Available online at www.sserr.ro

Social Sciences and Education Research Review

(4) 1 164-173 (2017) ISSN 2392-9683

FREEDOM OF PRESS IN CURRENT SOCIO-POLITICAL ENVIRONMENT IN ROMANIA

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Abstract

This study analyses the way journalists' freedom of expression is protected in current socio/political context. It has started from the fact that Mass Media is the guarantee of any modern democracy, and respect for freedom of expression is essential in the current European environment. We have shown that Romania guarantees through the Constitution, but also through other international treaties to which it is a signatory, the freedom of expression of every citizen, and, implicitly, the freedom of press. But in laws and treaties things seem simple, while in reality in the courts, the situation is completely different and, above all, extremely complicated. The study highlights the case of a journalist from Constanța, who was sued by the former mayor of the city on the grounds that his image was damaged in a TV show on a local television station. Thus, the views of the Romanian institutions, on the one hand, and the one of the European Court of Human Rights on the other, were analyzed. The ECHR ruled for the journalist in the case against the former mayor of Constanța (Ghiulfer vs. Romania), instead, two Romanian courts forced the journalist to

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pay moral damages and make him publicly apologize in a large circulation newspaper.

Keywords: freedom of expression, mass media, process, democracy, jurisprudence

INTRODUCTION

"Freedom of expression is the fundamental right of man to express his thoughts, opinions, religious beliefs and spiritual creations of any kind (...) Considered in the complexity of its legal content, freedom of speech is one of the oldest civil liberties, a traditional freedom, known either under its name or under its aspects' names, freedom of words or freedom of the press." (Dănişor, 2009) Almost all the world's countries have an ideal proclaimed to ensure respect for human rights for each of their citizens. Freedom of expression is considered to be the essential condition of any democracy (Turpin, 1998), and under this idea it has been defined in both domestic and international law. However, in the current constitutional environment, such a fundamental right is flagrantly violated by two Romanian courts (the Constanța Court and the Constanța Court of Appeal). Although this case has ended in failure in Romania, the case can still give hope to journalists who practice in good faith and especially in the interest of the citizen, that after exhausting all internal remedies, the ECHR can be reached, which truly guarantees free speech.

GHIULFER VS. ROMANIA

The „Ghiulfer vs. Romania" case, questioned here, targets a journalist from Constanța, who has been sued by the former city mayor, who felt injured by her in a TV show on a local television station. The journalist presented the

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results of some investigations, demonstrating the mayor's relations with controversial characters from the underworld. "The information was the result of an investigation by a team of 12 investigative journalists who drafted a monograph of organized crime in Constanta." (Obae, 2008). In court, the politician asked through his lawyers that the journalist should be obliged to apologize publicly and he demanded damages totaling 200,000 lei. At the merits, the magistrates of Constanța Court dismissed the action as unfounded after the journalist provided evidence to support her claims. Moreover, it is apparent from the court's explanatory statemenr that magistrates have taken account of ECHR jurisprudence in resolving the case. (Decision in File No 12769/2006)

The mayor appealed and the magistrates of Constanța Court approved the request. Thus, the journalist was obliged to publicly apologize in a large circulation newspaper in Constanța as well as in a national one, and was additionally obliged to pay the mayor moral damages amounting to 50,000 lei and court costs. The journalist appealed against this decision, but the Court of Appeal Constanța maintained the judgment of the Court (Decision in File No 2405/212/2006).

In 2009, the journalist notified the European Court of Human Rights. She called for defence for her freedom of expression by showing that Article 10 of the European Convention on Human Rights was violated in Romania. The judges' decision at the ECHR was favorable to the journalist. The court found that her right to free speech had been violated and would receive 18,500 euros from the Romanian state. In the defense of the journalist, her lawyer also used ECHR jurisprudence and based her plea on an older case, in which the city's mayor himself, at the time journalist as well, was defended in a case with similar accusations.

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The Romanian Government's defense attorney specified to the ECHR that "the interference in a journalist's freedom of expression is admissible when his claims are not real, the journalist does not take all steps to document and substantiate or fails to do so in good faith" . (Hotnews.ro, 2017) The Government's lawyers also told the Court that during the televised broadcast the journalist had made statements that were related to private life rather than the public position of Constanta mayor at that time, thus attempts were made in order to denigrate him.

INTERNAL AND INTERNATIONAL LEGISLATIVE FRAMEWORK

The journalist was convicted by two Romanian courts, in the context in which the mayor himself participated in the respective tv show, so he had the opportunity to respond directly to the allegations and to protect his image. Moreover, she was condemned in the current constitutional context, in which the fundamental law guarantees citizens' rights and freedoms. Thus, Article 30 of the Constitution of Romania defines freedom of expression as follows:
”Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.”

However, the Constitution of Romania provides a specific legal framework only for the freedom of expression, not also for the freedom of the press, as other constitutions of many democratic countries do. So, freedom of expression represents the general framework that includes freedom of the press, but the two cannot be equated. Probably this is the premise used by the magistrates who judged the journalist's trial in Constanța. "Unlike other means of expression, expression through the media has certain peculiarities regarding

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the object, the holders, the means of exercising and the finality. These are, of course, included in the generic content of freedom of expression, but they determine the specificity of freedom of the press. "(Ionescu, 1999)

Opinions in the sense of recognizing a distinct constitutional right have also been expressed in the Romanian doctrine. Victor Ionescu says that there may be conflicts between the two rights, and in the media there are restrictions and limitations that are not to be found in the content of the freedom of expression. This is due to the fact that the press has immunity only if the published information is compatible with the constitutional order. In conclusion, freedom of expression and freedom of press are not equivalent, despite the fact that the former includes the latter. But we cannot underestimate the importance of press freedom. It is the guarantee of the democracy of any state, and via media, people can form their own ideas and beliefs based on the information provided by journalists. That is why perhaps the best solution would be the constitutional recognition of this freedom.

