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The Essence of Freedom of Expression in a Democratically Governed State

This paper discusses the importance of freedom of expression for democratic countries and its role in shaping and self-realizing the individual. It defines the scope of freedom of expression concerning defamation, citing numerous examples from court decisions.

Keywords: *Freedom of Expression, Democracy, Defamation.*

1. Introduction

Freedom of expression is a fundamental part of a democratic state. Democracy is a form of governance in which state power originates from the people. Former U.S. President Abraham Lincoln famously described democracy as “government of the people, by the people, for the people.”¹ The people are the power; they are the “source of authority,” and they can form independent opinions to create a world where individuals can exercise their natural rights and fight for freedom, dignity, and happiness. Freedom enables the individual to develop independently; through freedom, one can make rational decisions that contribute to personal progress and well-being. A democratically governed society is actively engaged in the process of building the country and realizes its potential through this participation. From a historical perspective, countries reach high levels of development through democratic governance: the people deliberate, the people debate, and the people make decisions.

2. Freedom of Expression as a Means of Human Growth

Freedom of expression is one of the fundamental human rights, enshrined in the Declaration of the Rights of Man and of the Citizen on August 26, 1789, during the French Revolution in Versailles. Article 11 of the Declaration states: “The free communication of thoughts and opinions is one of the most precious of the rights of man. Every citizen may speak, write, and print freely, but shall be responsible for such abuses of this freedom as shall be defined by law.”² In democratic countries, freedom of expression and opinion exist without censorship, allowing individuals to express their inner voice. When expression is restricted, people become obedient, and consequently, their ability to participate in the rebuilding of the country is diminished.

Freedom of expression includes not only the right to hold one's own opinions, but also the right to live by and act upon those beliefs. It is a fundamental right in a democratic society. Everyone has the freedom to make decisions and act according to their beliefs and abilities, as long as they do not

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¹ <<https://www.lpb-bw.de/merkmale-demokratie>> [17.04.2025].

² <<https://www.bpb.de/themen/politisches-system/abdelkratie/311350/meinungsfreiheit>> [13.06.2020].

infringe on the rights of others.³ “A free society consists of free individuals who live in a free information space, think freely, have an independent view, and participate in democratic processes, which means exchanging opinions.”⁴ Sometimes it is very difficult to express one's opinion, especially when it challenges the opinion of the majority.” However, it is important to remember that individuals create wonders that benefit all of humanity. What seems strange to us today often becomes natural and accepted by the majority tomorrow. Freedom of expression encourages us to consider different perspectives, analyze them, and make better decisions. According to the prominent 19th-century English thinker John Stuart Mill, freedom of expression enables us to develop new ideas; This process is directly linked to the growth of society. Democratic values help individuals discover their true selves, become creative, and stand out through their individuality. Freedom of expression, closely associated with critical thinking, inspires society: one voice can lead to many, and the ideas of many can bring great benefit to the development of a democratic state. Freedom of expression is a necessary precondition for development and the progress of society as a whole. “Freedom of expression, as the individual interest of every person, is not only intertwined with the public interest; It also constitutes the public interest itself. It is an essential condition for democratic processes.”⁵ Democratic “The state recognizes and protects freedom of speech and expression as indescribable and supreme values.”⁶ Freedom of speech and expression is the foundation for realizing all other human rights. It is the source of truth. The more freedom of speech and expression is restricted, the further we drift from democratic values, which remain the most refined principles humanity has yet achieved. Naturally, freedom of expression does not concern only favorable or agreeable words and ideas; it may also include disturbing views. Yet without such freedom, the democratic development of a country is impossible. According to the case law of the European Court of Human Rights, expression encompasses the right to ask questions, to convey information and ideas, whether through words, images, conduct, or clothing. It also protects negative expression, which includes silence and inaction.⁷ Democratic states prioritize human rights, among which the legal protection of freedom of expression holds a prominent place.

The state acts based on the will of society and bears both negative and positive obligations: it must not interfere with the individual's exercise of this right; on the contrary, it must also ensure and promote it. The ultimate goal of states governed by democratic principles is to serve the welfare of their citizens. The government establishes legal frameworks through which individuals are either protected or are able to protect themselves. Relations and meetings between democratic countries aim to promote human well-being not only within individual states but also on an international scale. One

³ <<https://www.demokratiewebstatt.at/thema/thema-sag-deine-meinung/meinungsfreiheit-grundlage-der-demokratie>> [16.05.2022].

