

Sanita Osipova,¹ Dr. iur., Professor
Faculty of Law, University of Latvia, Latvia

CORRELATION BETWEEN EXPANDING THE LIMITS OF PERSONAL FREEDOM AND THE RISKS OF SOCIAL EXCLUSION: FREEDOM OF EXPRESSION AS AN EXAMPLE

Key words: freedom of expression, the risks of social exclusion, information society, fundamental rights

Summary

One of the most essential fundamental human rights is the freedom of expression. The progress of science, first and foremost – the development in information technologies, gives contemporary society new possibilities for communication, and the development of fundamental and human rights continues to expand the limits of the freedom of expression. It is the growing importance of the digital environment in communication, turning into the main space of societal communication, that creates the risk of exclusion for some social groups: persons in need, partly – persons with special needs, and seniors. The state has the obligation to be aware of this risk of social exclusion with respect to the very essential fundamental right to the freedom of expression, and develop a policy to prevent it.

Introduction

Although every person is born as a social being, humanness is not innate, it has to be mastered by living in society.² Aristotle (384–322 BC) in his work “Politics” reached the conclusion that a man was a social animal, endowed with a special gift – language.³ Language is the key to inclusion in society, since it gives the possibility to understand others and to be understood.

¹ Orcid ID 0000-0001-8508-0799

² Eriksens T. H. Mazas vietas – lieli jautājumi. Ievads socialantropoloģijā [Small places – big questions. Introduction to Social Anthropology]. Rīga: LU Akadēmiskais apgāds, 2010, p. 68.

³ Aristotle. Politics. Oxford translations series. Oxford: Aeterna Press, 2015, p. 12.

A human is a cultural creature whose personality develops throughout a lifetime of interaction with other people, *inter alia*, fulfilling one's place and role in society. Communication or interaction is essential both for the existence of the entire society and in the life of every individual, as it ensures inclusion in society, at present, *inter alia*, in the political nation,⁴ as well as individual improvement, by gaining ever-new knowledge and experience. Therefore, one of the most important fundamental human rights is the freedom of expression, which includes not only the freedom of speech but also the right to access information and the freedom to disseminate information, *among other things*, the freedom of the press.⁵ The state must examine the establishment of restrictions on the freedom of speech with particular care, since these must be interpreted narrowly, and the legislator must provide appropriate and sufficient justification for each restriction of the kind.⁶ Freedom of expression is a negative fundamental right, i.e., the state may not intervene in its exercising without special grounds; however, at the same time, the state must ensure that every person could enjoy the freedom of expression and would be a full member of society. Thus, whether and how a person's inability to access the information field, in which contemporary society and, more often, the state itself operates, i.e., the Internet environment, affects the person's freedom of expression requires special assessment. This study explores the correlation between expanding the limits of the freedom of expression with the possibilities to communicate in the digital environment, offered by new technologies, and the fact that for a part of society, with society transferring communication to the digital environment, participation is restricted.

1. Expanding the limits of the right to freedom and equality in the course of the 20th century

Each culture creates original models of human interaction, a singular formation of society, typical only of it, clearly defining every person's place in society, the scope of their rights and obligations.⁷ Historically, whether a person

⁴ The Constitutional Court of the Republic of Latvia has reviewed this matter in its judgement of 13 November 2019 in Case No. 2018-22-01 on determining the official language as the main language of instruction in the state. "The ability of all persons belonging to ethnic minorities to communicate freely on any matter in the official language is invaluable in the context of retaining the democratic order and is equally important for the persons belonging to ethnic minorities themselves and for society in general because, thanks to this ability, all members of society would be able to communicate freely among themselves and, also, to communicate with the state." Available: <https://www.satv.tiesa.gov.lv/cases/> [viewed 25.10.2023.].

⁵ Smith S. A. Freedom of Expression. Foundation Documents and Historical Arguments. Oxbridge Research Associates, 2018, p. 631.

⁶ The judgment of the Constitutional Court of the Republic of Latvia of 2 July 2015, in Case No. 2015-01-01. Available: <https://www.satv.tiesa.gov.lv/cases/> [viewed 25.10.2023.].

