

The human right to freedom of opinion and expression and the twilight of Western civilization

ABSTRACT

The subject of the study is the human right to freedom of opinion and expression. Its common understanding is built in the socio-cultural and technical context of the 20th century. At the beginning of current century, the digital revolution has taken place, which results in to redefine the human right to free speech. Technological changes create conflicts between traditional values and cyberspace values. We can even talk about the twilight of Western civilization. The human right to freedom of speech takes on a new meaning. It must be linked to the responsibility for a spoken or written word. It is therefore necessary to build supranational legal norms which would not only guarantee freedom of speech, but would also be the basis for responsibility for its content. The study uses a descriptive method and analyzes of legal provisions. The final conclusion is that the remedies for outlined at study problems are the efforts of the European Union to increase control over the content posted on the Internet.

KEYWORDS: *human rights, freedom of speech, freedom of opinion and expression, responsibility for spoken content, EU law, political correctness.*

Introduction

The history of humanity shows that civilizations arise, develop and eventually die. And the new ones are created on their ruins. When talking about civilization one should realize the multitude of definitions of this

concept. For the purpose of this study, it is assumed that the term “civilization” means *a cultural circle with common centers, similar beliefs, institutions and centuries-old tradition* (Rosińska, 2005, p. 1). Each civilization has its own traditions, ideas about the world and a system of values. However, this does not mean unification. Within a particular civilization, the phenomenon of multiculturalism often occurs.

Taking about this topic, it may be pointed out to several civilizations which have ceased to exist, including Egyptian, Hellenic, Babylonian, Roman, Byzantine, or more modern civilizations such us: the Maya, Aztec and Inca civilizations. The fall of civilization is most often shown as a negative event or even tragic situation, often in literature or in folk prophecies associated with the end of the world. Today, this phenomenon is usually attributed to negative connotations.

On the rubble of dying civilizations, the new, often completely different, civilizations arose, such as on the ruins of Byzantine culture, Muslim-Turkish culture was born, or cultures largely preserving the past culture, such as the so-called Western culture grew, among others on the Roman culture, Christianity, Greek philosophy and Judaism (Kuryłowicz, 2001, p. 10). In the latter case, the barbaric peoples after the destruction of many Roman cities began to introduce a new civilization order based on a large Roman model. Undoubtedly, the bridge between Roman civilization and the emerging Western culture was the Christian religion, which became a transmission belt for the values, the culture and the organization of social or state life.

The western civilization went through many stages of transformation. The present period of this civilization is more and more often defined as the era of its twilight. Such wording appeared already during World War II. J. Maritain, based on the horrific drama of the war, wrote in his book published in 1943: *For the moment, civilization is plunged non only in twilight, but in a devastating hurricane* (Maritain, 1943, p. VIII). In the second half of the twentieth century, other catastrophic theories were born, such as the concept of the end of history (Francis Fukuyama), the clash of civilization (Samuel Huntington) or the war of the worlds (Herbert George Wells) (Miłoszewska, 2008, pp. 1–13; Huntington, 2003, p. 15, Wells, 2018).

Without going into fatalistic prophecies about the end of the world, it can be stated that one of the most characteristic features of the present times, especially in western culture, is the war on values or the value war. Many examples can be cited here, including the right to abortion vs. right to life from the very conception, the right to euthanasia vs. the right to natural death, marriage as a relationship between man and woman vs. marriage as a relationship between two people, regardless of gender and, what is the most interested here, the freedom of speech vs. the political correctness or freedom of speech vs. the right to a good name.

The analysis of the functioning of the contemporary community of Western culture allows us to agree with this assessment of the reality of the beginning of the 21st century. Its characteristic feature is not so much multiculturalism but rather the radical diversification of value systems. Hence, in Europe, within the same society, the social and political divisions begin to run mainly according to certain value systems. They determine public statements, especially in the media.

The supporters of individual value systems are beginning to become more and more embedded, creating organized social groups of international character, and at the same time fighting each other. We can talk not only about the disputes but about the war between opponents of the particular axiological systems. It is no longer a war for arguments, but the fight for gaining control as well as political or economic power over others.

