

Freedom with Limitations: The Nature of Free Expression in the European Case-Law

Laszlo Vari

Abstract—In the digital age, the spread of the mobile world and the nature of the cyberspace, offers many new opportunities for the prevalence of the fundamental right to free expression, and therefore, for free speech and freedom of the press; however, these new information communication technologies carry many new challenges. Defamation, censorship, fake news, misleading information, hate speech, breach of copyright etc., are only some of the violations, all of which can be derived from the harmful exercise of freedom of expression, all which become more salient in the internet. Here raises the question: how can we eliminate these problems, and practice our fundamental freedom rightfully? To answer this question, we should understand the elements and the characteristic of the nature of freedom of expression, and the role of the actors whose duties and responsibilities are crucial in the prevalence of this fundamental freedom. To achieve this goal, this paper will explore the European practice to understand instructions found in the case-law of the European Court of Human rights for the rightful exercise of freedom of expression.

Keywords—Collision of rights, European case-law, freedom opinion and expression, media law, freedom of information, online expression

I. INTRODUCTION

FREEDOM of opinion and expression appeared first in 1948 in the Universal Declaration of Human Rights, then in 1966 in the International Covenant on Civil and Political Rights in the Article 19 in three paragraphs exploring the rights and their limitations. According to the explanation of the Human Rights Committee, “[f]reedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society” [1, § 1]. Moreover, “[t]he freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. For instance, freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association, and the exercise of the right to vote” [1, § 3]. But there should be drawn a difference between freedom of opinion and expression. The “[p]aragraph 1 of Article 19 requires protection of the right to hold opinions without interference. This is a right to which the covenant permits no exception or restriction. Freedom of opinion extends to the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights under the covenant on the basis of his or her actual, perceived or supposed opinions.

Laszlo Vari is with the University of Barcelona, Spain (e-mail: aszlovvari@yahoo.co.uk).

All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature. [...] Any form of effort to coerce the holding or not holding of any opinion is prohibited” [1, § 9]. However, having an opinion cannot be limited; its expression can be a subject of some restriction. The Human Rights Committee and the Special Rapporteur on freedom of opinion and expression organized the exceptions, restrictions, and limitations of free expression by several standpoints, by which there can be characterized the nature of freedom of expression, and the duties and responsibilities to find answers to all those challenges and violations, like defamation, fake news, misleading information, censorship, which we shall face when we exercise our fundamental freedom, when we seek, receive and impart information. These viewpoints are: the importance of information, the collision with others’ rights, the special state of political expression, the difference between offline and online expressions, and the case of sanctions. Moreover, we need to explore the duties and responsibilities of the duty bearers, who play important role in the prevalence of freedom of expression.

In this paper, there will be introduced the European practice by the case-law of the European Courts of Human Rights. In this manner, there can be explored and compared at the regional level, the legal practice of 47 states.

At the European level, freedom of expression appeared in 1950 in Article 10 of the European Convention on Human Rights. Article 10 contains two paragraphs in which there is declared the right to freedom and how it should be exercised:

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.

II. DUTIES AND RESPONSIBILITIES

The prevalence of freedom of expression depends on several actors. In the following, there will be explored those actors and their duties and responsibilities, which play crucial role in rightful exercise of freedom of expression.

A. States

The main duty bearers of the prevalence of freedom of expression are the contracting states. Their duties and responsibilities can be divided into three important fields according to the European and international law: (a) positive obligation, (b) negative obligation, (c) and respect to the activity of the media.