Thus, the media has an overwhelming importance in ensuring the good progress of the democratic society, both for its evolution and that of the individuals that are part of it. The importance of freedom of expression can be explained on two separate plans. As an individual freedom, "it is obviously a necessary condition for the development and activity of each individual, the means that one uses in order to make his own thoughts, opinions and feelings known to others" (Răduleţu, 2006). On the other hand, as a social freedom, it is one of the primary conditions for guaranteeing a state's democracy. In a country like Romania marked by "corruption, conflicts of interest and fraud" (MCV report of the European Commission, 2017), the press plays a key role - the fourth power in the state that genuinely guarantees the coherent existence of the three others. But, by its overwhelming role in society, it can turn into an enemy of

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power, and an example is the strategy of the Supreme Council of Defense of the Country, which included in its content, in June 2010, at the chapter reffering to vulnerabilities, "the phenomenon of press campaigns that have as a purpose the disparagement of state institutions by spreading false information about their activity, the pressures exerted by some press trusts on political decision, in order to obtain economic advantages or in relation to other institutions of state" (http://www.presidency.ro/, National Defense Strategy of June 2010). That is why politicians are interested in weakening the influence of the media, as the former mayor of Constanta tried and partially succeeded in Romania, in the case of the journalist.

Internationally, the Council of Europe has developed a series of laws on freedom of expression and on free access to information, its fundamental law being the European Convention on Human Rights. Freedom of expression and information is extensively regulated in Article 10 of the ECHR. The Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols no. 3, 5 and 8 and completed by Protocol No. 2, signed in Rome on the 4th of November 1950 (published in the Official Gazette No 135 of the 31st May 1994), in Article 10, paragraph 1, provides: "Everyone has the right to freedom of speech. This right includes freedom of opinion and the right to receive or communicate information or ideas without the interference of public authorities and without taking into account the borders."

Freedom of expression occupies a special place in the category of fundamental rights because it is the basis of any democratic society. The importance of this freedom was reflected for the first time in the Handzside case against the United Kingdom, in 1976 and then resumed several times in subsequent cases. "Thus, freedom of expression is one of the essential foundations of a democratic society, one of the fundamental conditions of its

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progress and the individual fulfillment of its members. Subject to paragraph 2 of article 10, it covers not only information or ideas that are favorable to the public, or which are considered harmless or indifferent, but also those that offend, shock or worry the state or a particular segment of the population." (Press Monitoring Agency, 2001) Freedom of expression serves a double desideratum. On the one hand, it ensures the fulfillment of each individual, representing an aspect of the principle of individual autonomy, and on the other hand, in relation to society, freedom of expression is an extremely important means of ensuring its functioning and it is also important for guaranteeing democracy.

Freedom of expression is not absolute. Paragraph 2 of Article 10 restricts this right when the use of freedom is directed against values or even democracy itself. In the present case, we are dealing with a possible damage to the dignity of the former mayor, a value protected by paragraph 2, but it should be noted that the restrictions on freedom of expression are controlled by the Court by applying principles of interpretation of article 10, and the prominent role of the freedom of expression, affirmed at least at the basic level, has often been observed. Thus, the Romanian courts had all the necessary ways to protect this fundamental right.

Moreover, Romania ratified the European Convention on Human Rights and the Additional Protocols by Law 30/1994 and was published in the Official Gazette No 135 of the 31st of May 1994 and took effect on the 20th of June 1994. The Convention's statute in Romanian domestic law is covered by two articles of the Constitution of Romania. According to art. 11 "the treaties ratified by the Parliament, according to the law, are part of the internal law", and according to art. 20 "Constitutional arrangements on the rights and freedoms of citizens will be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is part

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of." If there are inconsistencies between the covenants and the treaties on fundamental human rights to which Romania is part of, and internal laws, the international regulations take priority."

So the articles in the above-mentioned Constitution incorporate the text of the Convention into Romanian law, while providing a legal force superior to domestic law. In parallel, it allows the application of the provisions of the Convention by the Romanian courts. The role of the Convention in interpreting the constitutional provisions on fundamental rights and freedoms is also important, and this role has been expressed on numerous occasions, its decisions containing references to the jurisprudence of the European Court or the text of the Convention

CONCLUSIONS

The case of the journalist in Constanța, the limitation and the violation of the right to free expression, underlines an increasingly pressing issue of the Romanian Justice, namely, the non-unitary practice of the courts. It is easy to observe how the Constanța Court took account of the jurisprudence ECHR, while the Tribunal and the Constanța Court of Appeal ignored it. Everything happens in the context in which Romania incorporated the provisions of the Convention into national law and by ratification, it automatically created a series of rights in favor of individuals, rights which can be invoked before the national courts, which are competent to judge them from the perspective of the Convention's text and ECHR jurisprudence. So, there are still major problems in guaranteeing free expression in Romania. However, the journalist's case in Constanta can give hope to any journalist who does his job in good faith. He can hope that no matter which are the political pressures exerted on the country by Justice, the European Court of Human Rights remains a categorical guarantor of

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this freedom. Moreover, with the ECHR settling this case, an important judicial precedent was created in the freedom of expression that can be invoked in the courts in Romania, hoping that in the future the magistrates will take into account the jurisprudence existing in the article 10 of the European Convention Of Human Rights.

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