contradicts democratic principles and basic human rights, and provide a compelling argument for limitations of the right to acquire information and make it available, which is a fundamental right and constitutional principle expressed in Art. 54 of the Polish Constitution. The crisis as regards the freedom of speech and access to information is a progressive phenomenon that can be observed especially in the states with an underdeveloped tradition of democratic values (such as Central Asian States, China, and the Russian Federation), where national limitations have a significant impact on fundamental values. Meanwhile, given the new conditions and technical possibilities, the legal system that guarantees the rationing of traditional, classic social media seems anachronistic in the face of digitisation, at least in some areas. One of the new prerequisites for exercising the freedom of speech is access to infrastructure. An important premise for recognising Internet access as a fundamental human right becomes apparent. These transformations are contributing to the creation of a new cultural policy, the basic premises of which may be the place of development of „the policy of informationalism”. This space is often the new media, where values and problems derived from the life experiences of people living in the information age are relevant.

The crisis regarding freedom of speech and access to information¹¹ is a progressive phenomenon that can be observed especially in the states with an underdeveloped tradition of democratic values, where national limitations significantly impact on fundamental values. Meanwhile, in view of the new conditions and technical possibilities, the legal system that guarantees the rationing of traditional, classic social media seems anachronistic in the face of digitisation, at least in some areas. Public authorities face numerous difficulties in the process of limiting freedom of speech due to the specificity of an ICT network, and the multi-functionality of mobile devices that are increasingly cheaper and improved (Moore’s Law). Digitisation, which has transformed the system of media operation, may also justify limitations of the right to communicate. Thus, it can be concluded that social development

11 Access to information can be restricted for security reasons. For security of information, see: K. Chałubińska-Jentkiewicz, M. Karpiuk, *Prawo nowych technologii. Wybrane zagadnienia*, Warszawa 2015; M. Karpiuk, K. Chałubińska-Jentkiewicz, *Prawo bezpieczeństwa informacyjnego*, Warszawa 2015; M. Czuryk, *Informacja w administracji publicznej. Zarys problematyki*, Warszawa 2015; K. Chałubińska-Jentkiewicz, M. Karpiuk, *Informacja i informatyzacja w administracji publicznej*, Warszawa 2015.

is characterised by communication processes. The term „communication” comes from the Latin verb „communico”, „communicare” (to make common, to connect, to give someone a message, to confer) and the noun „communio” (commonality, a sense of connection). The term „communicate something” also means „to make something known, to convey some information, to give notice of something”; while to „communicate” means „to keep in touch with someone, to come to an understanding”. Thus, communication is a social process, which means that it refers to a specific relationship. Such a relationship, in the case of public communication, is of institutional, public, and group character, but also increasingly often, due to the development of message individualisation, is a process directed at the individual and his or her rights.

On the one hand, some countries and international organisations are considering recognising Internet access as a fundamental and universal human right while, on the other hand, many governments are considering tighter controls of content and the right to block technical means of transmitting digital content. According to a BBC World Service survey of 27,000 adults in 26 countries, nearly four out of five people worldwide believe that access to the Internet is a basic right. In this context, it is important to recall one of the most important principles reported at the World Summit on the Information Society (Geneva 2003 – Tunisia 2005). Participants at this conference declared „a common desire and commitment to building a common Information Society, where everyone can access, utilise and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the Charter of the United Nations and respecting fully and upholding the Universal Declaration of Human Rights”.

Net neutrality

Another important element of the regulation and rationing of the new media at the international level is net neutrality, which means the principle applicable to Internet access service, according to which Internet traffic of the same type is treated equally, i.e., without discrimination, restriction, slowdown or interference, regardless of the sender, receiver, content, device, service or application. End-users have the right to access and distribute information and content of their choice, to use and deliver applications and services of their choice, as well as to use terminal devices of their choice as part of Internet

access service. Blocking, slowing down or degrading traffic transmitted on the Internet is prohibited, unless it serves, in particular, the purpose of 1) enforcing a court decision; 2) ensuring the integrity and security of the network or services provided over the network, end-user devices, as long as equivalent types of traffic are treated equally; 3) preventing or minimising the effects of temporary and exceptional network congestion, as long as equivalent types of traffic are treated equally.

