

Dragan Dakić*

Primljeno: 8. 01. 2014.

UDK: 342.727

Pregledni naučni članak

ELEMENTS AND SCOPE OF FREEDOM OF SPEECH IN A DEMOCRATIC SOCIETY

Freedom of expression is not only a basic political right but also a clear legal standard. In this article as one of aspect of expression, freedom of speech has been analyzed through its regional scope of safeguards and limits acceptable in democratic societies of modern Europe. Certain elements of freedom of speech such as characteristic of speech, extent of criticism and debate, use of official statistic data and applied limitations of speech were investigated. General description of this freedom has been drowned out from definition of main aspects of mentioned elements. Definitions were reached through examination of relevant case law of European court of human rights. Attempt has been made toward picturing distinction between safeguarded free speech and malicious and prohibited forms of speech. In the light of results achieved through research in this article it could be considered that there are two characteristic of freedom of speech. First one concerns its purpose. This element qualifies it as part of safeguarded freedom or as unacceptable behavior. Second one concerns obligation of the State in respect to this freedom. State obligations are reduced on negative obligations. Such narrow interpretation cannot be taken as correspondent to present day conditions.

Key words: freedom of speech, characteristic, criticism, limitations, interpretation.

* University of Banja Luka.

I. Introduction

The fundamental global document that legally defined concept of freedom of expression is the Universal Declaration of Human Rights in its Article 19. There are other universal instruments which safeguards freedom of expression such as International Covenant on Civil and Political Rights (Article 2 paragraph 1, Article 20 paragraph 2 and Article 26), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (Articles 4 and 5), the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and Vienna Declaration, adopted on 9 October 1993, etc.

In the member States of Council of Europe, freedom of speech as an integral part of freedom of expression is guaranteed by the Article 10 of the European convention for protection of human rights and fundamental freedoms (further: European Convention or Convention) the regional legal document which equalize solutions in matter of human rights among it's members States. Convention actually codifies and protects human rights that have become accepted civilized, democratic and legal standards of modern States, such as freedom of thought, conscience and religion (Article 9), freedom of expression (Article 10), freedom of assembly and association (Article 11), the right to free elections (Protocol 1 ARTICLE 3.). Thanks to this facts as we see human rights and fundamental freedoms are guaranteed and protected at the same level in the every European country, with an exception of Belarus which is not member of Council of Europe. Foundation for this claim also lays in jurisdiction of European court of human rights which is extended to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it.

Paragraph 1 of article 10 introduces substance of freedom of speech prescribing that 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.

Previously mentioned jurisdiction of European court of human rights brought board case law in matter of freedom of speech which shows principal concept in its perception and its practical role in democratic society. It also presents judicial transformation of legal standard into human right.

Principal concept in interpretation of freedom of speech was established in the case of *Handyside v. the United Kingdom*¹ as it “constitutes one of the essential foundations of a [democratic society] and one of the basic conditions for its progress and each individual’s self-fulfillment. (...) Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.”

Significance of this principal concept which implies broad freedom of speech rather than its limitations is in its influence to practical aspect of this freedom through which we can also see its limitations in Courts case law.

II. Characteristics of speech

Article 10 guarantees publishing of information even if they might not be accurate if their author expresses doubts as to its veracity attempting to establish the truth² providing nonetheless, that such information to be presented in good faith.³

In the *Salov v. The United Kingdom*⁴ the Court even found that the 10th Article does not prohibit the dissemination of information for which there is a strong suspicion that they are true because otherwise it would be unreasonable limited to freedom of expression.

In the case of *Fuentes Bobo v Spain*⁵ the Court recognize a difference between written and verbal expression. In the verbal expression personae have reduced or non possibility to reform, improve or the withdrawal of their statement before they become public. The Court takes this fact into account in determining whether the restriction of freedom of expression was necessary in a democratic society, so that the narrow margin of appreciation of the State when it comes to verbal expression.

¹ *Handyside v. the United Kingdom*, Application Number 5493/72, Judgment of 07. 12.1976, Series A 24, p. 23, § 49. also see: *Bobo v Spain*, Application Number 39293/98, 29 February 2000, § 43.

² *Salov v. The United Kingdom*, Application Number 65518/01, Judgment of 07.09.2005, Reports 2005-XIII, § 113.

³ *Castells v. Spain*, Application Number 11798/85, Judgment of 23.04.1992, Series A 236, p. 23-24, §s 46-50.