⁷ Durkheim E. Regeln der soziologischen Methode [Rules of the sociological method]. Neuwied und Berlin: Luchterhand, 1965, S. 165–175.

was vested with full rights was determined by gender, age, origins, occupation, and other personal traits.⁸ Personal freedom was limited and equality was recognised only among those who were alike, whereas full rights were enjoyed only by a small part of society.

However, since the end of the 18th century, the very foundations of Western culture have changed. The changes were facilitated, *inter alia*, by the school of natural law and Enlightenment philosophy, which recognised human freedom as a natural inalienable right of every person because human beings possess reason.⁹ Human dignity as an inviolable value is the foundation of the modern state.¹⁰ Contemporary Western democracies are states, governed by the rule of law, in which, since the end of World War II, the fundamental rights of a person have been expanded dynamically, placing special emphasis on every person's equal rights and freedoms, first and foremost, as the right to self-determination.

Likewise, in the founding acts of the Republic of Latvia, freedom has been highlighted as a protected value and it included requirements regarding equality of persons.¹¹ However, the understanding of what exactly a person's freedom and equality comprises, in enjoying this freedom, has changed significantly in the course of the 20th century, because the limits of personal freedom, determined in law, have been expanded rapidly. Expanding the limits of personal freedom was influenced both by significant changes in society's consciousness and practical benefits brought by the development of science, namely, the provision of unprecedented goods and services to the members of society, first of all, in the field of information technologies.¹² This new freedom intervened in all areas of a person's life: providing new possibilities in choosing one's occupation because new professions were created, freedom in private life because, with the church's influence diminishing, the freedom to divorce expanded, as well as more and more persons were cohabiting without entering into marriage, broader opportunities to travel appeared, facilitated both by the increasing offer of new means of transportation, as well as aligned and simplified system of visas for entering

⁸ Luhmann N. Rechtssoziologie [Legal sociology]. Munchen: Rowohlt, 1972, Bd. I., S. 148.

⁹ Hefse F. Freiheit und Vernunft im Spannungsfeld des Naturrechts Feyerabend und der Grundlegung [Freedom and reason in the area of tension between Feyerabend's natural law and the foundations]. In: Auf dem Weg zur Kritische Rechtslehre [On the way to critical legal theory]. Hrs. D. Huning, S. Klingner, G. S. Bordoni. Leiden, Boston: Brill, 2021, S. 131–133.

¹⁰ Lazdins J. Payment of mandatory social insurance contributions in a socially responsible state as a safeguard for the inviolability of human dignity in the emergency conditions in a state governed by the rule of law. In: New Legal Reality: Challenges and Perspectives. Vol. II, Riga: LU, 2022, pp. 21, 22.

¹¹ Both gender equality in political rights and the protection of ethnic minorities are included in the Political Platform of the People's Council of 17 November 1918. In: Latvijas valsts tiesību avoti. Valsts dibināšana – neatkarības atjaunošana. Dokumenti un komentāri [Sources of Latvian state law. Founding of the country – restoration of independence. Documents and comments]. Riga: Tiesu Namu agentūra, 2015, p. 54.

¹² Banisar D. The right to information in the age of information. In: The human rights in the global information society. Jorgensen R. F. (ed.). Cambridge, Massachusetts...: The MIT Press, 2006, pp. 73, 74.

another country. Namely, since the end of World War II, extension of the limits of personal freedom grew dynamically, through the synergy of possibilities offered by science and technologies with the consolidation of liberal legal thought in sources of law. The freedom of expression also acquires another form because the ways and means for disseminating information change, which, in turn, leads to essential changes in society itself.