Poland's proposal on net neutrality, regarding the text of the draft regulation of the European Parliament and the Council, „Connected Continent”, defines Internet access services by referring to the best effort model with explicit emphasis on the validity of the principle of net neutrality. Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access, and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) no. 531/2012 on roaming on public mobile communications networks within the Union, introduced a definition of the term „Internet access service” which means a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used. Article 3 of the Regulation introduces the right to access and distribute information and content via an ICT network. This also includes the right to use and provide applications and services, and to use terminal equipment of their choice, irrespective of an end-users or provider's location or the location, origin or destination of the information, content or application. It should be noted that not every state adopts a policy of open internet access. It should be emphasised here that, according to an estimate from the report *Privatizing Censorship, Eroding Privacy*, the number of states where arrests are made for online publications has increased by half since 2013. Since June 2015, the police in 38 states around the world have arrested citizens over their social media activity.

Open access to resources

An important element influencing network access policy and the accompanying rule of open access to resources is the issue of public mentality, the fear of losing control over data and information, and the issue of resource security.

The regulatory concept is based on three complementary pillars: adjustment of the regulatory framework, including the adoption of legal measures, soft law measures and policy measures, prioritisation of normative solutions including open data principles in research, development and innovation activities and infrastructure programs, coordination and the exchange of experience among member states with benchmarking. The objective of an open access policy is to provide access subject to the protection of intellectual property rights. The necessary research includes technical, organisational and legal aspects.

Redefining the objectives of international regulation in the area of media activities

In the wake of the evolution of new technologies, regulatory changes must take place. This process is parallel to technological development and the development of digital technology while increasing consumer needs and globalisation. The development of new technologies as well as the related processes of social change require a new regulatory approach, and also a redefinition of the public interest objectives and the duties of the state in the process of regulating those areas that hit key issues related to the functioning of the individual – the citizen, the market and the state. The processes of the convergence of previously differently conceived regulatory areas are contributing to a special kind of conflict in the area of arrangements for the scope and level of new regulations. When talking about the changes brought about by new technologies, we must remember that this phenomenon requires an interdisciplinary approach, combining the knowledge and viewpoints of specialists, and experts in the fields of economy, sociology, technology, media, political science, psychology and culture, and security sciences. Modern living conditions largely depend on the level of the information and communications technology that functions in a given state. We are currently witnessing radical changes in how societies and the global economy operate as a result of the expected spread of innovative ICT solutions. The ideological basis supporting this exchange is freedom of speech, and freedom of communication. Thanks to new social media techniques (information and communication networks, the Internet), completely unknown ways of the functioning of individuals in families and in professional and public life have appeared. With the development of digital technology and social changes, also associated with the process of the formation of so-called digital democracy, new areas of human

activity commonly referred to as the information and communication network environment, more broadly understood as cyberspace, have emerged. They affect all aspects of life. This applies to social relations, the economy, state-individual relations and the exercise of fundamental rights of the individual. Open and free cyberspace allows the exchange of cultures and experiences between states, communities and individuals, enabling interactions and the exchange of information, and, consequently, the exchange of knowledge, experience and technology. Therefore, it can be said that a lack of regulation ensures the exchange of technology and, consequently, the development of innovation. However, this is just a small piece of a very complex issue – the development of modern technologies and the risks associated with them.

In the present conditions of the functioning of an individual in cyberspace, it seems necessary to take new steps to establish international norms and, before that, to redefine the principles and values that are standard in the real world. Freedom in the online environment also requires security and protection.