⁴ Decision # 1/3 421-422 of the Constitutional Court of Georgia of 10 November 2009 on case N1/3 421-422.

⁵ Decision of the Supreme Court of Civil Affairs of Georgia on 28 June 2022 on the case #As-989-2019.

⁶ Law of Georgia on Freedom of Speech and Expression, Article 3, Part 1, 04/06/24.

⁷ *Gotsiridze E.*, Freedom of Expression in Conflict of Value According to the European Convention on Human Rights and the Jurisprudence of the Strasbourg Court, Tbilisi, 2008, 69 (in Georgian).

of the most important objectives of democratic governance is to empower each individual and to provide opportunities for their full self-realization.

3. Legal Essence of Freedom of Expression

Article 10(1) of the European Convention on Human Rights gives everyone the right to freely express their opinions, and to receive and impart information and ideas without interference by public authorities and regardless of frontiers. Freedom of expression is protected both by the Constitution of Georgia and by other legislative acts. According to Article 17 of the Constitution of Georgia, freedom of speech and expression is a protected legal good. Moreover, on June 24, 2004, Georgia adopted the Law on Freedom of Speech and Expression (commonly referred to as the “Special Law”), which defines the nature of freedom of expression and sets its legal limits.

In judicial practice, opinion and freedom of expression are often treated as having equal legal value. However, under the Special Law, an opinion is granted absolute privilege, whereas expression may be subject to restrictions specifically prescribed by law. It is important to distinguish between the two: opinion and expression have different lexical and legal implications. An opinion is a personal belief or thought that can arise spontaneously and is inherently protected. The mere holding of an opinion does not give rise to legal liability. However, the content of an expressed opinion is often the subject of legal scrutiny, especially in determining whether it falls within the legally protected scope of freedom of expression. According to Article 5 of the Basic Law for the Federal Republic of Germany: *“Everyone has the right to freely express and disseminate their opinion in speech, writing, and pictures.”*⁸ The European Court of Human Rights on the privilege of opinion explains that it is an absolute right to have an opinion, not to express an opinion, and disseminate it.⁹ As for the special law, I think, based on this reasoning, it is better to call it the Law on Freedom of Expression, since the word is also a product of expression.

Despite the importance of freedom of expression, an individual's freedom may be exercised in a manner that infringes upon the rights of others. Therefore, the limits of freedom of expression are defined by the rights of others.¹⁰ It does not enjoy its own advantages over any constitutional good, if freedom of expression poses a real threat to the rights protected by law, “freedom of expression can also be restricted and this is also one of the main rules of democracy.”¹¹ In this regard, following the paragraph 5 of Article 17 of the Constitution of Georgia, the restriction is allowed only “under the law to ensure security or territorial security in a democratic society, to protect the rights of others, to prevent the disclosure of confidentially recognized information, or to provide the independence and impartiality of the court.” A restriction may also arise in cases where information is disseminated that contains false facts or obscene statements, which lack political, cultural, educational, or scientific value, and which grossly violate the universally accepted ethical norms of society.”¹² The expression

⁸ <https://www.gesetze-im-internet.de/gg/art_5.html> [14.12.2018].

⁹ *Meskhishvili St.*, Current Issues of Private Law, Difamation, Tbilisi, 2020, 258 (in Georgian).

¹⁰ Ruling of the Supreme Court of Georgia on December 16, 2022, on the case # as-237-2022.

¹¹ Decision of the Constitutional Court of Georgia of September 30, 2016 on the case 1/6/561, 568.

¹² Law of Georgia on Freedom of Speech and Expression, Article 1, “f”, sub-paragraph, 04/06/2004.

of opinion may be disturbing and staggering, but it must have some value and should not only violate the rights and protected values of others. The dissemination of staggering, offensive information is justified if the public has a certain weight.¹³ Freedom of expression must not serve solely as a means of inflicting insult; it must have some form of value.

Even when a statement constitutes a value judgment (normative judgment), the proportionality of any interference may depend on whether there exists a sufficient factual basis for the contested statement, since even a value judgment (normative judgment) may be regarded as excessive if it lacks any factual foundation.”¹⁴