⁴ *Salov v The United Kingdom*, Application Number 65518/01, 6 September 2005, §113

⁵ *Fuentes Bobo v Spain*, Application Number 39293/98, 29 February 2000, § 46

The Courts jurisprudence shows that the content of statements⁶, vocabulary which has been used and the underlying context are very important during qualification of speech and therefore of the justification of possible restrictions.⁷

The terminology used in speech in circumstances when there is a need of its qualification as insulting to particular group, could be examining by the Court according to the definition of racism prescribed by the Recommendation No 7 of December 13, 2002, and unprotected by Article 10 (1).⁸ The Court is satisfied that encouraging racist Statement s is a relevant reason for the purposes of paragraph 2 of Article 10⁹, so the State authorities can consider that uttering a hate speech is a relevant reason for interference.

A State may therefore legitimately consider it necessary to take measures aimed at repressing certain forms of conduct, including the imparting of information and ideas, judged incompatible with respect for the freedom of thought, conscience and religion of others.¹⁰

The statement qualification as excessive¹¹ or immoral¹² is also relevant to its classification as protected or not protected by guarantees of Article 10. For example in the case of *Steel and Morris v the United Kingdom*¹³ the Court decided to tolerate a certain degree of excessive and exaggeration to participants of public debate.

In the case of *Gündüz v Turkey*¹⁴ even where the applicant attacked the secular and democratic principles, the Court decided that such expression shall enjoy the protection of Article 10 and should not be limited.

Another element which the Court also takes into account, for example in the *Arslan v Turkey*¹⁵, *Halis v Turkey*¹⁶ and *Gerger v Turkey*¹⁷ is its dissemination, as the

⁶ *Sürek v Turkey (Number2)*, Application Number 24122/94, 8 July 1999, § 35, and *Sürek and Özdemir v Turkey*, Application Number 23927/94 and 24277/94, § 58.

⁷ *Abdullah Aydın v. Turkey*, Application Number 42435/98, Judgment of 09.03.2004.

⁸ *Gündüz v. Turkey*, Application Number 35071/97, Judgment of 04.10.2003, published in Reports 2003-XI, § 41.

⁹ *Jersild v. Denmark*, Application Number 15890/89, Judgment of 23.09.1994, Series A 298, § 32.

¹⁰ see, in the context of Article 9, *Kokkinakis v. Greece*, judgment of 25 May 1993, Series A number 260-A.

¹¹ *Europapress holding, d.o.o. v. Croatia*, Application Number 25333/06, Judgment of 22.10.2009, § 54.

¹² *Prager and Oberschlick v. Austria*, Application Number 15974/90, Judgment of 26. 04.1995, Series A 313, § 18.

¹³ *Steel and Morris v the United Kingdom*, Application Number 68416/01, 15 February 2005, § 90

¹⁴ *Gündüz v Turkey*, Applicationnumber 35071/97, 4 December 2003, §11

fact that some claims were said in a situation where there was no opportunity to present counter-arguments.¹⁸ It is generally accepted that the audio-visual and print media have the most direct and strongest impact¹⁹ and that some of them such as periodical print media leaves limited opportunity to present counter-arguments.

III. Criticism and debate

The freedom of political debate is at the core of the concept of democratic society.²⁰

Discussion on matters of serious public concern, particularly in the context of political debate, enjoys the highest level of protection by the Court.²¹

Although in a democratic society individuals are entitled to comment on and criticize, such criticism, however, must not overstep certain limits.²² Limits of permissible criticism are wider with regard to the Government than in relation to a private citizen, or even a politician,²³ but it could still remain open to the competent State authorities to adopt, in their capacity of guarantors of public order, measures, even of criminal law nature, intended to react appropriately and without excess to defamatory

¹⁵ *Arslan v Turkey*, Application Number 23462/94, 8 July 1999, § 48

¹⁶ *Halis v Turkey*, Application Number 30007/96, 11 January 2005, § 36

¹⁷ *Gerger v Turkey*, Application Number 24919/94, 8 July 1999, § 50

¹⁸ *Gündüz v. Turkey*, Application Number 35071/97, Judgment of 04.10.2003, Reports 2003-XI, § 42.

¹⁹ *Jersild v. Denmark*, Application Number 15890/83, ECtHR, 03. 09. 1994, § 31

²⁰ *Worm v. Austria*, Application Number 22714/9329. Judgment of August of 1997.

