

## Constitutional Freedom Of Speech: Experience Nos Countries Of Western Europe

*Liberdade Constitucional Da Discurso: Experiência Nos Países Da Europa Ocidental*

### Authors

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## Abstract

O artigo considera a variabilidade de abordagens constitucionais para consolidar a liberdade de expressão em 23 países da Europa Ocidental. A base metodológica da pesquisa é formada com base na aplicação de vários métodos científicos gerais e formas de conhecimento científico (análise, síntese, dedução, indução, sistema-estrutural, abordagem formal-lógica). Como resultados, o estudo sistematizou a experiência constitucional existente de articulação da liberdade de expressão e a dividiu em duas abordagens fundamentalmente diferentes. A primeira abordagem considera a liberdade de expressão por meio da categoria de "liberdade", e a segunda - por meio da categoria de "direito". Ao mesmo tempo, garantias adicionais de liberdade de expressão são estabelecidas nas constituições que implementam a primeira abordagem, e restrições adicionais a essa liberdade - que se aplicam à segunda.

**Keywords:** constitution, freedom of expression, expression of opinion, expression of belief, expression of thought, freedom of expression, freedom of information, censorship.

## Resumen

O artigo considera a variabilidade das abordagens constitucionais para consolidar a liberdade de expressão em 23 países da Europa Ocidental. A base metodológica da pesquisa é formada com base na aplicação de vários métodos científicos gerais e formas de conhecimento científico (análise, síntese, dedução, indução, sistema-estrutural, abordagem formal-lógica). Como resultados, o estudo sistematizou a experiência constitucional existente de articulação da liberdade de expressão e a dividiu em duas abordagens fundamentalmente diferentes. A primeira abordagem considera a liberdade de expressão por meio da categoria de "liberdade", e a segunda - por meio da categoria de "direito". Ao mesmo tempo, garantias adicionais de liberdade de expressão são estabelecidas nas constituições que implementam a primeira abordagem, e restrições adicionais a essa liberdade - que se aplicam à segunda.

**Palabras clave:** constituição, liberdade de expressão, expressão de opinião, expressão de crença, expressão de pensamento, liberdade de expressão, liberdade de informação, censura.



## Introduction

Modern constitutional acts cannot be imagined without norms enshrining human rights and freedoms (Alla et al. 2017). One of the central places in their system belongs to freedom of speech, which positions are authoritatively set in the fundamental international documents, which were the basis for the further development of freedom of speech in national doctrines and constitutional acts.

This, in turn, has provided constitutional and legal substance for scientific research of freedom of speech. Thus, freedom of speech is considered by authors such as Thomas Emerson (Butko, et al. 2017), Ai Weiwei (Cohen, 1993), Joshua Cohen (Emerson, 1986), Harry Wellington (Gelunenko, et al. 2019), and Edward Pitts (Makogon, et al. 2017).

Freedom of speech today is one of the most important achievements of modern democracies, since freedom of speech is the main instrument of democracy (Makogon, et al. 2019).

Freedom of speech appears as a unique opportunity to express your opinions and beliefs both verbally and in writing. Its uniqueness is manifested in the fact that the freedom of thought, being its integral part, is "free" enough to not be framed by the shackles of law (Pitts, 1986).

Developing the idea of the uniqueness of freedom of speech, it should be noted that it is a generalizing whole of freedom of thought, freedom of expression, freedom of opinion, freedom of information. Such an approach contributes to the increment of the constitutional content of freedom of speech and expands the boundaries of legal versions of how and in what form it can be implemented.

## Methods

The methodological basis of the research is formed on the basis of the application of various general scientific methods and ways of scientific knowledge (analysis, synthesis, deduction, induction, system-structural, formal-logical approaches). The latter include formal-legal, linguistic-legal, comparative-legal, which were used to study the constitutional texts of Western European states with a view to articulating and regulating freedom of speech in them.

