

Freedom of expression and freedom of the media



Federal Ministry
for Foreign Affairs
of Austria



“Everyone has the right to freedom of opinion and expression: this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Art. 19, Universal Declaration of Human Rights, 1948.

- ▶ **Freedom of Expression and Freedom of the Media** is one of the basic civil and political rights.
- ▶ Voltaire, John Stuart Mill, 18th & 19th Century: philosophical and economic considerations ⇒ against authoritarianism, against corruption and for development!
- ▶ President Roosevelt, January 1941: freedom of speech and expression ⇒ one of the four freedoms on which to base a future world!
- ▶ Different approaches in US, Europe and the South because of historical and cultural differences.

Media can have a dual role concerning the Freedom of Expression.



as a beneficiary:

- informing about global problems.
- strengthening global solidarity.

as a violator:

- propaganda instrument of: States, Economy and Other interests.

Art. 19, **UDHR**; Art. 19, **ICCPR**; Art. 10, **European Convention on HR**; Art. IV **American Declaration**; Art. 13, **American Convention on HR**; Art. 9 **African Charter on Human and People's Rights**, Art. 9; Art. 11, **Charter on Fundamental Rights EU**.

- ▶ Freedom to hold opinions without interference (**freedom of opinion**).
- ▶ Freedom to seek, receive and impart information and ideas (**freedom of speech, freedom of the media**).
- ▶ Orally, in writing or in print, in the form of art.
- ▶ Through any media (**freedom of the media**).
- ▶ Regardless of frontiers (**freedom of international communication**).

Related Rights

Freedom of
Expression

The right to freedom of
thought, conscience
and religion
(Art 18 ICCPR)

Freedom of expression

In relation to the
human right to education
(Art. 13 ICESCR),
the freedom of expression results
in the academic freedoms and
the autonomy of institutions of
higher education to protect
those freedoms.

The right of authors to
benefit from the protection
of the moral and material benefits
resulting from any scientific,
literary or artistic production,
i.e. copyright
Art 15 (2) ICESCR

Reasons for Restrictions Art. 19 ICCPR

Exercise of the right carries with it special duties and responsibilities.

Restrictions have to be provided by law and be necessary:

- a) for the respect of the rights and reputation of others.
- b) for the protection of national security or of public order.
- c) for the protection of public health or morals.

⇒ Case Law of Committee on Civil and Political Rights.

Restrictions may be justified:

- ⇒ in the interest of national security, territorial integrity and 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.
- ⇒ for maintaining authority and impartiality of the judiciary.

Two major preconditions of restrictions

Prescribed by the law

- Act of Parliament.
- Not an executive order by the government.

Necessary in a democratic society

This links the right to the concept of an open and pluralist society which is governed by democratic means.

Interpreted by European Court of Human Rights: **Lingens v. Austria**, 1986.

Conflict of Rights Art 10 ECHR vs. Art 8 ECHR

Caroline Case (ECHR 2004)

- ⇒ Right to privacy of „public figures“ in their private life.
- ⇒ Also pictures taken of private life in public places must not be published without the consent if the person has no public function.

NOTE: rights may collide as in the case of Princess Caroline, whose right to privacy (Art.8) had been violated by paparazzi chasing her.

- ▶ Widespread violations through restrictions of the freedom of expression and of the media in many different countries, documented by NGOs.
- ▶ “Reporters without Borders” reported that in 2011, 66 journalists and 5 bloggers were killed, 1.044 journalists and 199 bloggers arrested and more than 400 media censored. Proposal: “Charter for the Safety of Journalists Working in War Zones or Dangerous Areas”.

- ▶ War against Terror: new threats to the freedom of information, documented by International Helsinki Federation.
- ▶ Threat of censorship: by the state or through economic or other means.
- ▶ Censorship of the Internet.
- ▶ Self-censorship: when political or other interests are already taken into account by the journalists or director. Question of “fit to print”.
- ▶ Media concentration.