²¹ *Sunday Times v. the United Kingdom*, Application Number 6538/74, Judgment of 26 April 1979.; *Barthold v. Germany*, Application Number 8734/79, Judgment of March 25, 1985th.; *Lingens v. Austria*, Application Number 9815/82, Judgment of 8 July 1986th.; *Oberschlick Application Number 1. v. Austria*, Application Number 11662/85, Judgment of May 23, 1991st.; *Schwabe v. Austria*, Application Number 13704/88, Judgment of 28 August 1992.; *Observer and Guardian v. United Kingdom*, Application Number . 13585/88, Judgment of 26 November 1991.; *Thorgeirson v. Iceland*, Application Number 13778/88, Judgment of 25 June 1992.; *Castells v. Spain*, Application Number 11798/85, Judgment of 23 April 1992.; *Jersild v. Denmark*, Application Number 15,890 / 89, Judgment of 23 September 1994.; *Oberschlick Application Number 2. v. Austria*, Application Number 20834/92, Judgment of 1 July 1997; *De Haes and Gijssels v. Belgium*, Application Number 19983/92, Judgment of 24 February 1997; *Dalban v. Romania*, Application Number 28114/95, Judgment of September 28, 1999.; *Lopes Gomes da Silva v. Portugal*, Application Number 37698/97, Judgment of 28 September 2000.; *Feldek v. Slovakia*, Application Number 29032/95, Judgment of 12 July 2001.

²² *Lesnik v. Slovakia*, Application Number 35640 , Judgment of 11.03.2003, Reports 2003-IV.

²³ *Castells v. Spain*, Application Number 11798/85 Judgment of 23.04.1992, Series A 236, p. 23-24, §§ 46-50; *Incal v Turkey*, Application Number 22678/93, 9 June 1998, § 54; *Arslan v Turkey*, Application Number 23462/94, 8 July 1999, § 46; *Mehdi Zana v Turkey*, Application Number 26982/95, 6 April 2004, § 35.

accusations devoid of foundation or formulated in bad faith.²⁴ It is useful to mention here the dissenting opinion of judges *Costa, Cabral Barreto and Jungwiert* in the case of *İ.A. v Turkey*, who believe that any criminal sanction carries chilling effect and that the risk of self-censorship is very dangerous for freedom of speech in a democracy²⁵, and the Court itself in the case of *Cumpănă and Mazăre v Romania*²⁶ determined that particular sentence of imprisonment leads to *chilling effect*, but on the other place it States that the restriction of dissemination of Statements insulting to members of the targeted groups, *per se*, does not constitute a violation of Article 10, even when conviction and punishment against the disseminating person are unjustified.²⁷

The Court in its practice differs whether the expression was done in the ongoing political debate on important social issues. In the case of *Gündüz v Turkey*²⁸, *Feldek v Slovakia*²⁹ and *Fuentes Bobo v Spain*³⁰ it is referred to in such situations, the State margins of appreciation is very narrow and that any restriction of free expression in the political debate must be justified by strong reasons.

In the case of *Steel and Morris v the United Kingdom*³¹ concluded that in a democratic society even small informal 'campaign groups' need to be able to carry out activities that contribute to information and ideas of public debate and thus in favor of the public interest, in ruling *Özgür Gündem v Turkey*³² to public has the right to be informed about the different perspectives of the situation (in southeastern Turkey), regardless of how these perspectives are unacceptable in the eyes of the authorities. The Court has recognized in its practice, the distinction between value judgments and statement of fact. In the case of *De Haes and judgments Gijssels v Belgium*³³ and *Nilsen and Johnsen v Norway*³⁴, said that the truth of the facts require, and the value judgments cannot question this way, but value judgments should have a sufficient factual basis as it

²⁴ *Castells v. Spain*, Application Number 11798/85 Judgment of 23.04.1992, Series A 236, p. 23-24, §§ 46-50

²⁵ *İ.A. v Turkey*, Application Number 42571/98, 13 September 2005, Joint dissenting opinion of judges Costa, Cabral Barreto and Jungwiert, § 6

²⁶ *Cumpănă and Mazăre v Romania*, Application Number 33348/96, 17 December 2004, § 116

²⁷ *Jersild v. Denmark*, Application Number 15890/89, Judgment of 23.09.1994, Series A 298, p. 23 and 25-26, §§ 31 and 35.