## Discussion and results.

A review of the constitutional texts of 23 Western European states - Austria, Andorra, Great Britain, Belgium, Germany, Greece, Denmark, Ireland, Iceland, Spain, Italy, Liechtenstein, Luxembourg,

Malta, Monaco, Netherlands, Norway, Portugal, San Marino, Finland, France, Switzerland, Sweden - is of doctrinal interest. It seems that the analysis of Western European constitutions is of particular scientific interest, since these constitutional acts are usually referred to as "first generation" constitutions. Based on their constitutional texts, one can penetrate into the original versions of the formation of the catalog of human rights, as well as the development of world constitutionalism. In this regard, it would be interesting to consider the origins of the institution of freedom of speech through the prism of the constitutional approaches of Western European states.

The analysis of twenty-three Western European constitutions identified two principal groups. The first includes constitutions in which freedom of speech is considered through "freedom", and the second, in which freedom of speech is considered through "right". Let us clarify that all constitutional acts under consideration contain rules of freedom of speech, however, the establishment of its guarantees and restrictions vary.

The first group included the constitutions of 9 states - Andorra, Belgium, Greece, Luxembourg, Malta, Monaco, Norway, San Marino, and Sweden. Having examined the experience of consolidating their freedom of speech, we state that the simplest form of its consolidation is contained in the Constitution of San Marino (Article 6). It guarantees freedom of expression. We consider this wording to be positive in terms of that an additional constitutional framework for this freedom is not constitutionally established, which is more appropriate to freedom. At the same time, additional guarantees of freedom of speech are not emphasized, which can be regarded as a human rights risk (Weiwei, 2013).

The Andorran Constitution (Art. 12) contains a rule recognizing freedom of expression. The prohibition of censorship and the prohibition of any means of ideological control by public authorities are constitutionally recognized.

The Swedish Constitution (§ 1) states that "the state must ensure their citizens freedom of expression, which includes freedom of distribution of messages verbally, in writing, by means of images, by expressing thoughts, opinions, expressing feelings". In addition, the constitution establishes a means of protection from coercion to express their views on all spheres of public life, as well as protection against coercion to participate in demonstrations, to belong to a political association.

It is important to focus on the fact that these constitutions additionally establish means of protection against state control and any other coercion of expression. It follows that at the highest constitutional level, it is the state, on the one hand,



that is recognized as the source of "danger" for freedom of speech, and on the other hand, it forms the appropriate mechanisms of human rights.

The Greek Constitution (Article 14) establishes that "everyone can express and disseminate their thoughts verbally, in writing or in print, observing the laws of the state. Moreover, censorship and any other preventive measures are prohibited". Along with this, the confiscation of newspapers and other publications is prohibited, both before their publication and after.

The Constitution of the Principality of Monaco (Article 23), along with the guarantee of "freedom of expression on any matter, excludes prosecution for offenses committed in the case of the use of these freedoms".

The Belgian constitution (Article 19) enshrines "freedom of speech as freedom of expression in any guaranteed way, and excludes any prosecution for offenses committed while using these freedoms". In addition to the prohibition of censorship, there is a prohibition of prosecution of a publisher, printer or distributor if he is known and resides in Belgium.

It seems that such a constitutional guarantee of the means and methods of freedom of speech protects it from encroachments by both state-power structures, and by public associations and individuals.

This wording is expressly enshrined in the Constitution of the Duchy of Luxembourg (Art. 24), which states that "prosecution cannot be instituted against publishers, printers or distributors if the author is known, if he is a Luxembourger and resides in the Grand Duchy". In this way, in our opinion, freedom of speech is constitutionally guaranteed to citizens living in the state. At the same time, the specified constitutional article establishes liability for offenses committed while using freedom of oral expression, freedom of the press and liability of persons who received information illegally. The very constitutional wording of this article secures the freedom of oral expression of opinions on any issues. It seems that in this way not only the constitutional contours of freedom of speech are determined, but also its addressee (Luxembourgers) and the form (oral) expression.