At the beginning of the 20th century, scientists were studying the industrial or the industrially producing society, in the second half of the 20th century, however, they were writing about the next stage in society's development – the post-industrial society, in which individuals mainly were not engaged in production but in inventions and provision of services. Among the first to define the concept of post-industrial society was Alain Touraine (1925–2023)¹³ who, in a series of publications, by using historical analysis, analysis of documents, interviews and observations, studied the processes of industrial society transforming into the post-industrial one. He conducted in-depth studies, inquiring how, with features of post-industrial society becoming more pronounced, the formation of civil society turned increasingly more multi-layered and complicated and how, accordingly, the possibility of conflicts increased in it.¹⁴ Other authors call it also “the knowledge society”.¹⁵ Daniel Bell (1919–2011), studying features of the post-industrial society, wrote that post-industrial society was knowledge society or information society. D. Bell believes that, with the increasing amount of information, speed of its circulation and importance in the life of society, it turns into information society, in which each of its members extensively uses the new possibilities provided by technologies. D. Bell underscores that societal changes are not caused by the new possibilities offered by technologies, but by the ways how society adapts to using these new possibilities, transforming itself and turning into technocratic society. Information and knowledge, as well as the duties and positions related to their collection, accumulation, storage, processing and dissemination are becoming increasingly more significant and valuable in technocratic society¹⁶. Clearly, in society like this, the ability to access information and disseminate it is an essential precondition for exercising personal freedom, first and foremost, a precondition for the freedom of expression.

Changes in the understanding of equality and the prohibited grounds for discrimination, occurring in the course of the 20th century, have not been less significant. Over time, new features have been added to this range of grounds again and again. Thus, Article 1 in the United Nations Universal Declaration of

¹³ The first appearance of the idea is found in the work: Touraine A. *La société post-industrielle*. Paris: Denoel, 1969.

¹⁴ Wieviorka M., Dubet F. *Alain Touraine and the Method of Intervention*. In: Clark J., Diani M. (eds). *Alain Touraine*. London: Routledge, 2013, p. 55.

¹⁵ For example, Sakaiya, T. *The Knowledge-Value Revolution or A History of the Future*. New York: Kodansha International, 1991, pp. 57–58, 267–287.

¹⁶ Bell D. *The Coming of Post-Industrial Society: A Venture in Social Forecasting*. Basic Books, 1976, p. 37.

Human Rights of 1948 set out the requirement of human dignity and freedom for all persons, whereas Article 2 defined the features, on the grounds of which a person could not be discriminated against: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."¹⁷ These were the prohibited grounds for discrimination, which, in the middle of the 20th century, were considered to be exhaustive, to ensure the equality of all human beings. Article 15 of the European Convention of Human Rights, which was adopted only a couple of years later, established the prohibition of discrimination: "...on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status,"¹⁸ i.e., in 1970, the following were defined as additional grounds: national minority and status of birth. Although they could have been read into the text of the UN Declaration, they, however, are foregrounded *expressis verbis*. Article 21 of the Charter of Fundamental Rights of the European Union, which was drafted in the turn of the 20th and 21st centuries (the Charter was proclaimed on 8 December 2000), in turn, adds to all the above prohibition to discriminate against a person on the grounds of genetic features, disability, age or sexual orientation.¹⁹ The Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011, which has caused many reflections in Latvia and not only in Latvia, adds additional grounds to prohibition of discrimination: "gender".²⁰ This research will not provide in-depth analysis of the new grounds, which have been constantly included in the international documents on human and fundamental rights. In the context of the study, the fact that, over time, new criteria that hinder the attainment of true equality and the creation of inclusive society are identified and included in legal acts again and again is important. In each of the documents referred to above, the legislator, by defining the prohibited grounds for discrimination, in the framework of the prevalent understanding of its time, has attempted to include exhaustively all the stereotypes and prejudices prevailing in society, which deny every person's right to equality, by stigmatising²¹ and excluding a societal group. This was facilitated both by more nuanced

¹⁷ 09.12.1948. Universal Declaration of Human Rights. Available: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [viewed 23.11.2023.].

¹⁸ European Convention of Human Rights. Available: https://www.echr.coe.int/documents/d/echr/convention_ENG [viewed 23.11.2023.].

¹⁹ The Charter of Fundamental Rights of the European Union (2016/C 202/02). Available: https://www.europarl.europa.eu/charter/pdf/text_en.pdf [viewed 25.10.2023.].

²⁰ Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011. Available: <https://rm.coe.int/168008482e> [viewed 25.11.2023.].