To implement these battles, the political (party) and media programs are used that have already polarized according to specific value systems. The public administration, teachers as well as the legislator and even the judiciary are often involved in these activities. However, the fundamentals of the ongoing civilization changes are technology, especially the digitization and the cyberspace which is builds on it. Most of human activity has already moved from the so-called the real world to the virtual world (Sitek, Such-Pyrgiel, 2018, pp. 201–215).

In this context, the concept of political correctness, well-known from the time of real socialism, returns like a boomerang. The idea itself was defined only at the end of the twentieth century, but in practice it was implemented in the times of real socialism. Among the many definitions of this concept,

the one formulated by Roger Scruton is the most appropriate. According to this definition, the political correctness is an extortion of linguistic and other behaviours which are consistent with the vision of a multicultural, pluralistic, protective and non-judgmental society (Chechłowska-Lipińska, 2013, p. 287).

Depending on the social group that governs in a particular country and at a particular moment, the individual either submits to a new worldview or exposes him or herself to far-reaching negative political, and above all social and professional consequences. As it was mentioned, the new technologies play an important role in this process. As a result, the phenomenon of political correctness is already taking on a global character. The economic centers, large corporations and also the strong political or ideological lobbies are usually the driving or creating force of this world-view correctness.

New technologies make it possible for a person to create several different personalities on social networks, assigning them different value systems, often conflicting with each other. The stability of views and values shared by the greater part of society goes to the slump of history. Along with this, *homo moralis* also goes down in history (Bauman, 2012, pp. 305–306). And from this point of view, one can speak of certain twilight of civilization which functioned at the end of the 20th century.

From the above outlined characteristics of the early 21st century, especially through the prism of the war of values, the question of freedom of speech (freedom to opinion and expression) plays a significant role today. This human right is increasingly instrumentalized in order to implement the idea of political correctness. The aim of this study is to present the legal basis of freedom of expression as one of the basic human rights and to analyze selected national and European Court of Human Rights judgments on this thematic scope.

Legal basis of freedom of opinion and expression

One of the basic values of modern civilization is freedom of speech or freedom of opinion and expression. The right of every person to speak freely or express their views is an emanation of individual freedom in the ontological dimension. The internal reflections which are the product of the

human mind, connected with the entire psychosomatic system of human, can be expressed in verbal form (by word, handwriting, ink fingerprint or using codes such as information blockchain, for instance) and non-verbal through attitudes, gestures, intonation, behaviour, strength of voice, rate of speech, crying, sighing or appearance (Skinder, Mundy, 1986, pp. 657–669).

The verbal forms of expression may take the form of a simple statement related to the needs of a lower or higher order in accordance with the hierarchy of needs of A. Maslow or it may have the form of assessments, opinions, social or political programs. The nature of these statements may have a private dimension, i.e. done in the family and among friends or public nature, which is true when the speaker directs his or her speech to the public, in whatever form, or when that expression is made public.

This division of forms of expression is not unambiguous. The verbal and non-verbal statements may take the form of public or private opinions. The private speech concerns basically a specially protected zone, i.e. private, family or intimate life (Mrozek, 2012, p. 160). However, the privacy limit is different for ordinary people and different for public figures, politicians or celebrities. A public statement takes place when it becomes available to the wider public. The freedom of speech, opinion or expression refers to both – verbal and non-verbal forms, and regardless of whether it is a private or public statement.

The freedom to opinion and expression is one of the manifestations of a democratic state of law. According to the provision of article 54, § 1 of the Constitution of the Republic of Poland the legislator decided *that the freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone*. In § 2 of the same article, the preventive censorship of the means of mass communication as well as licensing of the press are forbidden – *Preventive censorship of the means of social communication and the licensing of the press shall be prohibited. Statutes may require the receipt of a permit for the operation of a radio or television station*. The freedom of expression was closely linked to the freedom of the press. Both of these freedoms are complementary (Sadomski, 2016, commentary on Article 54).

The Polish constitutional solutions are a reflection of solutions adopted in the acts of international law, especially in conventions and declarations.

This freedom is mentioned in the article 19 of the Universal Declaration of Human Rights and analogously in the article 19 of the International Covenant on Civil and Political Rights or in the article 11 of the Charter of Fundamental Rights (Sitek, 2016, p. 248).