- (a) Positive obligation: The limitation of the exercise of freedom of expression shall be prescribed by law and should follow legitimate aim, which is declared in paragraph 2 of Article 10, only when it is necessary in a democratic society, thus in the case of social press, in accordance with proportionality. The states positive obligation is to create this legal act, which shall be a quality law, which means that exercising free expression shall be able to foresee the legal consequences of the expression. In the case of *Pravoye Delo and Shtekel vs. Ukraine* where a blogger published an article about a public figure, which he downloaded from other site marking the site reference and keeping the distance from the content of the article. Later, he was sanctioned because of defamation. The ECtHR found that, “given the lack of adequate safeguards in the domestic law for journalists using information obtained from the Internet, the applicant could not foresee the appropriate degree of the consequences which the impugned publication might entail” [2].
- (b) Negative obligation: This duty obligates the contracting states not to violate the right to freedom of expression. To achieve this, states has a responsibility to follow the information communication development to avoid the breach of the right. In the case of *Ahmet Yildirim vs. Turkey*, the Turkish court decided against a journalist and removed not just the website of the impugned article powered by Google but made the all of Google services unavailable for the journalist, and thus needlessly violated his freedom of expression. As the ECtHR concluded in its decision: “[i]f the interference with the applicant’s freedom of expression on the public forum of the Internet must be assessed in terms of the negative obligations arising from Article 10 of the Convention, which already narrows the breadth of the margin of appreciation of the respondent State, the interim and preventive nature of the contested blocking measure narrows it even further” [3]. Therefore, the “[s]tates parties should take account of the extent to which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems, have substantially changed communication practices around the world. States parties should take all necessary steps to

foster the independence of these new media and to ensure access of individuals thereto” [1, § 15].

- (c) Respect to the activity of media: The states should respect the work of the media. It means duties and responsibilities which contain the respect of the investigate journalism, because “political reporting and investigative journalism attract a high level of protection under Article 10” [4, pp. 21]. Moreover, “[s]tates parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources” [1, § 45]. In the case of *Becker vs. Norway*, a journalist published a letter with economic information which influenced the stock prices; however the content turned out to be false. The police arrested the author, who admitted, that he sent this fake information to the journalist with the aim of economic advantage. After the confession, the police asked the journalist to reveal the resource of the letter, but she denied. The ECtHR did not uphold the decision of the Norwegian court against the journalist, and stated that “[h]aving regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.” [5].

B. Intermediaries

In the circumstances of cyberspace, to exercise freedom of expression, we need service providers to establish the infrastructure for the communication. They are the so-called third parties, or intermediaries. Because their activity is essential to enjoy freedom of expression, it raises the question whether intermediaries can be liable for (a) the exercise of their users, or (b) for their own activity?

To answer the questions, the ECtHR distinguished between technical service providers and content service providers, as in the case of *Delfi AS vs. Estonia*. “A hosting service provider offered merely a data storage service, while the stored data, their insertion, removal and content (including ability to remove or change the stored data) remained under the control of service users. In the *Delfi* commenting environment, those commenting lost control of their comments as soon as they had entered them, and commenters could not change or delete their comments” [6]. Therefore, content service providers can be liable for the harmful exercise of their users, because the intermediaries become party in the development of the content; however, being held liable for the harmful exercise of the users is not the case in every situation. In the case of the *Index-MTE vs. Hungary* [7], where an organisation published on a page of a content provider a warning of harmful activity of real estate companies some of which took action, the ECtHR defined, which elements can be taken into consideration to decide whether the content service provider is liable: (a) the behaviour of the injured parties, (b) whether they have natural or legal personalities, (c) and the content of

the users' expressions. Furthermore, if an expression incites violence and can be regarded as hate speech, the general 3rd party reaction, the "notice and take down" can be unsuitable and shall be replaced by an immediate deletion.

(b) Other important aspect of the third party's liability, which is the culpability for their own activities in the violation against their own users' rights. "[I]ntermediaries, as private entities, are not best placed to make the determination of whether a particular content is illegal, which requires careful balancing of competing interests and consideration of defences" [8, § 42]. "The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing the rights of others and to address adverse impacts with which they are involved" [8 § 45]. "[W]ith the advent of Web 2.0 services, or intermediary platforms that facilitate participatory information sharing and collaboration in the creation of content, individuals are no longer passive recipients, but also active publishers of information" [8 § 19]. "[T]he Special Rapporteur encourages corporations to establish clear and unambiguous terms of service in line with international human rights norms and principles, increase transparency of, and accountability for, their activities, and continuously review the impact of their services and technologies on the right to freedom of expression of their users, as well as on the potential pitfalls involved when they are misused" [8, § 48].

C. Media

Media freedom, the freedom of press can be derived from our fundamental right to receive information. "The Court has also repeatedly emphasized the essential role played by the press in a democratic society. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them [...]". "The Court has held that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in (a) good faith and on an accurate factual basis and provide (b) 'reliable and precise' information in accordance with the ethics of journalism" [9, § 79].

