

## Artículo de investigación

## Freedom of speech in constitutional binds of eastern European countries

Libertad de discurso en los sectores constitucionales de los países del este de Europa  
 Liberdade de expressão em regras constitucionais dos países da Europa do leste

Recibido: 19 de febrero de 2019. Aceptado: 22 de abril de 2019

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### Abstract

This article discusses the constitutional enshrining versions of freedom of speech in Eastern European countries. Being reflected in all constitutions of this group of countries, freedom of speech received lexical interfacing with other freedoms or with ways of their realization. The systematization of constitutional articulation variants of freedom of speech allowed us to identify two fundamental approaches: securing freedom of speech and detailing it. In the considered constitutions, the formulation of "freedom of speech" is typical, which is complemented by freedom of expression of "opinion", "conviction", "one's own views", "thought", "thinking and thought", and disseminating "ideas, opinions, beliefs, information". It was revealed that in a number of constitutions, the freedom of speech is articulated through law, which creates the conditions for its excessive regulation. "Everyone" traditionally act as the constitutional addresses the freedom of speech.

**Keywords:** constitution, personal rights and freedoms, political rights and freedoms, freedom of speech, expression of opinions, expression of beliefs, expression of views, public expression of thought, right to access information, censorship.

### Resumen

Este artículo analiza las versiones constitucionales de la libertad de expresión en los países de Europa del Este. Al reflejarse en todas las constituciones de este grupo de países, la libertad de expresión recibió una interacción léxica con otras libertades o con formas de su realización. La sistematización de las variantes de articulación constitucional de la libertad de expresión nos permitió identificar dos enfoques fundamentales: garantizar la libertad de expresión y detallarla. En las constituciones consideradas, la formulación de la "libertad de expresión" es típica, que se complementa con la libertad de expresión de "opinión", "convicción", "opiniones propias", "pensamiento", "pensamiento y pensamiento" y difusión. "Ideas, opiniones, creencias, información". Se reveló que en varias constituciones, la libertad de expresión se articula a través de la ley, lo que crea las condiciones para su regulación excesiva. "Todos" tradicionalmente actúan como lo constitucional aborda la libertad de expresión.

**Palabras claves:** constitución, derechos y libertades personales, derechos y libertades políticos, libertad de expresión, expresión de opiniones, expresión de creencias, expresión de opiniones, expresión pública de pensamiento, derecho de acceso a la información, censura.

### Resumo

Este artigo discute as versões constitucionais da liberdade de expressão nos países do Leste Europeu. Estando refletida em todas as constituições deste grupo de países, a liberdade de expressão recebeu uma

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interação lexical com outras liberdades ou com formas de sua realização. A sistematização das variantes de articulação constitucional da liberdade de expressão permitiu identificar duas abordagens fundamentais: garantir a liberdade de expressão e detalhá-la. Nas constituições consideradas, a formulação da “liberdade de expressão” é típica, que é complementada pela liberdade de expressão de “opinião”, “convicção”, “pontos de vista”, “pensamento”, “pensamento e pensamento”, e disseminação “Idéias, opiniões, crenças, informações”. Foi revelado que, em várias constituições, a liberdade de expressão é articulada por meio da lei, o que cria as condições para sua regulamentação excessiva. “Todos” tradicionalmente agem como a constitucional aborda a liberdade de expressão.

**Palavras-chave:** constituição, direitos e liberdades pessoais, direitos e liberdades políticas, liberdade de expressão, expressão de opiniões, expressão de crenças, expressão de opiniões, expressão pública do pensamento, direito de acesso à informação, censura.

## Introduction

Freedom of speech, though apparently is attributed to a person, is a complex and multifaceted constitutional and legal phenomenon. The restriction of this freedom is often interpreted as an encroachment on the part of public authority. It is not unreasonable that freedom of speech belongs to the elements of “protection from arbitrariness of the state power, and excessive interference in the sphere of personal freedom” (Hesse & Sidorova, 1981). At the same time, unrestricted and uncontrolled freedom of speech turns into anarchy.

In the context of this contradiction, freedom of speech is reflected in the fundamental international documents that formed the basis for further development of freedom of speech in national doctrines and constitutional acts. Therefore, the Universal Declaration of Human Rights (1948), because of the value point of view paid attention to the freedom of speech in the preamble, specific Art. 19 through “the right to freedom of opinion and expression”. The Convention for Protection of Human Rights and Fundamental Freedoms of 1950 (Article 10) and International Covenant on Civil and Political Rights of 1966 (Article 19) expressed the freedom of speech through the “right to freely express one’s opinion”.