²⁸ *Gündüz v Turkey*, Application Number 35071/97, 4 December 2003, § 49

²⁹ *Feldek v Slovakia*, Application Number 29032/95, 12 July 2001, §81

³⁰ *Fuentes Bobo v Spain*, Application Number 39293/98, 29 February 2000, § 48

³¹ *Steel and Morris v the United Kingdom*, Application Number 68416/01, 15 February 2005, § 89

³² *Özgür Gündem v Turkey*, Application Number 23144/93, 16 March 2000, § 70

³³ *De Haes and Gijssels v Belgium*, Application Number 19983/92, 24 February 1997, § 47

³⁴ *Nilsen and Johnsen v Norway*, Application Number 23118/93, 25 November 1999, §49-50

is stated in the *Sokolowska v Poland*³⁵ and *Lyndon Otchakovsky-Laurens and July v France*³⁶.

In accordance with the verdict *Jerusalem v Austria*³⁷, the Court held that statement appellant request, which accuses the sects to have totalitarian and fascist tendencies of the character, the Court on the issue of values in the public interest.³⁸

IV. Use of the official statistic data

In the *Bladet Tromsø and Stensaas v Norway*³⁹ the Court said that official reports are a reliable source whose veracity cannot be verified independently engaging in research. Use of the official statistic data should be in order to develop a constructive public debate on some social issues and not to create of a practical ground for incitement of ethnic intolerance especially with regard to the fact that the scope of rights and obligations depends on the nature of spoken words,⁴⁰ and general social and political situation in which it is imposed.⁴¹

Using the official data, to rationalize the opinion that some person or ethnic group are cause of a bad situation in the country and root of the problems, could make statements more dangerous than a similar statements given in regular political speech in which there was no use of official statistic data and therefore more exposed to restrictions by the State. Statistical data used, in the given context, could be utilized for justification of the accumulated dissatisfaction and intolerance against "objects" of such speech, which deliver an obligation to State to prevent it.

A speech in which is asserted that a group of people identified by their different ethnic origin should be blamed for bad economic situation, with which the majority of population is already extremely unsatisfied or upset constitutes a hazard to public security and poses a risk of disorder. The State, as a guarantor of public order should be given board a margin of appreciation in choosing the measures intended to react appropriately to situations where it is needed to fulfill its obligation to protect others

³⁵ *Sokolowski v Poland*, Application Number 75955/01, 29 March 2005, §48

³⁶ *Lyndon Otchakovsky-Laurens and July v France*, Application Number 21279/02 and 36448/02, 22 October 2007, §55

³⁷ *Ibid.* §43

³⁸ *Jerusalem v Austria*, Application Number 26958/95, 27 February 2001, §44

³⁹ *Bladet Tromsø and Stensaas v Norway*, Application Number 21980/93, 20 May 1999

⁴⁰ *Otto-Preminger-Institut v. Austrja* (Application Number 13470/87), ECtHR, 20. 09. 1994, §49

⁴¹ *Erdogdu and Ince v. Turkey* (Application Number 25723/94), ECtHR, 08. 07. 1999, §54

from all types of negative aspirations instigated against them, especially when it is done by hate speech which jeopardizes public safety, order, morals, dignity and rights of others while interfering with the freedom of expression.⁴² In this place we should remind about principle standpoint taken by the Court in the case of *Wingrove v. the United Kingdom*⁴³, that State authorities are in principle in a better position to give an opinion on the exact content of the requirements with regard to the rights of others than the international judges which seems to determine board margin of appreciation to national authorities.⁴⁴

It is interesting to mention Court's standing that among the various forms of expression that can incite hatred or violence, artistic forms of expression are rarely limited because of their artistic nature and limited impact which reduce them to an expression of deep distress in the face of tragic events, rather than a call to violence⁴⁵. However, this cannot be said for a political speech uttered for example in an inflammatory atmosphere between two rival groups of demonstrators regardless of the speaker's motives.

One of the most unacceptable forms of expression recognized by the Court is hate speech. When qualifying a speech and its qualification as “hate speech”, the Court is having regard to the relevant international instruments such as Recommendation No. R (97) on “hate speech”⁴⁶, the General Policy Recommendation no. 7⁴⁷, and other relevant international instruments, in addition to its own case-law and State as follows:

(...) tolerance and respect for the equal dignity of all human beings constitute the foundation of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious

⁴² As in case *Aslan v. Turkey*, Application Number 23462/94, Grand Chamber's Judgment of 08.7.1999, § 46.

⁴³ *Wingrove v. the United Kingdom*, Application Number 17419/90, Judgment of 25.11.1996, Reports 1996-V, § 58.

⁴⁴ *I.A. v. Turkey*, Application Number 42571/98, Judgment of 13.09. 2005, Reports 2005-VIII, § 29.