(a) "The distortion of the truth, acting in bad faith, may sometimes overstep the limits of acceptable criticism: a true statement may be accompanied by additional remarks, value judgments, suppositions, even insinuations that could give the public the wrong picture" [10] We can read this conclusion from the case of the Růžový Panter, OS vs. Czech Republic, where a "public watchdog" from an NGO defamed a local politician. However, he wrote the facts, but with the use of value judgement without factual base acted in bad faith, because his expression characterized the politician in a way which was against the facts.

(b) The ECtHR concluded in the case of Verlagsgruppe Droemer Knauer GmbH vs. Germany that reliable precise information shall be based on all-sided presentation, provable resources, and accurate timing [11] In this case an author with the name as an expert in the fields of mafia cases released a book where she mentioned a person with

his full name in a relation with a vendetta in Duisburg. Even though she failed to prove her allegation, give an opportunity to other side to defend him and confused the timing of this information. Furthermore, expression based an obviously false information does not enjoy the protection of Article 10. As it turned out from the decision in the case of Schuman vs. Poland, in which a journalist accused a politician of corruption but raised the public figure's income by three digits to base his allegation [4, pp. 30].

Maintaining an online archive is another challenge which the media should address. Generally, the limitation period of defamation is one year. However, on the internet, impugned content can appear and can continue to have an effect. Therefore, there are two different approaches to determine whether a harmful expression can be actionable after the limitation period: the single publication rule and the internet publication rule. In the latter solution, every access to the impugned expression creates the possibility of a new action. Here raises the question how can be avoidable the unlimited liability? In the case of Times Ltd vs. UK, the ECtHR upheld the decision of the Court of Appeal, and the use of internet publication rule in the case of online archive publication with the explanation that, "the attachment of a notice to archive copies of material which it is known may be defamatory would normally remove any sting from the material. [...] In the circumstances, the Court, like the Court of Appeal, does not consider that the requirement to publish an appropriate qualification to an article contained in an Internet archive, where it has been brought to the notice of a newspaper that a libel action has been initiated in respect of that same article published in the written press, constitutes a disproportionate interference with the right to freedom of expression" [12].

III. THE ELEMENTS AND CHARACTERISTICS OF THE NATURE OF FREEDOM OF EXPRESSION

According to the viewpoints of general comments of the Human Rights Committee and the Special Rapporteur, the following section we will introduce those elements and characteristics which describe the nature of freedom of expression.

A. Importance of Information

Information is the element which contains and carries all those ideas and opinions by which we can exercise our basic right to express them. According to the case-law of the ECtHR, we can distinguish information by their content, whether it is (a) reliable and precise or by their kind, whether it is (b) personal, or (c) public.

(a) Access to reliable and precise, and thus accurate information, comes from our right to receive information and the task of the media is to provide it through accurate reporting, according to responsible journalism. In the case of Verlagsgruppe Droemer Knauer vs. Germany, a book written by an expert named a private figure in connection with a vendetta, and thus violated his reputation. As the court pointed out, accurate information should be based

on all-sided presentation, reliable resources and correct timing of the report.

- (b) Personal information is any information relating to an identified or identifiable person does not belong within the realm of freedom of expression, however, for sake of the public interest, the media may have the right to publish personal information, but only the public should be the recipient of personal information, as it was concluded in the decision of the case of *Satakunnan Markkinapörssi Oy and Satamedia Oy vs. Finland*. In this case two publisher companies, lawfully published tax information of the taxpayers, however the extent and the manner of the publications violated the citizens' personal rights, because sending personal information via SMS cannot be interpreted as a publication for the public. [13, § 34, 60].
- (c) Public information means governmental information, governmental records and the right of access to public information appears as freedom of information in the legal system of several states, which emanates from our right to receive information when the public interest emerges [1, § 18]. In the case of *TASZ vs. Hungary* the ECtHR held that the importance of public information in democratic societies can overwrite even the personal information of public figures [14] In this case an NGO wanted to access to an original document of an amendment made by a member of the Hungarian parliament, but he denied it referring to his personal right.

B. Collision at a Personal Level

An important characteristic of the nature of freedom of expression is its possible collision with others' rights. According to Article 10, paragraph 2, this collision can emerge at private and social levels. Article 8 of the European Convention on Human Rights defines the rights to privacy, with which freedom of expression can easily collide.

