

Freedom of Expression on the Internet and National Security in Europe: Liberty and Basic Goods

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Abstract

XThe tension between freedom of expression and the protection of national security is a timeless research problem. Based on the specific historical moment and international political and security situation for Europe in general and the Three Seas region specifically, the aim of this article will be a normative assessment of the appropriate approach to potential limitations on online freedom of expression considering national security. The starting point will be an overview of the state of the art of the European Court of Human Rights practice. Then, the analytical framework of Berlin's two concepts of liberty will be utilised to differentiate between laissez-faire approaches connected to the first paragraph of Article 10 and the limitations, which are necessary in a democratic society per the second paragraph of Article 10 of the European Convention on the Human Rights and

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Fundamental Freedoms. In a novel approach to the problem at hand, the main research hypotheses that are subject to analysis are that there is a need for a more nuanced approach to balancing online freedom of expression and national security and that Berlin's two concepts of liberty, when connected to Finnis's basic goods, can be a useful normative framework in this regard. The need to differentiate between values and facts while recognising the incommensurability of values will be considered.

Keywords: Freedom of Expression, National Security, ECHR, Internet, Liberty,

1. Introduction

We are situated in the historical moment when Europe and European Union more broadly and the Three Seas region¹ specifically are facing a myriad of novel threats, from Russian aggression on Ukraine and thinly-veiled threats with nuclear annihilation,² to hybrid warfare utilising migration,³ disinformation campaigns⁴ and (primarily) Islamist terrorism.⁵ Such circumstances, in combination with the rise of utilisation of artificial intelligence in novel forms, especially regarding large language models and generative artificial intelligence,⁶ pose new societal questions regarding freedom of expression on the internet. One of them is the potential need for (re)conceptualisation of the existing relationship between freedom of expression and national security, especially in terms of balancing liberty with the protection of basic goods.

¹ G. Grgić, *The changing dynamics of regionalism in Central and Eastern Europe: The case of the Three Seas Initiative*, "Geopolitics", vol. 28, no. 1, 2023, pp. 216-238.

² M.J. Williams, *Who's Afraid of the Bomb?: The Euromissiles Crisis and Nuclear Weapons in Europe, Past and Present*, "International Studies Review", vol. 26, no. 1, 2024, viae008.

³ J. Straczuk, *Hybrid war, military humanitarianism, and epistemic friction. Framing illegalised migration on the Polish-Belarusian border*, "Journal of Ethnic and Migration Studies", 2023, pp. 1-19.

⁴ A. Jacuch, *Czech-Russian Relations. Russian Disinformation Campaign*, "Polish Political Science Yearbook", vol. 1, no. 53, 2024, pp. 145-166.

⁵ P.R. Neumann, *Europe's jihadist dilemma*, "Survival, Routledge", 2023, pp. 71-84.

⁶ E. Ferrara, *GenAI against humanity: Nefarious applications of generative artificial intelligence and large language models*, "Journal of Computational Social Science", 2024, pp. 1-21.

While the tension of the need for as free societal expression of opinions as possible and national security considerations is not entirely novel, the contemporary tools and new-found determination of different hostile and potentially adversary actors to spread disinformation and influence democratic processes in individual states and Europe more broadly, are putting the scientific and societal discussions in a new light. The aim of this article is to conceptualise the idea of freedom of expression on the internet and its balancing with national security consideration in line with the two concepts of liberty,⁷ while proposing the basic goods that might make the limitations on freedom of expression justified. The attempt is not as ambitious to claim to solve all the normative dilemmas, but it does aim to contribute to the ongoing debates in a productive and doctrinally novel manner, especially regarding the connection of freedom of expression with the basic values.

Due to the number of potentially relevant national jurisdictions, the scope of this article will be limited to the European Convention of Human Rights and Fundamental Freedoms legal framework, especially considering its transnational and supranational relevance and the close connection between constitutional discussions on freedom of expression in the Three Seas region and the practice of the European Court of Human Rights.⁸ A further research limitation will be the article's focus on the freedom of expression on the internet. While there might be a large degree of overlap between legal treatment of online and offline expression, unless specifically stated otherwise, online freedom of expression in connection with the internet will be the subject of this article.