²¹ Stigma is a person's trait, behaviour or occupation, considered by society, in accordance with the prevalent stereotypes, as being improper or shameful, which is the basis for restricting a person's full rights legally or in daily life. From: Goffman I. Stigma – zametki ob upravljeniji isporchennoj identichnostju [Stigma – notes on managing spoiled identities]. Available: https://www.hse.ru/data/2011/11/15/1272895702/Goffman_stigma.pdf [viewed 29.09.2023.].

understanding of the importance of each person's human dignity, which, *inter alia*, was consolidated also in the judgements by national constitutional courts and international human rights courts,²² as well as the fast development of science, which made deeper studies of societal life possible.

2. Freedom of expression in the age of new technologies and the risks of social exclusion

Exercise of the freedom of expression is clearly linked to a person's inclusion in the process of information circulation, implemented by society. Examination of the concept "information" allows concluding that, within information society, it has three meanings, i.e., information as news or knowledge, information as a process, in which news are obtained, information as a thing, a document or property, which is valued not only according to its content but also its amount. The concept of "information" has the substantive side and also the procedural side, which characterises the circulation of information.²³

Since the beginning of the 21st century in Latvia, like elsewhere in Europe, the benefits, jointly created by the contemporary post-industrial information society, have turned into essential goods and items of daily use, first and foremost, access to the internet and smart devices, the acquisition of which demands material resources, but their use – certain skills, linked not only to the mental ability to use them but also to purely physical ability. These factors determine certain risks of social exclusion because, for a person to exercise in full their freedom of expression and be included in the societal circulation of information, both material resources and skills, as well as the ability to use these skills are required.

The fact that, without a smartphone, even basic daily services can be hard to receive is proven by the fact that, during COVID-19 pandemic, many catering companies abandoned printed menus and started using codes, which had to be "scanned" – they became visible only if a smartphone or another smart device was used. The situation is similar in other areas: in museums, nature trails, etc. part of or even entire information can be obtained only by using smartphones. Namely, those who have created this system trust that all visitors will have both the required smart device and the skills to use it. Such difficulties in accessing information may have an impact on all areas of a person's life, *inter alia*, receiving consumer services both on-site, if information can be obtained only by using a special device, and on the internet because large part of advertising and also provision of services has been moved to the internet environment, irrespectively of whether it is shopping or applying for service, or registering for a visit to a doctor.

²² For example, in the matters of gender equality, see Alkiviadou N., Manoli A. The European Court of Human Rights Through the Looking Glass of Gender: An Evaluation. *Gottingen Journal of International Law*, Vol. 11, 2021, pp. 191–211.

²³ Buckland M. *Information and Society*. Cambridge, London: The MIT Press, 2017, pp. 22, 23.

However, to use the internet and smart devices, first and foremost, access to the source of energy – electricity – is needed. Notwithstanding the European living standard of Latvia's inhabitants, there are still households without connection to electricity in the country.²⁴ Installation of a new connection to electricity, however, is an expensive service, in particular, if the house is located far from the already existing connections to electricity.²⁵ The state of Latvia was aware of it and, on 30 August 2017, the Cabinet Regulation No. 483 "The Procedure for Financing the Installation of a Connection for a Protected User" was adopted, providing that the costs of electricity connection should be covered by the state budget to persons in need and low-income persons, who are using electricity for their household needs. The approved procedure allowed the state and the operator of the distribution system to cover the costs of installing an electricity connection to non-electrified households.²⁶ However, with Amendments to the Electricity Market Law of 11 February 2020²⁷, it became void. Responding to a question, posed by a large family after the adoption of these amendments, on how to receive state support for an electricity connection, the Ministry of Economics answered in the portal LV: "Currently there is no valid regulation that would envisage state support for installing a connection. However, we are working on this issue: we are revising the provisions of the Cabinet Regulation No. 483 "The Procedure for Financing the Installation of a Connection for a Protected User" and examining various possible solutions to provide state support for covering the costs of installing a connection from the state budget to non-electrified houses of protected users. It is planned to complete this work by the end of the year; we suggest following information posted on our webpage."²⁸ Although it seems quite absurd to suggest a household without electricity to follow information on the website, instead of providing a concrete answer, even following the link, the promised information is not found, it leads to the ministry's webpage, comprising very extensive information...