In accordance with the guidelines of the ECtHR, to get the balance right between the colliding rights "the outcome of the application should not, in principle, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as indicated previously, these rights deserve equal respect. Accordingly, the margin of appreciation should in principle be the same in both situations" [13, § 160]. To ascertain the balance between the colliding rights, the ECtHR uses a criteria [9, § 89] which comprises elements like the contribution of the expression to a debate of general interest [9, § 90], the answer to the question how well known the person is concerned and what is the subject of the report [9, § 91], the research of the prior conduct of the person concerned [9, § 92], the method of journalist in obtaining the information and its veracity [9, § 93], the content, form and consequences of the publication [9, § 94], and lastly the severity of the sanction imposed [9, § 95].

One of the most common collisions is the violation of reputation. This breach, conforming to the explanation of the ECtHR, can often be derived from the harmful usage of facts

and value judgement, which indicates, when the media acts in bad faith. Acting in bad faith violates not just reputations, but the right of citizens to accurate information, because the misuse of facts and value judgements leads to misleading information "[T]he Court reiterates that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10" [15, § 72]. However, as it turned out in the case of the *Ivanovo Press and Others vs. Russia*. "[...]even a value judgment must be based on sufficient facts in order to constitute a fair comment under Article 10 and that the difference between a value judgment and a statement of fact finally lies in the degree of factual proof which has to be established. Although the journalists must be afforded some degree of exaggeration or even provocation, especially when it comes to critical reporting about politicians or public figures [...]" [15, § 77]. Hence, the value judgements shall not go against the truth related to the facts. Furthermore, we should note that, if a case emerges in the general interest, the public figures shall tolerate greater critique.

Another personal right with which the freedom of expression can collide is right to intellectual property, which is declared in Article 1 of the First Protocol of the European Convention on Human Rights. In the case of *Fredrik Neij and Peter Sunde Kolmisoppi vs. Sweden*, where an internet service provider developed and operated a file sharing website "[...] the Court considers that the prison sentence and award of damages cannot be regarded as disproportionate [...]" [16]. "[...] Where infringements of "copyright protection" are concerned, which do not raise any important question of general interest, the Court considers that the domestic authorities enjoy a particularly wide margin of appreciation [...], the margin of appreciation enjoyed by the States must be put in perspective when what is in issue is not a strictly "commercial" message but one that contributes to a debate on matters of "general interest [...]" [4, p. 46].

C. Collision at the Social Level

Freedom of expression can collide with the national interest or the public order as well.

The collision of freedom of expression at the social level can be when the expression violates the national interest. In the cases of public interest, the public has a right to even confidential information, and the media has the right to disclose it, assuming, that they act in accordance with responsible journalism; otherwise, the coverage presented by the media may violate the national interest. In the case of *Stoll vs. Switzerland*, a journalist edited the content of a confidential document at his own discretion, thus he acted in bad faith by publishing misleading information, and hence damaging the national interest of Switzerland. The ECtHR, in its decision concluded, that "[...] while the confidentiality of diplomatic reports is justified in principle, it cannot be protected at any price. [...] media's role as critic and watchdog also applies to the sphere of foreign policy [...] preventing all

public debate on matters relating to foreign affairs by invoking the need to protect diplomatic correspondence is unacceptable” [18, § 128]. “The Court considers that the truncated and reductive form of the articles in question, which was liable to mislead the reader as to the ambassador’s personality and abilities, considerably detracted from the importance of their contribution to the public debate protected by Article 10 of the Convention” [18, § 152].

The state of minors is an important element of the morality of democratic societies. Therefore, if the violation of the right of minors is at stake we can talk about the breach of the public order. Thus, the states, according to their positive obligation, should create quality law, and thereby limit freedom of expression to ensure the right of minors, and hence the public order. “The act was criminal, involved a minor and made him a target for approaches by paedophiles” [17], as it turned out from the decision of ECtHR in the case of *K.U. vs. Finland*, where an individual created an online profile based on the personal information of a 12 years old boy in a dating site. The violation came into light when someone connected with the child. The parents asked the operators of the site to delete the profile, but they rejected the request citing freedom of expression.