- ▶ **National media and communication laws set up national monitoring bodies** (i.e. Press Councils) and the state may issue licenses.
- ▶ **Human Rights Committee (ICCPR):**
 - States have to report every 5 years.
 - General Comment No. 34 of 2011 interprets Article 19 ICCPR.
 - May receive individual complaints if the state concerned has ratified the First Optional Protocol of 1966.
- ▶ Professional Associations and NGOs like „Article 19“ do play a special role.

- ▶ **UN:** Special Rapporteur on the Promotion and Protection of the Freedom of Opinion and Expression.
- ▶ **Regional monitoring mechanisms:** the Special Rapporteurs on Freedom of Expression of the OAS and the AU or the CoE PACE Standing Rapporteur on Freedom of the Media.
- ▶ **OSCE:** Representative for the Freedom of the Media, since 1997.

⇒ “Joint Declaration on Freedom of Expression and the Internet of 2011” ←

- ▶ UNESCO: World Press Freedom Day and World Press Freedom Prize.
- ▶ Reporters without borders: the World Day against Cyber-Censorship
- ▶ Crimes of War Project brings together journalists, lawyers and academics to raise awareness of laws in respect of media.
- ▶ Bosnia-Herzegovina: Communication Regulation Agency; Kosovo: Independent Media Commission.
- ▶ „Writers in Exile Network“, co-operating cities provide a temporary safe haven for journalist in exile.
- ▶ European network „ins@fe“: safety of the Internet for children.

- ▶ New Opportunities, but also new limitations of FOE
Internet Security and Data Protection.
- ▶ (Hidden) Censorship of the Internet, filtering of harmful or political content.
- ▶ Illicit and harmful content: child pornography, hate speech, racism, Nazi propaganda, deformation, incitement to terrorism etc.
- ▶ Protection of privacy, of minors, of society
- ▶ Brave new digital world?

WSIS I, December 2003 – GENEVA.

- Declaration of Principles.
- Plan of Action of Geneva.

WSIS II , December 2005 – TUNIS.

- Tunis Commitment and Agenda for the Information Society.

The freedom of the media plays a role in respect of:

- ▶ Democracy and Minorities.
- ▶ Reporting on famines or other national emergencies
- ▶ Respect for other cultures -> *i.e.* cartoons of the prophet.
- ▶ Prohibition of war propaganda and advocacy of hatred.
- ▶ Human Rights Education on freedoms and limitations, principles of balancing, “proportionality” etc.

Conclusion

- ▶ Right of states to regulate media.
- ▶ Responsibility of media to respect limits.
- ▶ Delicate task of „balancing“ between rights and responsibilities.
- ▶ Human Rights provide framework and orientation as well as legal obligations.
- ▶ Tendency of over-regulation in transformation societies to avoid instability can be counter-productive for purposes of economic development and democracy, which are based on freedom of expression.

- 1948 Universal Declaration of Human Rights, Art. 19.
- 1966 International Covenant on Civil and Political Rights, Art. 19.
- 1978 UNESCO Declaration of Fundamental Principles concerning the contribution of the media to strengthening peace and international understanding, to the promotion of human rights and to countering racism, apartheid and incitement to war (Declaration on Media).
- 1983 General Comment **No. 10** on **Art. 19** ICCPR.

- 1993 UN Special Rapporteur on Protection and Promotion of the Right to Freedom of Opinion and Expression.
- 1997 OSCE Representative for the Freedom of the Media.
- 1997 OSCE Representative for Freedom of the Media.
- 1997 OAS Special Rapporteur for Freedom of Expression.
- 1999 Resolution of the Commission on Human Rights on Freedom of Opinion and Expression (1999/36).
- 2001 CoE Convention on Cybercrime and Additional Protocol 2003.

- 2003 World Information Summit on the Information Society I, Geneva.
- 2004 Special Rapporteur on Freedom of Expression in Africa.
- 2005 World Information Summit on the Information Society II, Tunis.
- 2005 Council of Europe Declaration on Human Rights and the Internet.
- 2006 First Internet Governance Forum (IGF), Athens.
- 2011 Sixth Internet Governance Forum, Nairobi.
- 2011 General Comment No. 34 on **Art.** 19 of the ICCPR.