The specific provisions on freedom of speech, including the freedom of the press, should be found in statutory provisions. The freedom of the press is guaranteed in the article 1 of the Act of 26th January 1984 on the press law (Journal of Laws of 2018, item 1914, consolidated text). This freedom is correlated with the citizen's right to be informed and with the citizen's right to provide the press with information in accordance with the law (the article 5 of Act on the press law) (Kosmus, Kuczyński, 2018, commentary on Articles 1 and 5).

Today, however, the issue of freedom of speech concerns not so much media or political and social statements. The new dimension of freedom of speech was created with the emergence of cyberspace. The statements posted on social networks become instant public statements. The spreading of statements does not know the political or geographical boundaries. This phenomenon is accompanied by anonymity in the network. This situation fosters hate speech or expressing hurtful and unjust statements about others. Hence, in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Official Journal of the European Union L 2016, No. 119, page 1) it was decided that the collection and processing of personal data is to serve humanity. Activities undertaken in this area, however, cannot violate fundamental rights, including freedom of expression and information. The provisions of this directive have been implemented into the Polish legal system on the basis of the Act of 10th May 2018 on the protection of personal data (Journal of Laws of 2018 item 1000).

The responsibility for the word

The human right to freedom of expression, in order to be fully implemented, must be correlated with the responsibility for the word spoken

or written. In the analysis of international law presented above, not only the specific normative regulations on responsibility for “spoken” words on the web are missing, but there is also no public discourse about the responsibility for a word introduced into cyberspace.

Hardly anyone realizes that spoken words have a causative power, which St. John undoubtedly referred to Saint John in the first words of his gospel. The spoken words can reveal the truth, contain interesting or necessary information, but they can also destroy someone’s personal life, professional career, good name in society, brand of the company, discredit the product or service, and they can even declare wars.

As a consequence, there is the phenomenon of mass and uncontrolled accusation or hate. This is accompanied by recording of the conversations or recording of the images and then publishing it. The lack of responsibility for the word leads to the weakening of human’s trust in other people, his or her closure to others, which was one of the important features of the Western culture so far. Thanks to digitization, the interpersonal relations are being changed quite dramatically. Friendships are increasingly being made in the virtual world between people who do not know each other physically. However, they are not friendship in the traditional sense, what have recently been between neighbours. Using the latest technologies to communicate, no emotional bond is born between communicants. The nature of these friendships also changes; most often it is based on some common interests or political or social views, without taking into account other important elements of the life of people communicating with each other. In this way, the interpersonal empathy also disappears (Dębiński, 2016, pp. 9–26).

From the outlined point of view, one can say about the end of Western civilization in the traditional sense, based on friendship in the real world and on the responsibility for the spoken word. This state of affairs is the result of the ongoing political changes, the globalization and the computerization. The subject of the study is the analysis of the latest provisions of Polish and EU law in the area of responsibility for the word.

The statutory limitations of expression on the Internet introduced and implemented by the individual countries result from the digital revolution,

which more and more does not know the technical or technological boundaries. The effect of this is, among others, the use of new technologies to communicate at various social and political levels. It is the progressive digitization that is becoming an instrument and a place of vital discussions and expressions. In other words, this is a place where the idea of freedom of expression is implemented (Zielinski, 2012, pp. 71–82, Łażewska, 2016, pp. 431–442).

The abuse of the freedom of speech is punitive primarily on the basis of criminal law. And so, on the basis of the provision of the article 212, § 1, the slander aimed to humiliate someone in the public opinion or to strain public trust needed for a given person to perform a specific social function or practice should be punished. The criminal law protection is available to every person, regardless of his or her social status or moral values that they present at the moment. Even the detainee who carries out the penalty of deprivation of liberty for a committed crime deserves such protection. Such a criminal responsibility is borne by the one who imputes, that is, who is giving the information to other, which may be even real but arranged only in a negative light and thus it would discredit the person. The defamation can only be done through action (Grzeškowiak, Wiak, 2019, commentary on Article 212).

The insult is an act similar to defamation. The act of insult is punished on the basis of the article 216 of the Criminal Code. However, its content is not entirely clear. In legal literature, there is a dispute over determining the form in which an insult occurs. It is understood that this insult is a public deprivation of the honour and respect of the other person, regardless of whether it is done in his or her presence or without. Therefore, the distinction between insult and defamation is that the insults are always carried out in public and are directed against the personal dignity of a person and against his or her subjective self-esteem (Gardocki, 2013, p. 291 n.).