In the case of maintaining the public order, the collision of freedom of expression with Article 9, which declares the right to freedom of thought, conscience, and religion is a crucial conflict nowadays. The ECtHR, in its decisions in the cases of *E.S. vs. Austria* and *Aydın Tatlav vs. Turkey*, declared the rightful exercise of freedom of expression, in the case of collision with Article 9.

According to the explanations, the aim is to maintain peaceful religious coexistence which is an important element of democratic societies, thus, states have a wider margin of appreciation to limit the expressions when they confront with the freedom defined in Article 9. The expressions shall not desecrate the objects of veneration of religions, like calling Mohamed a paedophile without providing a factual base, as in the case of *E.S. vs. Austria* [19]. Moreover, inciting hatred-based discrimination, which might lead to possible violation can be considered a criminal act. However, religions, their doctrines, and their followers cannot be exempt from criticism. “Those who choose to practice freedom to manifest their religion, whether they belong to a majority or a religious minority cannot reasonably be expected to do so free from criticism. They must tolerate and accept rejection by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith” [20]. Moreover, the criminalization of blasphemy is illegal [21], [22], according to international and European law. The crucial point in criticizing religions is the rightful practice of facts and value judgement, and the situation of public interest, thus the expression can be viewed as political expression.

D. Political Expression

An important element of the nature of freedom of expression is the special importance of political expressions. Unlike commercial expression, if a topic emerges at public

interest, we can reach the sphere of the political discussions, which has a special roll in democratic societies. In the case of *Eon vs. France*, a political activist’s offensive and vulgar expression against the president of France circulated in the internet. The ECtHR did not uphold the negative decision of the French Courts against Mr. Eon. “The Court reiterat[ed] that there is little scope under Article 10 § 2 for restrictions on freedom of expression in the area of political speech or debate – where freedom of expression is of the utmost importance – or in matters of public interest. The limits of acceptable criticism are wider as regards a politician as such than as regards a private individual” [23]. Moreover, states have a narrow margin of appreciation [...], [the expression] can be offending, shocking and provocative [...]. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which, there is no “democratic society” [9, § 78]. Furthermore, public figures shall be more tolerant, if the debate emerges as a political debate, concluded the Court. However, political speech can hardly limited but calling for discrimination with legal disadvantage goes beyond the freedom of the political speech. In the case of *Willem vs. France*, in which the mayor of a French city called for the boycott of products from Israel, so wanted to express his sympathy to the plight of Palestinians. “[...] the Court took the view that Mr Willem had not been convicted for his political opinions but for inciting the commission of a discriminatory, and therefore punishable act [...]” [24].

E. Differences between Online and Offline Expression

The internet, with its spatiotemporal nature, offers not just (a) access to huge amount of information in a relation of any other technology, but an opportunity for (b) “many-to-many” direction of communication, all of which has a crucial influence on the exercise of freedom of expression, as it was revealed in the decisions of the ECtHR.

- (a) Because of the amount of the accessible information in the Internet, the exercise of freedom of expression offline can be limited. “The Court reiterates in this connection that the authorities are required, when they decide to restrict fundamental rights, to choose the means that cause the least possible prejudice to the rights in question [...]” [25]. In case of *Mouvement Raëlien Suisse vs. Switzerland*, the authorities forbade the poster campaign of a religious organization, with the argument that the information was accessible via the internet.
- (b) There is a difference between the effects of online and offline communication. Unlike the one-to-many model of broadcast communication, the internet offers a many-to-many or many-to-one model. In line with the decision of the ECtHR, the one-to-many model is more effective; thus, to keep the impartiality in political communication, the right to expression can be limited in the broadcast media if the exercise of free expression in the internet is

feasible, as it was concluded in the case of *Animal Defender vs. United Kingdom*. In this case an NGO wanted to advertise its campaign in the broadcast media, but their application was rejected by referring to the impartiality of the media in political communication. "In particular, the Court recognises the immediate and powerful effect of the broadcast media, an impact reinforced by the continuing function of radio and television as familiar sources of entertainment in the intimacy of the home (...). In addition, the choices inherent in the use of the Internet and social media mean that the information emerging therefrom does not have the same synchronicity or impact as broadcasted information. Notwithstanding therefore the significant development of the Internet and social media in recent years, there is no evidence of a sufficiently serious shift in the respective influences of the new and of the broadcast media (...) to undermine the need for special measures for the latter" [26].