In analysing the liberty-related aspects of limiting online freedom of expression on national security grounds, Berlin's two concepts of liberty will be used as the default theoretical framework.⁹ In ascertaining the relevance of the relevant values, Finnis's neo-Thomist basic goods will be the starting point of exploration and incommensurability of values will be taken into account.¹⁰

⁷ I. Berlin, *Two Concepts of Liberty*, "Reading Political Philosophy, Routledge", 2014, pp. 231-237.

⁸ L. Nalyvaiko et al., *Application of the principle of the rule of law international and national courts*, "Щорічник", 2023, p. 143.

⁹ I. Berlin, *Two Concepts of Liberty*, Reading Political Philosophy, Routledge, 2014, pp. 231-237.

¹⁰ J. Finnis, *Natural law and natural rights*, "Oxford University Press", 2011.

Methodology will be primarily rooted in the fields of law and philosophy. Logical, dialectical and dogmatic methods will be used to assure the rigorousness of reasoning, the arrival at relevant conclusion through an internal process of considering different scientific, legal and philosophical standpoints and through treating law itself as a normative phenomenon which influences the societal conduct of legal subjects, respectively. Philosophical theories will be utilised primarily in the manner of applied ethics and political philosophy, to shed light on the analysed normative legal issues.

After the introduction, the second heading will focus on researching freedom of expression in the European Court of Human Rights framework and national security. Third heading will be dedicated to the need for positive liberty and fourth will deal with the basic values in limiting freedom of expression for national security reasons. Finally, yet importantly, conclusions will follow and potential avenues for future research will be sketched.

2. Freedom of Expression in the ECHR Framework and National Security

Considerations of national security as a part of the requirement of any interference with the freedom of expression being necessary in a democratic society¹¹ have featured less prominently than some other potentially legitimate reasons for restricting speech and other modes of expression. While the Council of Europe's analytic guide on the freedom of expression in the European Court of Human Rights practice does offer a good basic overview of court practice,¹² it is lacking in terms of the depth of analysis and additionally needs further contextualisation considering the problematic at hand. Deeper research in the wording of a select number of individual decisions is necessary.

At the outset, it needs to be stated that in certain circumstances, the European Court of Human Rights obviously finds national security to be a legitimate reason for interference

¹¹ H. Fenwick, *Freedom of expression and human rights: Interrogating the focus at Strasbourg on political expression under Article 10 ECHR*, "The Routledge Companion to Freedom of Expression and Censorship, Routledge", 2024, pp. 324-333, p. 325.

¹² European Court of Human Rights, *Guide on Article 10 of the European Convention on Human Rights: Freedom of expression*, 2022.

with the general requirement to protect the freedom of expression.¹³ This was reflected already in the case of *Castells v. Spain*, where although in 1992 decision the court found that a violation of defendant's freedom of expression occurred, it at the same time stated that protection of order and national security could be a legitimate reason for interference with freedom of expression, as is clear from the wording of Article 10 of the European Convention on Human Rights and Fundamental Freedoms.¹⁴

As to specifically regarding the use of internet as a medium and to online expression in general, the European Court of Human Rights considers the internet a platform of utmost importance, especially regarding facilitating news and accessing information.¹⁵ Wholesale blocking of internet access in principle conflicts with the Article 10 of the convention, per court practice.¹⁶ In principle, internet-related expression is to be treated in an analogous manner to offline expression,¹⁷ although there might be a need to adjust the legal concepts to the specific aspects of technology,¹⁸ which would seem to include not only the internet but the application of generative artificial intelligence and large language models as well.

The court practice thus far, regarding balancing freedom of expression with national security, has in principle followed a restrictive approach. In the case of *Stoll v. Switzerland*, the court's grand chamber argued that national security needs to be applied with restraint, interpreted restrictively, and be brought into play only as a matter of necessity, when used as grounds to interfere with freedom of expression.¹⁹ A similar approach was taken by the court in the *Görmüş and Others v. Turkey* case, where it stated

¹³ Y. Bilousov, Yevhen et al., *The case law of the European Court of Human Rights on the protection of Human Rights and freedoms in terms of national security protection*, 2022, p. 80.

¹⁴ European Court of Human Rights, *Castells v. Spain*, 23 April 1992, Series A no. 236.

¹⁵ European Court of Human Rights, *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015; A. Wiśniewski, *The European Court of Human Rights and Internet-Related Cases*, "Białostockie Studia Prawnicze", vol. 3, no. 26, 2021, pp. 109-133.

