

Summary

Free flow of information across boundaries and the „domaine réservé“.

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1.

The notion „flow of information“ comprises written and oral communication, including telecommunication, but also broadcasting and television. The new methods of data-telecommunication must be taken into account as well.

2. The technical regulatory systems

2.1 The international law of postal and telecommunication relations contains general reservations protecting the sovereignty of member-states. For the modern methods of communication, especially for the direct data-transfer via international lines, the reservation as to national sovereignty will in practice be mostly meaningless.

2.2 The international law of broadcasting is concerned with frequencies and the avoidance of interferences but permits broadcasting directed at foreign countries. Jamming is permitted as long as it has no extra-territorial effects.

2.3 For Satellite-television broadcasting the technical possibility to direct services specifically at a foreign state has been severely restricted by the agreement on the geostationary orbit positions and on the frequencies. Services of that sort will mainly be possible between states with a similar political structure. A duty to consult the state concerned can be seen as accepted; there is dispute as to a requirement of prior consent.

3. The bilateral obligations to guarantee the freedom of information

3.1 There are strong self-executing guarantees for transnational freedom of information in the treaties of friendship, commerce and naviga-

tion concluded by the United States (Art. II par. 4 German-American treaty of 1954). The reservation as to ordre public does not render the guarantee worthless.

3.2 In cultural agreements one mostly finds obligations to co-operate in order to increase the distribution of books, journals and other cultural publications. The co-operation of broadcasting – and television – institutions is also provided for. Very weak are the obligations for an exchange between official institutions which are common in cultural agreements with socialist states.

4. The establishment of a human right guaranteeing transnational freedom of information

4.1 The UN-Covenant on Civil and Political Rights (Art. 19), the European Convention on Human Rights (Art. 10) as well as the American Convention on Human Rights (Art. 13) guarantee transnational freedom of information.

4.2 The restrictive clause of the UN-Covenant – although formulated in terms which could be interpreted judicially – will probably have the effect of a complete reservation of state sovereignty because of the lack of consensus between members of the Covenant. All the more important are cases where consensus is reached on specific matters as in the Helsinki Final Act.

4.3 Art. 10 par. 2 of the European Convention on Human Rights – although broadly worded – is open for judicial implementation and effectively restricts state-interferences with the transnational free flow of information.

5. The transnational freedom of information as generally recognized principle of international law

5.1 The principle – although basically accepted, is less important as guarantee for the free flow of information itself than for the interpretation of rules on the basis of which a restriction of the transnational freedom of information is asked for or practiced.

5.2 A responsibility of states for private statements even via publicly organised broadcasting and television institutions is generally to be rejected on the basis of this principle.

5.3 The punishment for statements made abroad, even if spread in the territory, needs special justification to comply with the principles of free flow of information.

5.4 Already existing international law requires some respect for the function of journalists if they were allowed by the state to start their activity.

6.

The principle of transnational freedom of information is widely recognized in international law, bilaterally and multilaterally, and – in spite of different restrictive clauses – it has some practical effect.