⁴⁵ *Alinak v. Turkey*, Application Number 40287/98, Judgment of 09.03.2005.

⁴⁶ Adopted on 30.10.1997 by the Committee of Ministers of the Council of Europe.

⁴⁷ Adopted by the European Commission Against Racism and Intolerance through domestic legislation.

intolerance), provided that any “formalities”, “conditions”, “restrictions” or “penalties” imposed are proportionate to the legitimate aim pursued.⁴⁸

V. Limits of speech

Freedom of expression presumes an obligation to avoid as far as possible the use of expressions that are unjustifiably offensive to others and which do not contribute to progress. Article 10, paragraph 2, provides that 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 which 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.

Therefore limitations of freedom of speech as limitations of freedom of expression in general have to be “prescribed by the law”, “necessary” for pursuing one/more of the mentioned “legitimate aims” and “proportional” to them.

As to the requirement to be “prescribed by law”, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law⁴⁹. The Court’s standpoint about “forcibility” of the law Stated in the case *Hashman and Harrup v. the United Kingdom*⁵⁰, says that a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct.

As for the “necessity” of imposing restrictions or interference to be decided by the Court, according to accepted approach⁵¹ this freedom is subjected to limitations which, on the other hand, have to be strictly set and the need for limitations has to be convincingly established. As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions

⁴⁸ *Gündüz v. Turkey* Application Number 35071/97, Judgment of 04.10.2003, Reports 2003-XI, § 40.

⁴⁹ *Kruslin v. France*, Application Number 11801/85, Judgment of 20.04.1990, Series A 176-A, § 29.

⁵⁰ *Hashman and Harrup v. the United Kingdom*, Judgment of 25. 11.1999, Reports 1999-VIII, §§ 31 and 34.

⁵¹ See, e.g. Judgment *Janowski v. Poland*, Application Number 25716/94, Judgment of 21.01.1999, Reports 1999-I, § 30.

must be established convincingly.⁵² The adjective “necessary”, within the meaning of Article 10 (2), implies the existence of a “pressing social need”. The Contracting States have a certain margin of appreciation in assessing whether such a need exists but The Court does not give States unlimited discretion, the only discretion by itself is under European supervision, and it includes the laws and decisions that are implemented and decisions of independent courts⁵³, still the burden of proving the necessity of the constraints is at the State, which in this context should provide “relevant and sufficient evidence”⁵⁴. If the speech is gratuitously offensive to others and thus presents an infringement of their rights, and which therefore does not contribute to any form of public debate capable of furthering progress in human affairs, its limitation could be regarded as “necessary in a democratic society”.⁵⁵ (see, *mutatis mutandis*, *Otto-Preminger-Institut*, cited above, paragraph 49; *Wingrove*, cited above, paragraph 52; and *Gündüz v. Turkey*, no. 35071/97, paragraph 37, ECHR 2003-XI). It is the same case if the measure were taken in respect of the some statement was intended to provide protection against offensive attacks on matters regarded as sacred by some ethnic group.⁵⁶

As to pursuing one/more of the mentioned “legitimate aims” The circumstances under which the right to freedom of expression to a person can be limited are exhaustively enumerated in paragraph 2 of Article 10. Restrictions that do not fall under one of the designated categories will be permitted and constitute a violation of freedom of expression. All restrictions must be narrowly construed. It is recalled that paragraph 2 of Article 10 allows particularly low limits of political speech or debate in the public interest⁵⁷.

An integral part of the necessity is requirement that its limits are proportional to pursued goal⁵⁸. National authorities must use the method which is the least restrictive to the right to freedom of expression.

⁵² See the following judgments: *Handyside*, op.cit., § 49; *Lingens v. Austria*, Application Number 9815/82, Judgment of 08.07.1986, Series A 103, p. 26, § 41 and *Jersild v. Denmark*, Application Number 15890/89, Judgment of 23.09. 1994, Series A 298, p. 23, § 31.

⁵³ *Handyside v. the United Kingdom* Application Number 5493/ 72, ECtHR, 7. 12. 1976, §§§ 48-50

⁵⁴ *Handyside v. the the United Kingdom* , Application Number 5493/ 72, ECtHR, 7. 12. 1976, § 50

⁵⁵ *Giniewski v. France*, Application Number 64016/00 Judgment of 28.06.2001.

⁵⁶ *I.A. v. Turkey* Application Number 42571/98 Judgment of 13. 09.2005.