Freedom of speech and expression attains a broader scope in relation to individuals who play a role in shaping public opinion. Such individuals are subject to a heightened duty of tolerance. Accordingly, when adjudicating a claim brought against the exercise of freedom of speech and expression, significant attention is paid to whether the claimant is a private individual or a public figure. Under special legislation, a person may incur civil liability for defamation against a private individual, provided that the claimant proves that the respondent's statement contains a substantially false factual allegation directly concerning the claimant, and that the statement caused the claimant harm.¹⁵ In connection with the civil liability of a public person, together with the prerequisites of Article 13 of the Special Law, the following conditions shall exist: “The false nature of the stated fact was known to the defendant in advance or the defendant showed obvious and gross negligence, which led to the dissemination of a statement containing a substantially false fact.”¹⁶ “In the case of a public person, the plaintiff must additionally assert the fact that the disseminator of the information knew or should have known that the information he was disseminating was false.”¹⁷ According to the special law, a public figure shall be considered: a) a public official as defined in Article 2 of the Law of Georgia on Conflict of Interest and Corruption in Public Institutions; b) a person whose decisions or opinions have a significant influence on public life; or (c) a person who, through certain actions, attracts public attention to specific issues.”¹⁸ A public person has a greater degree of tolerance, especially politicians. According to the case law of the European Court of Human Rights, the permissible limits of criticism are widest in respect of the government and its representatives. In such cases, the Court does not require that factual allegations be proven with absolute precision; The existence of even a minimal factual basis may be considered sufficient. In *Castell v. Spain*, the Court held that the right to criticize the actions of the government constitutes an integral part of the freedom of expression of an elected representative.”¹⁹ Under paragraph 5(a) of the Special Law, liability for defamation shall not arise from a statement made: “A. within the framework of political debates, as well as concerning the performance of duties by the Parliament, the Supreme Council of the Autonomous Republic, or a member of the City Council.”

¹³ *Meskhishvili St.*, Current Issues of Private Law, Defamation, Tbilisi, 2020, 262 (in Georgian).

¹⁴ *Meskhishvili St.*, Current Issues of Private Law, Defamation, Tbilisi, 2020, 258 (in Georgian).

¹⁵ Law of Georgia on Freedom of Speech and Expression, Article 13, 04/06/2024.

¹⁶ Law of Georgia on Freedom of Speech and Expression, Article 14, 04/06/2024.

¹⁷ *Meskhishvili St.*, Current Issues of Private Law, Defamation, Tbilisi, 2020, 254 (in Georgian).

¹⁸ Law of Georgia on Freedom of Speech and Expression, Article 1, “I, Sub-paragraph, 04/06/24.

¹⁹ Ruling of the Supreme Court of Georgia of 17 January 2018 on the case #-As-928-868-2017.

The burden of proof regarding any restriction on freedom of speech lies with the party initiating the restriction, whether the claimant is a private individual or a public figure. Moreover, if a defamation claim is manifestly unfounded, the defendant has the right to seek reasonable monetary compensation from the plaintiff.”²⁰

The legal protection of freedom of expression serves as a motivating factor for individuals to become active members of society and to realize their potential. At the same time, public figures are expected to show greater tolerance toward criticism and to act with a heightened sense of responsibility toward the public. Since, alongside freedom of expression, individuals also enjoy other fundamental rights, each of which is independently protected under the law, Article 2 of the Civil Code of Georgia provides that “A person shall have the right to protect, through judicial means and following the procedure established by law, their honor, dignity that is interpreted within the context of the Special Law. The abuse of the right to freedom of expression occurs when an opinion or a value judgment (normative judgment) is based on false facts, thereby constituting defamation. Defamation that causes harm to an individual results in the violation of their honor and dignity, which, in turn, constitutes an interest worthy of legal protection.

4. The Distinction Between Judgment and Defamatory Statement in Judicial Practice

Before 2004, defamation was a criminal offense; Accordingly, defamation is now predominantly addressed within the framework of civil litigation. Protection of rights is good for the public when one is not restricted by the other. Freedom of expression is indeed the foundation of ensuring the existence of all rights, but it also has natural boundaries that are not permitted by law. The question is frequently raised: *Where should the line be drawn?* At first glance, the answer seems straightforward: freedom of expression must not be misused to commit defamation. Defamation entails the dissemination of false factual claims that harm another person’s reputation, dignity, or honour.

If a statement is based on verifiable facts, it does not constitute defamation. However, when an incorrect fact is fabricated or distorted, and a damaging opinion is formed and expressed following that falsehood, such expression is considered defamatory. As mentioned above, this gives rise to civil liability under applicable law. According to the definition provided in special legislation, *defamation* is understood as the communication of a false factual statement that causes damage to an individual's reputation.”²¹ As for the fact, the law comes from its general definition, according to which the fact is a Latin word, explained as a real, true, not fictional story, case, or event.²² According to court practice, it is established and interpreted based on special law that the plaintiff must confirm whether the expression is a fact or an evaluation. Assessing the issue of liability of a person for violating the rights of another person as a result of the dissemination of information, the distinction between value

²⁰ Law of Georgia on Freedom of Speech and Expression, Article 18, 04/06/ 2004.