F. Sanctions

It is an important element of the nature of freedom of expression, how harmful expressions should be sanctioned. The decriminalization of free expression is the main direction, once the sanctioning of the harmful expressions appears. "[C]alled upon Member States that still provide for prison sentences for defamation to abolish that sanction without further delay. The fear of a prison sentence will have a "chilling effect" on the exercise of freedom of the press, the Court held that the imposition of a prison sentence, even suspended, may have a significant chilling effect [...]" [4, p. 34]. "[T]hat defamation should be decriminalized, and that protection of national security or countering terrorism cannot be used to justify restricting the right to expression unless the Government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence" [8, § 36].

IV. CONCLUSION

The aim of this paper was to detect the nature of freedom of expression and the duties and responsibilities of duty bearers to find solutions to those daily problems, all of which stem from the misuse, and the misunderstanding of the fundamental right to freedom of expression. In accordance with the case-law of the European Court of Human Rights, we can get an image about those elements and characteristics, and duties and responsibilities which influence the rightful exercise of freedom of expression.

There can be distinguished three different actors, which carry the duties and responsibilities for the prevalence of freedom of expression: States, the main duty bearers, intermediaries, and the media. The states, by complying to their positive obligation, should create quality law not just to facilitate the prevalence of free expression, but to set the rightful limitation. Furthermore, states should avoid the

violation of the freedom of expression by providing an insufficient information communication environment; therefore in the digital age they should follow and adopt the technological development. Moreover, states should respect the activities of the media, mostly in the field of investigative journalism, and the anonymity of the journalistic sources.

By the spread of the internet and mobile world, the role of internet service providers becomes more salient, which appears in their duties and responsibilities in relation with freedom of expression. The intermediaries can be liable for the harmful exercise of their users, but their liability depends on whether they are technical or content service providers, or by the act of the users and the injured parties. Furthermore, intermediaries shall promote and protect human rights, thus freedom of expression during their activity.

The media freedom comes from our right to receive information. The importance of media comes alive in the cases of public interest. However, the media should produce accurate and reliable information made in good faith, according to the responsible journalism.

The elements that characterize the nature freedom of expression should take into consideration are the information, the collision with others' rights at a personal or social level, the special importance of political expression, the difference between online and offline expression, and the sanctioning of free expression.

By these elements, it can be concluded that information is a crucial element of free expression. It comes from the right to receive it. The states, media, or any actor who play press-like role should provide the information according to some requisites, like: reliable and provable resources, all-sided presentation and good timing. Freedom of expression can easily collide with other's rights at social, and personal level as well. To resolve the collision the accurate and liable information plays a central role, in which the rightful usage of facts and value judgements are crucial. Political expression is an elemental part of democratic processes, and therefore, political expression can be offensive, and shocking. The states have a narrow margin of appreciation to limit political expressions, if a case emerges in the public interest. The importance of political communication in democratic society determines the direction of sanctioning of harmful expressions. By the decriminalisation of political expression, the so-called "chilling effect" can be avoidable by preventing the communicators from harmful self-censorship. However, if an expression does not reach the level of the public interests and confronts the private sphere, the states have a wider margin of appreciations and a criminal convention could come in to play for the harmful exercise of freedom of expression. The nature of cyberspace influences the exercise of freedom of expression, thus if there is an opportunity to exercise the freedom online, the offline freedom is limitable.

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- [22] The European Parliament, *on the situation of fundamental rights in the European Union (2012) (2013/2078(INI))* § 35., 2014.
- [23] ECtHR, *EON vs. France* (Application no. 26118/10) § 59., 2013.
- [24] ECtHR, *Willem c. France* (Application no 10883/05) § 3., 2009.
- [25] ECtHR, *Mouvement raëlien suisse vs. Switzerland* (Application no. 16354/06) § 75., 2012.
- [26] ECtHR, *Animal Defenders International vs. the United Kingdom* (Application no. 48876/08) § 118., 2013.

Laszlo Vari is a PhD candidate at the University of Barcelona. His research field is about the relation of the fundamental right to freedom of expression and political communication. laszlovari@yahoo.co.uk.