The legal basis for protection against the abuse of the freedom of speech may also be found in the Civil Code, especially in the article 23 and the article 24. Such personal goods as honour name, pseudonym or image are mentioned by the legislator in the article 23. The protection of these goods is carried out on the basis of the article 24 of the Civil Code. A person who has

been insulted or has been slandered may demand the abandonment of such actions. In addition, it may request the perpetrator to submit an appropriate statement with specific content and in a specific form. Ultimately, he or she can demand financial compensation or payment a sufficient sum of money for the indicated social purpose (the article 24 § 1). If, as a result of a personal goods infringement, the material damage was caused, the aggrieved party may demand its remedy on general terms (the article 24 § 1) (Machnikowski, 2017, pp. 57–65).

Today, the Internet is the most important for the freedom of speech. It is there, where people usually express their opinions, points of view or other types of statements. The Internet has also become a great space for the abuse of freedom of speech. In the spirit of responsibility for the word on the Internet, one should see the EU Directive of the European Parliament and the Council on copyright in the Digital Single Market and amendments to Directives 96/9 / EC and 2001/29 / EC. This directive has not yet been approved by the Council of the European Union. The aim of this directive is to fight piracy and increase the protection of the rights of creators and publishers. The most important are here the articles 15 and 17 of this Directive, on the basis of which the obligation of filtering and the possibility of removing materials posted on the Internet by users of the network that infringe upon other property or personal goods, including copyright, are introduced. This obligation is to rest on the Internet companies, especially on: Youtube, Facebook or Google. The opponents of this solution point out that it is the possibility of a far-reaching restriction of freedom of speech, and as a consequence, the censorship of the network is being introduced (Dobrzycka, 2019).

It seems that the evaluation of the solutions implement by above-mentioned directives cannot be unambiguously negative. Due to the global structure of the Internet network, it is not possible to introduce such legal regulations that would effectively limit the growing phenomenon of word abuse. In this perspective, it seems necessary to build a global legal system, thanks to which, it would be possible to effectively combat the phenomenon of word abuse in cyberspace. The issue of word abuse in cyberspace is a fairly clear

indicator of the twilight of civilization based on the transmission of traditional media, such as: the newspaper or television. Currently, every person can be a recipient and a creator of information, and this creates a new dimension of responsibility for the word and a new dimension of freedom of speech.

Conclusions

One cannot hide the fact that Western civilization enters the period of its dusk. We can point out many reasons for this state. The most important of these is digitization, which is the foundation of cyberspace. Its global character means that existing values are redefined. In this phenomenon, one should seek a conflict between the values belonging to the existing Western culture and the values which begin to function in the virtual world, which is mainly related to large business centers of America or Asia. Freedom of speech has become an instrument of inter-system struggle. The system that which is economically and technologically stronger wins. The political correctness created in this way marginalizes other social groups or pushes them to the margins. Very often, it touches the majority of society. We can point out many examples of such situation. One of them is stronger protection of minority rights, which using the mechanism of the right to freedom of speech and the political correctness, begin to dominate under the rights of the majority.

In this perspective, the issue of freedom of speech takes on a global character. A verbal or non-verbal statement about another person begins to function in a new life. It is not only present in the circle of close relatives, colleagues from the workplace or even in the media of one country, but in the global world of cyberspace. Therefore, it is necessary to conduct a discourse not only about the right to freedom of expression, but also about the responsibility for the spoken word. Its creative power can destroy professional, social and ultimately biological life.

It is therefore necessary to create appropriate legal regulations which would balance the right to freedom of expression, especially in cyberspace, with the responsibility for the spoken word. It is impossible to build a uniform or universal normative system from which a concept accepted by the majority

would emerge. Hence, among others, the European Union is beginning to build a system of law that would clean up cyberspace, including the scope of content posted there. An emanation of such action is the directive referred to as ACTA 2. And even if it is not a legal act with ideal normative solutions, it nevertheless constitutes a certain remedy for the problems outlined at work.

The West is also losing due to the fact that others use technological instruments to fight ideologically or militarily on the web. It is even possible to change the history by filling up the Internet with inaccurate information as well as by the recruitment of supporters or fighters done by terrorist organizations. The control over this phenomenon is very difficult or even impossible. Thus, the new research perspectives are opening up here.

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