Thus, persons in need, who lack resources, and persons with special needs, who are unable to master the skills needed for using devices, without which it is

²⁴ Dzedulis D. Latvija joprojam ir vismaz 30 apdzīvotas lauku mājas bez elektrības [There are still at least 30 inhabited rural houses without electricity in Latvia]. LA.LV, 23.01.20. Available: <https://www.la.lv/maja-bez-elektribas> [viewed 23.10.2023.].

²⁵ The relevance of this issue was foregrounded by the civil society's platform *mana balss.LV*, on which people publish initiatives to proceed with submitting them as legislative initiatives to the *Saeima*.

²⁶ 16.08.2017. Ministru kabineta noteikumi Nr. 483. Kartība, kada finanše pieslēguma ierikosanu aizsargatajam lietotajam [Regulations of the Cabinet of Ministers No. 483. The procedure for financing the connection installation for the protected user]. 16.08.2017. Available: <https://likumi.lv/ta/id/293132-kartiba-kada-finanse-piesleguma-ierikosanu-aizsargatajam-lietotajam> [viewed 25.10.2023.].

²⁷ 2020. gada 11. februara Grozījumi Elektroenerģijas tirgus likuma [11 February 2020 Amendments to the Electricity Market Law]. Available: <https://likumi.lv/ta/id/312482-grozijumi-elektroenerģijas-tirgus-likuma> [viewed 25.10.2023.].

²⁸ Par valsts atbalstu pieslēguma ierikosanai neelektrificētajiem mājokļiem [On state support for installation of connection to non-electrified dwellings]. LV Cilveks, valsts, likums. Available: <https://lvportals.lv/e-konsultacijas/20792-par-valsts-atbalstu-piesleguma-ierikosanai-neelektrificetajiem-majokliem-2020> [viewed 25.10.2023.].

impossible to become fully included in public life, first and foremost, electronic means of communication, are subject to the risk of social exclusion.

This causes a paradox, – the greater freedom in communication is offered to members of society, the deeper the social gap that might appear in society because part of society is unable to participate in communication at all. Therefore recently both the area of scientific research and the political agenda include the issue of how to decrease risks of social exclusion, which have appeared due to science offering to persons new horizons of freedoms, opened up by technologies.²⁹ Already now some states solve this issue with the help of fundamental rights, i.e., defining a new fundamental right – the right to access to the internet, deriving it from the freedom of expression. The Council of Europe also has called for the recognition of this fundamental right of a person already in 2014.³⁰ Digital devices help persons to communicate with each other and with the state, to access the information space in the broadest meaning and be a full participant in the circulation of information, ongoing in society, i.e., to be a full member of society.

The State of Latvia is transferring more and more of its communication with inhabitants, public registers and public services, *inter alia*, legal proceedings to the digital environment. However, it should be taken into consideration that these services are not accessible to all, in terms of both availability of technological devices and personal skills. This issue cannot be solved solely by the internet connections in libraries as, currently, the right to access to the internet has been ensured in Latvia.³¹ It was calculated in 2016 that the annual costs of the state for the free-of-charge internet in rural libraries were EUR 400 000³², because a librarian will not be the one to give advice to an elderly person with trembling hands on the issue of recovery of overpaid tax through the webpage of the State Revenue Service, or help to obtain information from the digitalised Land Register, or analyse test results, delivered via e-mail. Likewise, with the transition to remote schooling of children during COVID-19 period, the state found out that all

²⁹ Nguyen A. Digital Inclusion: Social Inclusion in the Digital Age. In: Handbook of Social Inclusion, Research & Practices in Health and Social Care. Liamputtong P. (ed.), Publisher: Springer, 2021, Available: https://doi.org/10.1007/978-3-030-48277-0_14-1 [viewed 23.10.2023.], and Tsetoura A. Technological Inequality and Social Exclusion of Older People during the COVID-19 Pandemic. The International Journal of Social Quality, Vol. 12, No. 2, 01 Dec 2022. Available: <https://www.berghahnjournals.com/view/journals/ijsq/12/2/ijsq120205.xml> [viewed 23.10.2023.].

³⁰ Jasmontaite L., De Hert P. Access to the Internet in the EU: a policy priority a fundamental, a human right, or a concern for e-Government? In: Research Handbook on Human Rights and digital technology. Wagner B. (ed.), Cheltenham, Northampton: Edward Elgar Publishing, 2019, p. 178.