As for the Constitution of the Republic of Malta (Article 41), it defines freedom of speech as freedom of expression of both opinion and speech. Along with this, it was established that "no one should be impeded in using freedom of expression, including freedom of opinion, freedom of idea, freedom of information". The constitutional restriction (Wellington, 1979). of freedom of speech can be established in the interests of defense, public security, public order, public morality, decency, public health. We consider it important to emphasize that freedom of speech may be limited in order to protect the rights and freedoms of others, their reputation, privacy, and

the protection of persons participating in legal proceedings; protect the integrity of parliamentarians. Which is quite justified, because the freedom of one should not infringe on the rights and freedoms of another.

The constitutional text of the Kingdom of Norway (§ 100) grants freedom of the press. Every citizen, foreign citizen is allowed to "freely speak out about public administration and on any other matter". There are guarantees that no one can be punished for any work. Moreover, non-compliance with laws, incitement, false and disgraceful accusations are not allowed; contempt for religion, morality; resistance to constitutional authorities and their orders.

The second group of Western European countries where freedom of speech is legally enshrined includes Austria, Great Britain, Germany, Denmark, Ireland, Iceland, Spain, Italy, Liechtenstein, Portugal, Finland, France, and Switzerland.

The Austrian Constitution (Article 13) and the German Basic Law (Article 5) enshrine freedom of speech in a similar way. The constitutions state that everyone has the right to express their opinion (verbally, in writing, through print and artistic images). They establish that expression of opinion can only be within the framework of the law and should not go beyond this framework. A ban on censorship. However, it is distinctive that the Austrian constitution does not apply administrative postal bans on printed works published domestically.

The issue of enshrinement of freedom of speech in the UK has long remained open, since this freedom was not reflected at the constitutional level. However, such a constitutional legal gap was eliminated by the adoption in the UK of the Human Rights Act 1998, which enshrines freedom of speech, as the right of everyone to freedom of expression. This right includes freedom to have an opinion and receive, transmit information and ideas without interference from state authorities. State licensing of broadcasting, television or cinema is not allowed. However, the right to freedom of expression is subject to restriction or a fine to the extent established by law and is necessary in a democratic society in the interests of national security, territorial integrity, public security, to prevent unrest and crime, to protect health and morality, to protect the reputation and rights of others to prevent the disclosure of information received in confidence, maintaining the authority and impartiality of the judiciary.

The Danish Constitution (Article 77) states that everyone has the right to freely express their thoughts in the press, in written and oral form, realizing the possibility of bringing them to justice in court.



The Irish Constitution (Art. 40) establishes "the right of citizens to freely express their thoughts and opinions". Of fundamental importance, in our opinion, is the constitutional wording establishing that "the creation of public opinion is a matter of the greatest importance for the common good". Criticized constitutional criticism of Government policy is allowed, but with some constitutional reservation. Such criticism should not be used to undermine public order, morality, and the authority of the state. In our opinion, this form of consolidating the freedom of speech allows us to use not just freedom of speech, but really become involved in democratic processes. It was also established that the publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

A similar and fundamentally important interpretation is contained in the constitutional act of France (Article 11). Thus, communicating thoughts and opinions to other people is one of the most precious human rights; therefore, a citizen can freely speak, write, print, but bear responsibility (Yan Mill, 2018).for the abuse of this freedom in cases established by law.

The Constitution of Iceland (Article 73) states that everyone has the right to freely express their thoughts, and prohibits any censorship and restrictions on freedom of speech. Moreover, in cases of necessity or in accordance with democratic traditions, restriction of freedom of expression is allowed. Such cases include the interests of public order, state security, protection of the health, morality, rights and reputation of others.

The Constitutional Act of Spain (Article 20) recognizes "the right to freely express the dissemination of thoughts, ideas and opinions through words, writing or any other means". A preliminary ban has been established by censorship (part 2 of article 20); it is set (part 3 of article 20) that parliamentary control can be established over social media dependent on the state or any state entity.

Such parliamentary control can be established in order to protect the right to honor, privacy, personal image, protection of youth and children.