The evaluation of digital markets based on freedom on the net reports clearly defines the relationship between public authorities and the digital media environment. Especially in the case of such a sensitive issue of regulating the content of electronic media, including media services provided on the net, for instance, in connection with disinformation. This thesis contradicts the principle of the democratic will of a sovereign state pursuing its public interest, especially concerning issues of a cultural nature, where the equally fundamental principles of subsidiarity and proportionality must be taken particularly seriously. The issue of the regulation of infrastructure and the use of instruments typical for preventive censorship of contents is significant mainly owing to the constant change in the position and roles of market users, in the global international sphere. Technological changes have contributed to the growing importance of infrastructure operators at the expense of content providers. And because of this phenomenon, the digital media world will be regulated using the level of technical access to the network. The examples of selected states support the thesis that regulation by public authorities in the network area, more or less offensive, is a way to strengthen the need for power, even in those so far most libertarian areas.

Cyber security as a rationale for international regulation

Social changes associated with the development of civilization stimulate democratic processes, and provide a space for the achievement of various economic goals, but can also be a place for undesirable activities. This applies to virtually every sphere of human life, including freedom of speech. The risk of threats to the individual is increasing in proportion to the process of weakening the state as a structure and institution, and this is particularly true of the information and communication network cyberspace based on it. As a result, individuals and citizens lose their sense of security. Ensuring cybersecurity¹² is one of the most important objectives of states' efforts in the international arena. The state, using its attributes of power, employs a variety of legal instruments and legal institutions designed to protect the public interest, public morality or national security. The situation of the weakening of the state and its institutions, as a consequence of digital change, threatens directly national security and, consequently, individual security like no other. For this reason, it becomes necessary to determine the status of the individual and the citizen in the face of the development of cyberspace. This also applies to values such as freedom of speech. If the protection guarantee is analysed, it becomes necessary to supplement its scope with a diagnosis of civic duties and limitations related to cybersecurity, according to the principle „homo persona moralis est quaternus spectatur tanquam subiectum certarum obligationum atque iurium certarum”¹³.

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¹² For cybersecurity, see: K. Chałubińska-Jentkiewicz, M. Karpiuk, J. Kostrubiec, *The legal status of public entities in the field of cybersecurity in Poland*, Maribor 2021; M. Karpiuk, *Position of the Local Government of Commune Level in the Space of Security and Public Order*, „Studia Iuridica Lublinensia” 2019, no. 2; K. Chałubińska-Jentkiewicz, *Cyberbezpieczeństwo – zagadnienia definicyjne*, „Cybersecurity and Law” 2019, no. 2; M. Karpiuk, *Activities of local government units in the scope of telecommunication*, „Cybersecurity and Law” 2019, no. 1.

¹³ H. Conrad, *Individuum und Gemeinschaft in der Privatrechtsordnung des 18 und beginnenden 19 Jahrhunderts*, Karlsruhe 2006, p. 16.

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Wolność słowa w regulacjach międzynarodowych w warunkach rozwoju mediów cyfrowych

Streszczenie

W warunkach rozwoju technologii szczególnie trudną relację stanowi związek wolności – w tym wolności słowa i bezpieczeństwa – zwłaszcza jego cyfrowej odmiany, czyli cyberbezpieczeństwa.

Należy wskazać, że płaszczyzna międzynarodowa stanowi niezbędny wymiar ochrony praw człowieka, gdyż to w niej są tworzone nowe standardy w dziedzinie praw człowieka, które są następnie wnoszone do systemu prawa wewnętrznego i praktyki państw. Z drugiej strony, istnienie regulacji prawnomiędzynarodowych jest w coraz większej mierze gwarancją efektywności systemów prawa wewnętrznego. Instytucje międzynarodowe stają się często instancją odwoławczą dla jednostek oraz środkiem nacisku na rządy krajów nieprzestrzegających podstawowych praw i wolności człowieka. Poparcie dla jednostek, społeczności czy narodów walczących o swoje prawa, ich sukcesy w tej walce czynią jeden z elementów kształtowania nowego, demokratycznego porządku międzynarodowego.

Słowa kluczowe: wolność słowa, cyberbezpieczeństwo, media cyfrowe, regulacja, prawo międzynarodowe