²¹ “Freedom of Speech and Expression”, Article 1 of the Law on Freedom of Speech, Sub-paragraph “e” 04/06/2004.

²² <<http://www.nplg.gov.ge/gwdict/index.php?a=term&d=3&t=41720>> [08.04.2025].

judgments and factual assertions must be established as a primary consideration.”²³ An opinion reflects an evaluative perspective, whether in the form of commentary, viewpoint, or expressive statement that conveys an attitude toward an individual, event, or subject, and does not involve verifiable or harmful factual claims.”²⁴ The assessment is related to the subject, and the fact is derived from an objective circumstance. “Thoughts and facts are often interconnected, and it is difficult to separate them, which is since both forms of expression are rarely found in pure form.”²⁵ In the process of legal qualification, it may be permitted to isolate certain parts of a statement, considering the context. However, such an approach is justified only if it does not distort or misrepresent the overall content and true meaning of the expression. If the content cannot be separated without altering its substantive meaning, the statement must be assessed as a value judgment or an opinion, and, accordingly, it must be fully protected under the scope of the fundamental right to freedom of expression.”²⁶ The court decision reads: “The cassation claim is checked: who said, to whom, and in what circumstances, and what exactly the phrase expressed based on examining the context, to assess and distinguish the opinion protected by the freedom of expression of the person.”²⁷ According to the precedent established by the European Court of Human Rights, “It is an inherently impossible task to prove the truth of a value judgment (normative judgment). While a fact may be demonstrated, the truth of a value judgment is not subject to proof. Requiring proof of the truth of a value judgment constitutes an interference with freedom of opinion.”²⁸ In one of its decisions, the Court of Cassation upheld the conclusion of the Court of Appeals and noted the following: “The claimant disputes two statements of the published article, one of which reads: ‘Interpol has suspended the search for the number one enemy of the Georgian public.’ The accuracy of the information regarding Interpol’s decision to suspend the search for I.G. is not in dispute between the parties. However, the reference to the claimant as the ‘number one enemy’ does not constitute a factual statement, as it is not capable of being verified against objective reality.”²⁹ Therefore, the court did not consider the expression defamatory. “The Cassation Chamber determines whether a disputed statement constitutes a factual assertion or an expression of opinion; it is impossible without taking into account the full context of the statement. Individual words or sentences cannot be assigned independent meaning outside of their broader context, as isolating them in this way would lead to a distortion of the overall content of the expression. In this regard, the substantive meaning of a statement takes precedence over its literal wording.”³⁰

Finally, under Article 7, Paragraph 5 of the Special Law: “In determining whether a statement should be classified as a factual assertion or an opinion, any reasonable doubt that cannot be resolved

²³ Ruling of the Supreme Court of Georgia on December 16, 2022, on the case # as-237-2022.

²⁴ <https://idfi.ge/public/upload/FBarticle/Freedom_of_Expression_Guidebook.pdf> [05.04.2025].

²⁵ Ruling of the Supreme Court of Georgia on December 16, 2022, on the case #as-237-2022.

²⁶ Decision of the Supreme Court of Civil Affairs of Georgia on November 25, 2022, on the case #As-797-2022.

²⁷ Ibid.

²⁸ *Lingens v. Austria*, 1986, cited in: *Meskhishvili K.*, Current Issues of Private Law: Defamation, Tbilisi, 2020, 259.

²⁹ Ruling of the Supreme Court of Georgia on December 16, 2022 on the case #as-237-2022.

³⁰ Decision of the Supreme Court of Civil Affairs of Georgia on January 14, 2021, on case #547-2020.

following the procedures established by law must be interpreted in favor of assigning the statement the status of an opinion.”

5. Conclusion

In conclusion, it can be said that the most important component of a democratically governed state is freedom of expression, which is a source of all other rights. Freedom of expression promotes the process of human growth, its realization, and formation as an active member of society. However, it is important to protect a person's honor and dignity. In this regard, attention is paid to the distinction between assessment and fact by the legislator. If an assessment is based on incorrect facts and is simultaneously offensive to an individual, it naturally results in a violation of that person's dignity, rights that are equally protected under the Constitution. One of the core responsibilities of democratic states is to strike a fair balance: protecting both freedom of expression and the individual's dignity requires limits on expression itself.

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