¹⁶ European Court of Human Rights, *Ahmet Yıldırım v. Turkey*, no. 3111/10, ECHR 2012, § 67; M.Fazaeli et al., *A Reflection on the Protection of Freedom of Expression in the Case Law of European Court of Human Rights as to Blocking the Access to Internet*, *Modern Technologies Law*, vol. 2, no. 4, 2021, pp. 155-182.

¹⁷ European Court of Human Rights, *Ashby Donald and Others v. France*, no. 36769/08, 10 January 2013, § 34.

¹⁸ European Court of Human Rights, *Editorial Board of Pravoye Delo and Shtetel v. Ukraine*, no. 33014/05, ECHR 2011, § 63.

¹⁹ European Court of Human Rights, *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, § 54.

that while the concept of national security may be utilised by military authorities, it should be applied with restraint, interpreted restrictively, and resorted to only as a matter of necessity.²⁰

More leeway is given by the court to national authorities in specific connection with the cases related to combating and preventing terrorism.²¹ In the *Leroy v. France* case, the court emphasized the need for case-by-case evaluation of compliance with the necessity in a democratic society standard and noted the difficulty of punishing the apology terrorism without interfering with freedom of expression at least to a certain degree.²² While in *Karatas v. Turkey*, the court merely took note of the problems linked to the prevention of terrorism,²³ in *Mahi v. Belgium*, the interference with freedom of expression of a person in position of authority, stating criticism of a journalistic institution that was a victim of terrorism, was deemed to be legitimate.²⁴

As far as political speech is concerned, the European Court of Human Rights has not been particularly receptive to national security grounds for limiting the freedom of expression. It namely views this particular liberty as being of special importance for the democratic process and the political health of individual societies.²⁵ Thus, in a number of Turkey-related cases, it has shown that any interference with freedom of expression that concerns politicians or political speech, is assessed in a specifically stringent manner.²⁶

A particular problem is posed by the new forms of disinformation, including in terms of utilisation in hybrid warfare by nefarious actors. While the case law is still very much under development and not all of it relates to the Article 10 of the European Convention

²⁰ European Court of Human Rights, *Görmüş and Others v. Turkey*, no. 49085/07, 19 January 2016, §§ 37-38.

²¹ J. Sikuta, *Threats of Terrorism and the European Court of Human Rights*, "European Journal of Migration and Law", vol. 10, no. 1, 2008, pp. 1-10.

²² European Court of Human Rights, *Leroy v. France*, no. 36109/03, 2 October 2008, §§ 37-38.

²³ European Court of Human Rights, *Karatas v. Turkey*, no. 23168/94, ECHR 1999-IV, § 51.

²⁴ European Court of Human Rights, *Incal v. Turkey*, 9 June 1998, Reports of Judgments and Decisions 1998-IV.

²⁵ T. Tsomidis, Theo, *Freedom of expression in turbulent times—comparative approaches to dangerous speech: the ECtHR and the US Supreme Court*, "The International Journal of Human Rights", vol. 26, no. 3, 2022, pp. 379-399, p. 381.

²⁶ European Court of Human Rights, *Yalçiner v. Turkey*, no. 64116/00, 21 February 2008; European Court of Human Rights, *Incal v. Turkey*, 9 June 1998, Reports of Judgments and Decisions 1998-IV; European Court of Human Rights, *Faruk Temel v. Turkey*, no. 16853/05, 1 February 2011.

on Human Rights and Fundamental Freedoms, some general lines of argumentation are emerging and can be inferred from the existing court practice and court's reasoning.

In *Mouvement Raëlien Suisse v. Switzerland* case, the court noted that states have a certain margin of appreciation when dealing with imparting ideas in public space and that the right of individuals to use the public space in this regard is not unconditional or unlimited, especially in relation to advertising or information campaigns.²⁷ In the *Delfi AS v. Estonia* judgment, the court emphasized special importance of the press and internet itself as it emphasized the need for a thorough substantiation of any grounds for limiting freedom of expression in the interest of preventing disinformation.²⁸

Similarly, special protection of journalists was argued by the court in other cases, including *Jersild v. Denmark*.²⁹ While pursuing a noble aim of protecting the journalistic endeavour, at the same time it might be practically problematic in certain situations in the context of foreign agents posing as journalists³⁰ and the proliferation of freelance journalism on the internet.³¹ The blocking of internet access is in any case especially limited per court practice, an action of last resort and must be extremely well substantiated and reasoned.³²

3. The Need For Positive Liberty

In moving from a descriptive to normative understanding of the interrelation between freedom of expression on the internet and national security, first a conceptualisation is needed. Since the value of freedom, sometimes interchangeably known as liberty, is at

²⁷ European Court of Human Rights, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, ECHR 2012, § 58 and 76.