As we noted earlier, the freedom of speech serves as a kind of defense mechanism against state encroachment. However, a question arises that if there is a constitutional protection of freedom of speech? After all, the constitutional protection of freedom of speech, by itself is a humanistic value, which was the product of our own history, experience and values reflected in our culture (Sedler, 2006). Therefore, it is very important to not only declare the freedom of speech, but also its constitutional protection, and guarantees of implementation. Such protection may be reflected in previously mentioned international acts, and in the constitutions of states.

However, nowadays, there are disputes in the constitutional doctrine regarding the protection of freedom of speech. One of the parties emphasizes the paramount value of freedom of speech, the other indicates the harm that certain types of freedom of speech can cause. The main problem is that protecting freedom of speech inadvertently violates the rights and freedoms of others, while upholding state interests leads to the infringement of freedom of speech (Heyman, 1998). That is the reason that why such a constitutional protection of freedom of speech is necessary to predetermine the legal boundary that will not allow to encroach, not only the rights and freedoms of another person, but also his/her dignity (Markhgeim et al, 2016).

In our opinion, this freedom in its nature is a dualistic legal phenomenon, since absolute freedom that can protect the rights and freedoms of one, violates the rights and freedoms of the other. Also, its duality lies in the fact that from point of view of the addressee (“everyone”), the freedom of speech appears as personal, but from point of view of people as political (Nifanov et al, 2016).

In this regard, it is interesting to consider the constitutional approaches of Eastern European countries related to the formulation and consolidation of freedom of speech, which, as we know, is perceived as an attribute of a democratic society and state. Since constitutions of the countries of Eastern Europe are considered to be constitutions of the “new generation”, they are supposed to reflect the modern standards for the formalization of freedom of speech.

## Research Method

The methodological basis of the present research is formed by using various general scientific, and scientific knowledge methods (analysis,

synthesis, deduction, induction, system-structural, formal-logical approaches). Among the latter are formal legal, linguistic legal, comparative legal, which were used to study the constitutional texts of Eastern European states, to reflect in them, and in order to regulate and articulate the freedom of speech in the constitutional texts.

## Results and Discussion

Analyzing the Constitutions of Fifteen countries in Eastern Europe including Albania, Bulgaria, Bosnia and Herzegovina, Hungary, Cyprus, Latvia, Lithuania, Macedonia, Poland, Romania, Slovakia, Slovenia, Croatia, Czech Republic, Estonia, showed that all of them, along with securing freedom of speech, consist of provisions prohibiting the restrictions of freedom of speech, which in turn can serve as a defense of freedom of speech (Constitutions of Albania Site; Bulgarian Constitutions; Constitution of Bosnia and Herzegovina; Constitution of Hungary; Constitution of the Republic of Cyprus; Latvian Constitution; Lithuanian Constitution; Constitution of the Republic of Macedonia; Polish Constitution; Romanian Constitution; Constitution of the Republic of Slovakia; Constitution of the Republic of Slovenia; Constitution of Croatia; The Constitution of the Czech Republic; Constitution of the Republic of Estonia Site). For example, Constitution of Bulgaria (Art. 38), along with the right to express one's opinion by means of words, both written or oral, prohibits its restriction relating to its convictions. The Lithuanian Constitution (Art. 25) prohibits the restriction of freedom of expression, and the receipt and dissemination of information. In the case of freedom of speech, the Romanian Constitution (Art. 30) imposed a ban on the restriction of printed publications. However, such bans do not mean support for "verbal permissiveness." In particular, in the constitutions of Slovakia (art. 26) and Czech Republic (art. 17), the freedom of speech, as well as freedom to disseminate information, can be "restricted by law in order to protect the rights and freedoms of others". A more extensive list of grounds for restricting freedom of speech is presented in the Romanian Constitution (Article 30). Thus, a group of prohibitions has been established as following: to damage the dignity, honor, and personal life of a person; to spread libel to a country and a nation, call for aggressive war, national, racial, class or religious hostility, incitement to discrimination, territorial separatism or public violence. The attempt to warn against permissiveness in the implementation of freedom of speech by listing

prohibitions is quite understandable and deserves support, but it is more expedient to do this not through their "closed" list.

Additionally, in the constitutions of Albania (Art. 22), Latvia (Art. 100), Poland (Art. 54), Slovakia (Art. 26), Croatia (Art. 38), Czech Republic (Art. 17), the freedom of speech is associated with the prohibition of censorship. It seems that this prohibition includes political, ideological, cultural, and other censorship. We believe that such a ban sets boundary of encroachment on the freedom of speech, which is often sought by public authority. Note that the word "censorship" often arises negative feelings in a person. In this regard, we believe that the constitutional version of Romania (Article 30) deserves an accent, where freedom of speech is presented through its "inviolability", like the imperative of personal inviolability, inviolability of private life, and personal and family secrets.