⁵⁷ *Wingrove v. the United Kingdom* Application Number 17419/90, ECtHR, 25. 11.1996, § 58

⁵⁸ *Handyside v. the United Kingdom* Application Number 5493/ 72, ECtHR, 7. 12. 1976, § 49

As to “proportional”, when examining proportionality of any interference important place belongs to fairness of the domestic proceedings and sentence level.⁵⁹ Unusually high sentence inflicted on the disseminating person was recognized as constitute grounds for a violation of Article 10.⁶⁰ In fact, threaten the freedom of expression means not only a personal compromise, the Convention guaranteed the right, but it means undermine the very democracy as a form of ruling of the people and the assumption of realization of all other declared human rights and freedoms.

In the above cited case of *Castells v. Spain* the Court even concluded that "domestic courts should refrain from applying criminal penalties, particularly prison sentences for offenses such as misuse of freedom expression."

VI. Conclusion

Freedom of speech safeguards publishing of information even if they might not be accurate. It is important that they were presented in good faith. In general, State enjoys narrower margin of appreciation in regulating and limiting verbal expression as compared to written forms of expressing. Still vocabulary which has been used and the underlying context, next to potential exaggeration and moral views, are very important for speech qualification. Equally those parameters are relevant for written word too. Specific ground for speech limitation in respect to its timely characteristic is opportunity of opposite side to present counter-arguments. In the lack of such opportunity this freedom could be limited. Impact of the media used as tool for speech transmission is also of the relevance.

Imparting of information and ideas, judged incompatible with respect for the freedom of thought, conscience and religion of others may constitute legitimate ground to take measures aimed at repressing speech. Herein it is to note that borders of permissible criticism are wider with regard to the Government than in relation to a private citizen. Presenting different perspectives of the current situation regardless of how these perspectives are unacceptable in the eyes of the authorities is safeguarded under the provisions of freedom of speech.

Use statements of the fact such as judgments, official reports and statistic data should be only in order to develop a constructive public debate on some social issues. It

⁵⁹ *Pedersen and Baadsgaard v. Denmark* [GC], number 49017/99, § 93, ECHR 2004-XI

⁶⁰ *Pakdemirli v. Turkey*, Application Number 35839/97, Judgment of 22.02.2005.

cannot be used in order to create ground for incitement of intolerance. It is interesting that Convention institutions used public interest as ground for limiting freedom of speech and as reason for safeguard of free speech mostly in depends on intend of speech and its aim.

The main obligation of States under Article 10 is to refrain from unlawful interference with exercise of freedom of expression. It must not hinder say just because you oppose an opinion or ask for ban on dissemination of information to certain parts of the population. Also, freedom of expression presumes an obligation to avoid as far as possible the use of expressions that are unjustifiably offensive to others and which do not contribute to progress.

As we saw the Article 10 imposes only negative obligation to the State. The practice of the Court, nor only by the underlying valuation, imposes almost no positive obligation of the State. Upon entry into force of new international documents on protection of human rights of specific groups of people such as various minorities or persons with disabilities, the interpretation of Article 10 just in the light of negative normative obligations on the side of State is not enough anymore. Interpretation of this article should evolve towards its understanding as guarantor of certain positive obligations.

Драган Дакић

ЕЛЕМЕНТИ И ОБИМ СЛОБОДЕ ГОВОРА У ДЕМОКРАТСКОМ ДРУШТВУ

Слобода изражавања није само основно политичко право већ је и јасан правни стандард. У овом чланку је анализирана слобода говора као један од аспеката изражавања и то кроз његову регионалну заштиту и ограничења у демократским друштвима модерне Европе. Истражени су одређени елементи слободе говора који се односе на његове карактеристике, границе критике и дебате, употребу званичних података и његове ограничавајуће елементе. Општи опис слободе говора досеђујући је путем дефиниција најважнијих аспеката наведених елемената. Релевантне дефиниције су извучене из релевантних пресуда Европског суда за људска права. У том смислу учињен је и покушај да се прикаже разлика између заштићене слободе говора и малициозних и забрањених облика вербалног изражавања. У свјетлу резултата остварених кроз ово истраживање могло би се закључити да постоје двије основне карактеристике слободе говора у наведеном смислу. Прва се тиче сврхе говора која квалификује говор као функцију заштићене слободе или као неприхватљиво понашање. Друга се тиче обавеза државе у односу на ово право. Уочено је да се обавезе државе свode на њене неативне аспекте. Тако уска интерпретација слободе говора се не може смањити кореспондентном условима данашњице.

Кључне ријечи: слобода говора, карактеристике, критицизам, ограничења, интерпретација.