The Italian Constitution (Article 21) recognizes "the right to freely express one's thoughts verbally, in writing and in any other way. Printing may not be subject to authorization or censorship". In order to protect good nature, it provides for the prohibition of printed works, spectacles, and demonstrations. At the same time, measures are established by law to ensure the prevention and suppression of relevant offenses.

The Constitutional of Liechtenstein (Art. 40) stipulates that "everyone can exercise the right to

freely express their opinions and thoughts verbally, in writing, in print or by means of images within the framework of law and morality". Censorship may be established solely in relation to public performances and exhibitions.

The Portuguese Constitution establishes that freedom of speech refers to personal rights (art. 26), that everyone recognizes the right to freedom of speech (art. 26), with the subsequent specification of the means of free expression and dissemination of thought, either verbally, or through images or in any way also the establishment of freedom of information and the prohibition of censorship (art. 37).

The Finnish Constitution (§ 12) enshrines not only freedom of speech as the right to freedom of expression, but discloses its content. So, freedom of expression is understood as "the right to transmit, disseminate and receive information, views, other information without any obstacles thereto". Legislatively established regulations on the limitations of video programs that are necessary to protect children. Also, if necessary, the law may suspend access to documents and surveys held by state bodies.

Switzerland, with its constitutional formulations, has incorporated the approaches discussed above. This is dedicated to Art. 16, the parts of which guarantee freedom of opinion and information (part 1); the right of everyone to freely form, freely express and disseminate their opinion is secured (part 2); the right to freely receive, retrieve and disseminate information is established (part 3). It should be noted that throughout the text of this article, freedom of opinion is enshrined in conjunction with freedom of information and the prohibition of censorship. Based on the analysis of the rule, we consider such a constitutional symbiosis an error of legal technique, since Art. 16 does not fix any restrictions, but rather reveals the boundaries of freedom, practically reducing it to permissiveness.

The constitutional formulations of securing freedom of speech in the Netherlands cannot be attributed to either the first or second group, since there is no direct reference to this freedom, but it is implied by its meaning. So, Art. 7 of the Dutch Constitution states that no one should apply for prior permission to publish their views or opinions, but everyone is responsible for abuse of this right in the manner prescribed by law.

### Summary

As a result of the analysis of the constitutional texts of the indicated focus group of countries, we note that constitutional texts identify freedom of speech with freedom of expression of opinions,



thoughts, words, as well as freedom of expression. Moreover, the most popular wording is “freedom of expression”, which is used in nine of the twenty-three examined constitutional texts. “Freedom of expression of thought” is used in seven, and “freedom of expression” in two constitutions. It is interesting that the modern wording “freedom of speech” is enshrined only in the Portuguese Constitution of 1976.

Among other things, a pattern was revealed that often the consolidation of freedom of speech through “freedom” rather than “right” does not establish additional restrictions or liability of persons for using the constitutionally established freedom of speech. Of the nine constitutions of the first group, the exception was three constitutional texts (Liechtenstein, Malta, Norway), which established restrictions on freedom of speech. The rest of the constitution, on the contrary, introduced additional guarantees for the exercise of freedom of speech, which are expressed in means of protection against state control and any other coercion of expression; prohibition of prosecution and punishment for expression of opinion, prohibition of censorship; prohibition of confiscation of print media.

The trend of the constitutions of the second group of Western European countries, that reveal freedom of speech through the prism of “law”, is to establish additional constitutional restrictions. Such restrictions are expressed in the responsibility of persons within the framework of the law, in court, with the aim of protecting children, human rights, their dignity and reputation. Such constitutional restrictions are associated with the protection of the constitutional order, state secrets, the rule of law, morality, and protection from propaganda, discrimination, hostility and violence.

Summarizing this study, we note that restrictions on freedom of speech can be introduced to protect fundamental democratic values. But at the same time, there must be effective guarantees to protect such freedom, because it can be used to protect other constitutional values, including the rights and freedoms of the individual.

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