²⁸ European Court of Human Rights, *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015.

²⁹ European Court of Human Rights, *Jersild v. Denmark*, 23 September 1994, Series A no. 298

³⁰ P. Lashmar, *Putting lives in danger? Tinker, tailor, journalist, spy: the use of journalistic cover*, "Journalism", vol. 21, no. 10, 2020, pp. 1539-1555.

³¹ B. Josephi et al., *The blurring line between freelance journalists and self-employed media workers*, "Journalism", vol. 24, no. 1, 2023, pp. 139-156.

³² G. Gosztonyi, *The European Court of Human Rights: Internet Access as a Means of Receiving and Imparting Information and Ideas*, »International Comparative Jurisprudence«, vol. 6, no. 2, 2020, pp. 134-140.

the core of the notion of freedom of expression itself, it is a lens through which the forthcoming analysis will be performed.

An appropriate way to conceptualise the tension between laissez-faire approaches and approaches aiming at the common good through imposing certain limitations on freedom of expression is through Berlin's two concepts of liberty. In this sense, negative liberty is a specific value, a separate ideal from positive liberty and is in concrete characterised by permitting the full scope of exercising the freedom of expression.³³ This has obvious societal benefits of enabling debate and ideational battling of different sets of values and assertions of facts in the intellectual or at least public domain.

At the same time, leaving freedom of expression completely unhindered might in certain less peaceful times enable adversaries and nefarious actors to run rampant, especially considering the novel forms of applications of artificial intelligence in the sense of large language models and deep fakes, ensuing a descent into a state of anarchy, or at least destabilisation of established social and public order institutions through election interference and other means. Balancing with positive liberty is thus necessary.

Positive liberty as a separate value has at its core the paternalist intervening of the state.³⁴ In relation to the freedom of expression, the authorities desire to prevent externalities and protect individuals from other individuals and states.³⁵ This, in Berlinian terms, includes legislating and deciding with public policy, what it truly means for an individual to be free, which freedom is true freedom. In relation to freedom of expression, it is included in the paragraph two of the Article 10 of the European Convention on Human Rights and Fundamental Freedoms in the context of limitations, necessary in a democratic society.³⁶

While as per described practice of the European Court of Human Rights, *de lege lata*, the default is clearly the value of negative liberty, it can be discussed and proposed when the limitations in light of the value of positive liberty, in the name of national security, are

³³ I. Berlin, *Two Concepts of Liberty*, "Reading Political Philosophy, Routledge", 2014, pp. 231-237, p. 233.

³⁴ I. Berlin, *Two Concepts of Liberty*, "Reading Political Philosophy, Routledge", 2014, pp. 231-237, p. 235.

³⁵ J. Stajko, *Tackling hate speech in Western Balkans*, "Central European political science review", vol. 24, no. 94, 2023, pp. 65-77, p. 65.

³⁶ G. Gunatilleke, *Justifying Limitations on the Freedom of Expression*, "Human Rights Review", vol. 22, 2021, pp. 91-108, p. 91.

appropriate in normative terms. Since the values of positive and negative liberty are two competing ideals,³⁷ a discussion on choosing one or the other and in which circumstances necessarily entails further reasoning and even valuation.

4. Basic Values in Limiting Freedom of Expression on the Internet for National Security Reasons

When approaching the question of legitimate grounds for limiting online freedom of expression in normative terms, valuation is necessarily at the core of such an endeavour. Since values seem to be incommensurable at least in the abstract sense, they must primarily be chosen.³⁸ Such a choice is not arbitrary, but reasoned and while there is no common measure for different values, the consequences of the chosen values do play out in human affairs and can themselves be measured and subjected to further valuation.³⁹

Within the confines of this article, considering its limitations, we will briefly consider the basic values as proposed by Finnis, then choose and analyse arguably the most important ones. Finnis terms the values at the centre of the focal meaning of the law, in line with the common good, the basic goods and lists seven of them. These are life, knowledge, play, aesthetic experience, friendship, practical reasonableness and religion.⁴⁰

While there might be something to say especially for the values of play, practical reasonableness and religion, I want to zero in especially onto the values of life and knowledge. There are several grounds for such a decision. Firstly, the protection of the value of life seems inherently connected to the notion of national security, or at least its bare minimum. Respectively, the value of knowledge seems to be at the centre of the free

³⁷ I. Berlin, *Two Concepts of Liberty*, Reading Political Philosophy, Routledge, 2014, pp. 231-237, pp. 232-233.