Analyzing the constitutional texts of the declared group of countries made it possible to identify the following pattern: freedom of speech is concretized in conjunction with other freedoms or ways of their realization. In this case, we have identified two groups of approaches. The first includes constitutions of Albania, Bosnia and Herzegovina, Lithuania, Poland and Hungary, which directly enshrines the freedom of speech, the second consists of Bulgaria, Cyprus, Macedonia, Romania, Slovakia, Slovenia, Latvia, Czech Republic, Croatia, and Estonia, which details the freedom of speech.

Thus, in the Albanian Constitution (Article 22), directly (without any constitutional procedure) citizens have "guaranteed the freedom of speech". The Constitution of Bosnia and Herzegovina (Article 2, paragraph "g") gives citizens "the right of freedom in expression" without mentioning the means of implementation. Note that in both constitutions, the freedom of speech is addressed exclusively to citizens. This gives reason to believe that foreigners are limited in this freedom. In Constitution of Hungary (Art. 8), the right for free speech is coupled with the freedom of thought, and is addressed to everyone. In the Lithuanian Constitution (Art. 25) "a person has the right for his/her convictions and their free expression". The Constitution of Poland (Art. 54) defines the freedom of speech as "freedom of expression of one's views, guaranteed to everyone".

Thus, difference in addressees (citizen or other), which is present in the constitutions of these

countries, adds additional arguments in favor of attributing the freedom of speech to political (for citizens) or personal (for everyone) freedoms. The lack of implementation methods in them can also be interpreted in two ways: on the one hand, significance of freedom in speech presupposes a mechanism for its implementation, on the other, such a freedom is immanent to the thesis that “everything that is not prohibited by law is allowed”.

In the second group of constitutions in Eastern European countries, content and methods of realizing freedom of speech are disclosed. For example, the Bulgarian Constitution (Article 39) defines right of everyone to express and disseminate their opinion “in written or oral form, by means of sound, image or other ways”. The Cyprus Constitution (Art. 19) guarantees everyone “the right of freedom in speech and its implementation in any way” and includes “freedom of opinion, and receipt and transmission of information and ideas, without interference by any authority”. The Constitution of Macedonia (Article 16) guarantees the freedom of speech “through public speaking, informing the public, and free establishment of the media”. The Constitution of Romania (Article 30) defines freedom of speech “as freedom in public expression of thought, opinion or belief, and freedom of any kind of creativity through speech, writing, images, sounds, or any other means of communication”. I would like to note that in this case, freedom of speech is considered not only in a political context, but also as a person’s creative activity.

In the Constitution of Slovenia (art. 39), the freedom of speech is defined in connection with guaranteed freedom in the expression of thought and establishment of means of implementation, i.e. freedom of public speaking, and the press and other media. Additionally, everyone is guaranteed the freedom to receive and disseminate information. According to the Constitution of Latvia (Art. 100), everyone has the right of freedom in speech, which includes the right to receive, own and disseminate information, and to express their views.

In the constitutions of Slovakia (art. 26) and Czech Republic (art. 17), the freedom of speech is guaranteed by expressing one’s opinions “either orally, in writing, in print, or by image”. At the same time, in the first case, an open list of ways to implement the freedom of speech is presented, which, in our opinion, is more preferable, and though in the second one is closed. The Croatian Constitution (Art. 38) enshrines the freedom of speech through freedom

of thought and expression, including “primarily freedom of the press and other media, freedom of speech and public speaking, and free establishment of the media”. In the Estonian Constitution (Art. 45), the freedom of speech refers to the right of everyone to “freely disseminate ideas, opinions, beliefs and other information either orally, in print, in graphic or otherwise”.

It should be noted that constitutions of the second group of countries most clearly trace the association of freedom of speech with the right to access information. Such a constitutional interpretation is adequate to the modern processes for informatization of society and can be regarded as a pattern.

### Findings

Analyzing the texts of the constitutions in Eastern European countries showed that all of them reinforce the freedom of speech. Meanwhile, the lexical decisions in constitutional consolidation of this freedom differ. In addition to the typical wording of “freedom of speech” in constitutions under review, there are used conjugation with the freedom of expression “opinion” (Bosnia and Herzegovina), “conviction” (Lithuania), “one’s own views” (Poland), “thoughts” (Romania, Slovenia), “thinking and thought” (Croatia), as well as disseminating “ideas, opinions, beliefs, and information” (Estonia).

It should be noted that in the texts of some constitutions, the freedom of speech is articulated through the following rights: “everyone has the right to express his/her opinion” (Bulgaria), “everyone has the right to freely speech” (Cyprus), “a person has the right to his convictions” (Lithuania). Based on the fact that human rights are more legislatively regulated than human freedoms, we believe that formulation of the freedom of speech through “right of freedom” creates conditions for its excessive regulation.

The addressees of freedom of speech are traditionally “everyone” or “person”. Citizen in this sense is rather the exception. It should be noted that freedom of speech is often fixed in conjunction with information rights, which we consider quite logical for modern society.

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