



UNIVERSITÄT
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THE EUROPEAN CONCEPT OF THE MEDIA AS PUBLIC WATCHDOG

OUTDATED RELIC OR VITAL DEMOCRATIC TOOL?

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A. The Media as an (Un-)stable Pillar of Democracy

- Media as a **cornerstone of democratic societies**
- British writer *Thomas Carlyle*: the press as the **fourth estate** (legislative, executive & judiciary)
 - *Thomas Carlyle*, *On Heroes, Hero-Worship and the Heroic in History*, London 1841
- Privileged position within European legal framework
- European Court of Human Rights (ECtHR)
 - Landmark Decision: *Sunday Times v. UK* (1979)
- Media as a 'public watchdog'
 - safeguarding transparency
 - holding power to account and
 - fostering informed civic participation
- NGOs as 'social watchdogs'

A. The Media as an (Un-)stable Pillar of Democracy

- Privileged position of the media increasingly **contested in practice**
- Profound transformation of the media environment
- Variety of actors
 - individual level: normal people act as journalists by sharing (mis-)information, e.g. via blogging, posting
 - level of media enterprises: enormous growth of the power of international platforms
- **Rising economic & political pressure** on both levels

A. The Media as an (Un-)stable Pillar of Democracy

Never in human history was there such a chance for freedom of expression ...

Never was there a time when the evils of unlimited speech flowed so easily across frontiers

Timothy Garton Ash, Free Speech: Ten Principles for a Connected World (2016)

→ **Challenges** especially **for Democracies**

B. The Normative Core: Media = Public Watchdog

I. Media & Democracy

➤ Preamble of the ECHR (para. 4):
*Reaffirming their profound belief in those fundamental **freedoms** which are the **foundation of justice and peace** in the world and are best maintained on the one hand by an effective political **democracy** and on the other by a common understanding and Observance of the **Human Rights** on which they depend*

ECHR: indissoluble connection between

- human rights
- democracy and
- international peace

B. The Normative Core: Media = Public Watchdog

II. Protection of Sources

➤ Art. 10 ECHR

(1) Everyone has the right to freedom of expression. (...)

➤ Freedom of the media

- Protection of journalistic sources (Goodwin v. UK 1996)
- Seizure of journalistic material therefore underlies strict, judicially controlled conditions

III. Pluralistic Media Landscape

➤ prerequisite for the watchdog function

→ ECtHR, Grand Chamber, no. 38433/09, Centro Europa 7 S.r.l. and Di Stefano v. Italy, 7 June 2012; no. 28470/12, 5 April 2022, NIT S.R.L. v. the Republic of Moldova

➤ 46 Member states of the Council of Europe (CoE) must provide legal framework securing external & internal media pluralism

B. The Normative Core: Media = Public Watchdog

IV. Responsible Journalism

- Concept of Responsible Journalism
- **Duties of care** (journalistic ethics)
- Not: duty to truth (which may be turned into an instrument of suppression)

- Responsible Journalism **in the digital age**
 - Grand Chamber, no. 64569/09, 16 June 2015, Delfi AS v. Estonia, para. 134
- Possible liability of a news portal for user comments
- Subject to a thorough scrutiny of the Court in each case

B. The Normative Core: Media = Public Watchdog

V. Consequences

1. Art. 17 ECHR

- No contribution to a constructive democratic dialogue
- ‘Chilling effect’ not desirable for a democratic society

2. Balancing Criteria

- Standards of Balancing: subject in questions concerns a **matter of public interest** and contributes to a debate of public interest, high protection

→ Grand Chamber, no. 39954/08, 7 February 2012, Axel Springer AG v. Germany, para. 89-95

3. Margin of Appreciation

- In cases of art. 10 the Court describes the margin of appreciation of national courts by the **interest of a democratic society**

C. Public Watchdog in Times of Crisis

- **Novaya Gazeta et al. v. Russia of 11 february 2025**
- Independent Russian newspaper Novaya Gazeta (editor-in-chief, Mr Muratov was awarded the Nobel Peace Prize in 2021) filed a claim against Russia
- ECtHR: clearly contests the suppressive measures against Novaya Gazeta and individual journalists who reported on the **war against Ukraine**
- all statements in question concern **matters of 'intense public interest and significance'**

D. The European Legal Response

- European Media Freedom Act (EMFA)
- Anti-SLAPP Directive
- European Democracy Action Plan

E. International Enforcement: The Challenge of Fragmentation

- Fragmentation of enforcement across Member States
- EU experience with the General Data Protection Regulation (GDPR): global benchmark, but uneven implication among member states
- Systemic non-implementation of Strasbourg judgments underscores the enforcement deficit at the heart of supranational media protection

F. Conclusion: Rethinking the Public Watchdog in the Digital Sphere

- Concept of Public Watchdog more important than ever
 - Challenges (Hate Speech & Fake News)
 - ECtHR
 - German Federal Constitutional Court
- World + Media Landscape changing
 - Democracies as an endangered species
 - Power held by governments & private players
 - International Players
- For European Countries: European Approaches

F. Conclusion: Rethinking the Public Watchdog in the Digital Sphere

- Public watchdog concept **remains fundamental layer**
 - Art. 10 ECHR open to technical development
 - ECtHR has transferred concept to new media
 - Concept open to individuals & media enterprises
 - ECHR as a 'living instrument'
 - ECtHR has stressed positive obligations of member states (private actors)
 - ECtHR finds clear words for suppression of free media
 - Strong Connection **Democracy + Media**
 - **Functional Interpretation**
 - ECtHR opening up the concept to new players ('social watchdog')