³⁸ J. Finnis, *Natural law and natural rights*, Oxford University Press, 2011; V. Strahovnik, *Robert Audi, The Good in the Right: A Theory of Intuition and Intrinsic Value*, "Croatian Journal of Philosophy", vol. 15, 2005, pp. 583-589; L. Walasek, Lukasz et al., *Incomparability and incommensurability in choice: no common currency of value?* "Perspectives on Psychological Science", 2023, 17456916231192828.

³⁹ J. Finnis, *Natural law and natural rights*, "Oxford University Press", 2011.

⁴⁰ J. Finnis, *Natural law and natural rights*, "Oxford University Press", 2011.

exchange of ideas ensured by the upholding of the right to freedom of expression. Furthermore, both values seem to be prone to at least indirect argumentation of their merit even in the abstract sense. Lastly, an overinclusive approach would not be in order, given the extremely restrictive *de lege lata* approach of the European Court of Human Rights.

Life is an obvious candidate for a basic good at the centre of protection through national security.⁴¹ The importance of the value of life can barely be overstated. Since it is difficult to state that life is not a good and be philosophically consistent while consciously remaining alive, it can be deemed a value of at least some importance even in the abstract. While the national security does as a bare minimum aim at protecting the lives of citizens of an individual country or an alliance of countries, a further step is necessary.

The mere protection of life is not enough, national security is in principle, as it should be, concerned with ensuring enough security for a good life of its citizens, a life worth living.⁴²

The two undesirable options are sketched by example in Raz's abstracted account. He gives the examples of a man in a pit, who gets food thrown to him but can barely do anything productive with his life.⁴³ The second account is of a woman who is chased by wild beasts and can always barely escape, living her life in a constant state of psychological terror and physical exhaustion.⁴⁴ Especially the second exemplary account underscores the core concern of the programmes of national security.

In protecting online freedom of expression, while life might feature indirectly, protection of the basic good of knowledge is at its core. For a society, free expression serves as an appropriate tool for ascertaining the truth of different sets of facts and at the same time, to reason about the chosen values and their consequences to facilitate human flourishing. In abstract, the value of knowledge can be asserted indirectly, since the claim that knowledge is not a value is internally inconsistent.

⁴¹ R. Radwański et al., *Premises for Protecting the Polish Population in the Context of the National Security Strategy*, "Journal of Security and Sustainability Issues", vol. 13, no. 1, 2023.

⁴² D. Machek, *The Life Worth Living in Ancient Greek and Roman Philosophy*, "Cambridge University Press", 2023.

⁴³ J. Raz, *The Morality of Freedom*, "Oxford, Oxford University Press", 1986, p. 373.

⁴⁴ *Ibidem*.

At the same time, it needs to be understood, that knowledge for knowledge's sake is not enough. It is obvious that pursuit of knowledge is possible in blatant disregard of human life.⁴⁵ Thus, even in pursuit of knowledge, moral limitations do and necessarily must apply.

In ascertaining when to give priority to negative liberty, primarily through the choice of the pursuit of the underlying main value of knowledge and protecting freedom of expression and when to give priority to positive liberty and protection of life and human flourishing through national security related measures, a potential approach could be in differentiating between facts and values.⁴⁶

Differentiation between values and facts may not always be straightforward, especially in connection with political speech, but it is nevertheless an analytically useful description.⁴⁷ Facts are a matter of observation, and values are a matter of a reasoned judgement of what is good and what is not.⁴⁸

There are two abstract types of facts that could be reason for limitations of freedom of expression, the first being deliberate disinformation and the second being sensitive, confidential information. Disinformation, when it can be ascertained, should be a reason for limiting expression but only when it can be discerned with a high degree of probability. The requirement for confidentiality might also be necessary and should be established considering the ECHR standards on a case-by-case basis.

Regarding values, less leeway is appropriate for limiting expression on national security grounds, to prevent descent into a totalitarian society. Ideologies which clearly oppose both liberty and life might be an exception. European Court of Human Rights already sets

⁴⁵ H. Gold, Hal, *Unit 731: Testimony*, "Tuttle Publishing", 2011.