³¹ Plasaka informācija ir pieejama. Latvijas publiskas bibliotekas un internets: tehnoloģijas, pakalpojumi un ietekme. Bibliotēku vadītāju aptauja 2011. gada oktobris – novembris [More information is available in Latvian public libraries and the Internet: technologies, services and impact. Survey of library managers October–November 2011]. Available: https://culturelablv.files.wordpress.com/2009/04/bibliotekas2011_bibliotekuvaditaji.pdf [viewed 25.10.2023.].

³² Cigane I. Bezmaksas internets lauku bibliotekas valstij izmaksā ap 400 000 eiro gada [Free internet in rural libraries costs the state around 400 000 euro per year]. LSM. Available: <https://www.lsm.lv/raksts/zinas/latvija/bezmaksas-internets-lauku-bibliotekas-valstij-izmaksā-ap-400-000-eiro-gada.a194874/> [viewed 25.10.2023.].

households did not have computers; moreover, – not every child had a computer to participate in the study process. The decision was to grant state support to families in the amount of EUR 500 to every child.³³ However, this state support was not targeted, i.e., no differentiation was made to understand whether a family was in need, whether a child had or did not have a computer and, in general, whether a computer, fit for study process, could be purchased for EUR 500... The state, being aware of the need for computers in the process of education, intends to provide the computers to children from families in need and low-income families also in the future. The current plan is to purchase 26.6 thousand portable PCs by the end of 2023, with support from the European Union Recovery Facility.³⁴

Conclusions

1. One of the most essential fundamental human rights is the freedom of expression, which includes not only the right to freedom of speech but also the right to access information and the freedom to disseminate information. Exercising the freedom of expression depends both on restrictions established in law and the person's possibilities to become included in the models of communication, existing in society, i.e., to use all possibilities that the particular society uses in communication.
2. Since the progress of science, first and foremost, development in the area of information technologies, gives contemporary society new possibilities for communication and the development of fundamental and human rights continues to expand the limits of the freedom of expression, part of society, i.e., those who have the skills and access to digital technologies, expand considerably their freedom to communicate, also on the global level.
3. The importance of the digital environment grows in societal communication and, thus, in exercising the freedom of expression. Not only persons belonging to certain age groups (first and foremost, the younger generation), but also mass media, trade and catering companies, and even the state transfer their communication to the digital environment. Therefore, access to the internet, which is the key to the digital environment, and the skills needed to function in it, turn into important preconditions for exercising not only the freedom of expression but also other fundamental rights.

³³ 23.02.2021. Latvijas Republikas Saeimas grozījumi Covid-19 infekcijas izplatības seku parvaresanas likuma [23.02.2021 Amendments by the *Saeima* of the Republic of Latvia to the Law on Overcoming the Consequences of the Spread of the COVID-19 Infection]. Available: <https://likumi.lv/ta/id/321173-grozijumi-covid-19-infekcijas-izplatibas-seku-parvaresanas-likuma> [viewed 25.10.2023.].

³⁴ IZM uzsaks datoru nodrosinasanu investiciju programmu sociali neaizsargatiem skoleniem [The Ministry of Education will launch an investment programme for providing computers for socially vulnerable students]. Available: <https://www.izm.gov.lv/jaunums/izm-uzsaks-datoru-nodrosinasanas-investiciju-programmu-sociali-neaizsargatiem-skoleniem> [viewed 25.10.2023.].

4. It is the growing importance of the digital environment in communication, turning into the main space of societal communication, that creates the risk of exclusion of some social groups, first of all, persons in need, partly – persons with special needs, and of seniors. Persons in need might not have the resources to obtain the digital tools, the internet connection or even electricity, which are the necessary preconditions for communication in the digital environment, whereas seniors and some groups of persons with special needs often are unable to master and use the new technological tools.
5. The state has the obligation to be aware of this risk of social exclusion with respect to the very essential fundamental right to the freedom of expression and develop policy to prevent them, so that every person would be able to become included in civil society, exercising the full right to receive information, to express and disseminate one's own opinion.

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