⁴⁶ N. Mchedlidze, *Modern Challenges to Freedom of Expression: Need for Recalibration of the ECtHR Approach to Facts and Value Judgments*, "Georgian Journal of Comparative Law", vol. 28, 2023.

⁴⁷ I.M. Lami, Isabella et al., *A multi-methodological combination of the strategic choice approach and the Analytic Network Process: From facts to values and vice versa*, "European Journal of Operational Research", vol. 307, no. 2, 2023, pp. 802-812.

⁴⁸ M. Schroeder, *Value Theory*, The Stanford Encyclopedia of Philosophy (Fall 2021 Edition), E.N. Zalta (red.), URL = <https://plato.stanford.edu/archives/fall2021/entries/value-theory/>.

sufficient and appropriate standards in this regard.⁴⁹ Severity of threat should continue to be taken into account in terms of the necessity of limitation.

In general, differentiating between de lege lata practice of the European Court of Human Rights and de lege ferenda necessities of a shifting societal, multinational and technological landscape, calls for allowing certain slightly broader limitations on the freedom of expression in service of national security than current practice reflects. It requires a clear differentiation between facts, where more limitations should be allowed and values, where a strict primacy of a laissez-faire approach remains appropriate.

The two core values at the centre of the debates should be life and knowledge, both assessed through the competing ideals of negative and positive liberty, where a certain degree of tension and value conflict is inherent. When the basic good of life in the narrower sense, interpreted restrictively, is threatened, national security should be given priority over knowledge. Such an approach will allow for a clearer understanding of the changes in court practice and a better ascertainment of when limitations on freedom of expression in consideration of national security are appropriate.

5. Conclusions

The shifting societal, technological and international circumstances call for a nuanced understanding of freedom of expression on the internet as it relates to national security. When dealing with such complex matters in normative terms, we are like people in a dark room, trying to make sense of a large unknown object. This article contributes to the discussion on appropriate limitations on online freedom of expression grounded in arguments of national security through the competing values of positive and negative liberty.

While these are indeed two separate ideals, at the same time, in a novel approach, the article connected the two concepts of liberty to two of Finnis's incommensurable basic

⁴⁹ P. Lobba, *Holocaust Denial before the European Court of Human Rights: Evolution of an Exceptional Regime*, "European Journal of International Law", vol. 26, no. 1, 2015, pp. 237-253.

goods, reflected in their application as it relates to the freedom of expression. While the idea of negative liberty and the ensuing laissez faire approach are more closely connected to the basic good of knowledge and the prioritisation of unrestrained freedom of expression, the positive liberty in protecting the basic good of life calls for limitations based on the national security considerations. Both sets of values exist in a certain degree of tension, which only case-by-case ascertainment of reasons can resolve.

Applying these values could prove useful to interpret and progressively develop the case law of the European Court of Human Rights. In the normative sense, online disinformation utilising novel technological approaches, such as large language models and generative artificial intelligence cannot remain entirely unchecked. While erring on the side of restrictiveness of limiting freedom of expression on the internet is in order, erroneous facts spread by hostile actors for disinformation purposes are a clear candidate for a stricter approach by the European Court of Human Rights, as it protects not only the basic good of life of citizens, but also contributes to more productive knowledge exchange.

There is a vast potential for future research. In terms of applied ethics, further values could be subjected to reasoning and evaluation. Regarding analysis of the European Court of Human Rights, a more specific focus on disinformation might be relevant and other relevant limitations, not relying on the argument of national security, could be explored. The conceptual framework of analysing the Finnisian basic values behind different concepts, and the consequences of them being chosen considering their incommensurability, could be utilised to provide clarifications regarding other legal problems. Finally, yet importantly, content analysis could be performed on the European Court of Human Rights decisions and relevant scientific debates, to ascertain which values map together with both freedom of expression and national security as textual notions.

The eternal tension of safeguarding free discourse in a democratic society, while protecting members of the same society from nefarious actors abusing their rights will remain relevant. This article strived to provide a slight but meaningful contribution to the ongoing debates. Hopefully the implementation and further research in value-based approaches to online freedom of expression and a clear differentiation between facts and

values could serve to better navigate the tensions between safeguarding individual liberties on the internet while protecting the collective security and promoting common good.

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