FREEDOM OF SPEECH IN MEDIA COMMUNICATION. THE CENSORSHIP AND POLITICISATION OF MEDIA INSTITUTIONS

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Abstract:
Starting from the classic ethical problems and reviewing the modern regulated ethical norms regarding freedom of speech and its limitations in media communication, the current paper aims to verify the following hypotheses in media communication: (1) Alerting European Court of Human Rights (ECHR) of the infringement on freedom of speech entails a positive response for journalists who fight for this right, (2) Press censorship is the result of editorial policy and the political orientation of the press, which can generate mass resignations of journalists, (3) The more politicised the media institutions, the more limited the right to freedom of speech is for journalists.

Keywords:
Freedom of speech, censorship, the right to information, media communication moral and legal norms.

Ethical principles on the freedom of the word

The respect for duty, truth, law and good will were conveyed by the categorical imperative of Kant, as moral obligation includes loyal activity, and conscience is what guides the mind by sifting the truth from the lie. A supporter of the adage which would eventually become a universal law, Kant believes in "*the reason of the human being*" and the *"representation of the law"*[1]. The conscience of freedom derives from moral law, and freedom becomes the *"ratio essendi* of moral law": "*We start to feel free only when, against multiple and various empirical temptations, we fulfil an action under the exclusive duress of the moral law*"[2]. John Stuart Mill hopes that the time

[1]I. Kant, 2014, *Întemeierea metafizicii moravurilor*, p. 26.
[2]I. Kant, 2010, *Critica rațiunii practice*, p. 13.

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when defending the freedom of the press against "*the rule of tyranny or corruption"* has passed[3]. Also, the author assumes there is no need to argument that a legislation which does not include the interests of the public or which would impose on the public certain opinions should not be allowed. Mill challenges the exertion of constraining power, which comes from the ones that lead ("*the rulers*") and considers it illegitimate: "*the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation"*[4]. Two situations arise in philosophical thinking: (1) the opinion of the one who communicates is correct and thus, he is deprived of the "*opportunity of exchanging error for truth"*, (2) the opinion of the one who communicates is wrong, yet the rest "*lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error"*[5]. Mill theorizes individual freedom and wonders where the authority of society begins, establishing clear significations of individuality in relation to society: "*To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society"*[6]. Accordingly, the moral obligation is not to harm the interest of the other and to respect the legal norms. Mill condemns the state which " *substitutes its own activity for theirs"* or *"makes them work in fetters… bids them stand aside": "a state which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes--will find that with small men no great thing can really be accomplished."* [7]

Censorship in media communication

The liberal ideology includes a liberal market of ideas, where the individual "*exercises in an absolute manner the functions of a private individual without being vexed by the violence and aggressiveness of the state".* D. Pop outlines three main functions of the free market: (1) the deployment of ideas already in existence, (2) the stimulation of the emergence of new ideas, (3) the facilitation of the critical circulation of information. The

[3]J. S. Mill, 2017, *Despre libertate*, p. 28.
[4] *Ibidem*, p. 30.
[5] *Ibidem*, p. 30.
[6] *Ibidem*, p. 111.
[7] *Ibidem*, pp. 169-170.

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journalist can exercise his democratic function in such a free market, where he can disseminate the information unhindered, "*the market becoming the journalist's only refuge against government pressures"*[8]. Although we live under the sign of democracy and liberal ideology, "*the professionals of public communication are subjected to those in control of political or financial power and who try to control the dissemination of information of public interest"*[9]. The paradox that Clifford G. Christians *et al.* mention is that liberty is never absolute. There arise beliefs regarding language violence, slander, discrimination, limits included in professional ethics and deontology. As regards censorship coercion, "*democratic beliefs inexorably and officially reprove it",* censorship being linked to "*the authority of any institution which stifles the voices rising against it*"[10].

According to the theory of social responsibility, the specialists in public communication will inform correctly, will present all the approaches or all "*the standpoints on the problems of public interest in a certain society*"[11]. Freedom of speech also includes the right of not agreeing with other ideas or opinions, even the pressures or restrictions imposed on the journalists. The pressures can be economic, but also political, and a professional journalist must not fall prey to censorship imposed by power factors, media owners or politicians. Defined in a negative sense, freedom of speech is the denial of censorship, while in a positive sense, "*it guarantees the equal access of individuals to expressing opinions"*[12]. Censorship is a restriction or limitation of freedom of speech, it is a control and a blockage, an omission of information of public interest, a masking of reality. Petcu and Stanomir define censorship as "*a complex of repressive solutions, the result of the actions of political, religious, military and administrative entities to pre-emptively control intellectual work, be it journalistic or academic...with the aim of eliminating the risk of disseminating information and opinions considered dangerous.*" According to John Keane, political censorship or

[8] D. Pop, 2001, *Mass-media și democrația*, p. 14.
[9] Alina Thiemann, „Libertatea de exprimare și de informare. Limitele libertății", in Raluca Nicoleta Radu (coord.), *Deontologia comunicării publice*", 2015, p. 82.
[10] Clifford G. Christians, Mark Fackler, Kim B. Rotzoll, Kathy B. McKee, 2001, *Etica mass-media*, p. 294.
[11] Alina Thiemann, „Libertatea de exprimare și de informare. Limitele libertății", în Raluca Nicoleta Radu (coord.), *Deontologia comunicării publice*", 2015, p. 77.
[12] *Ibidem*, p. 76.

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repression regarding the press, points to "*the attempts of governments to subject mass-media to instructions, threats and arrests*", where censorship can happen pre-publication or post-publication. Moreover, Keane considers that "*political liberty ends where the government can use its discretionary power to reduce its critics to silence"*[13]. Censorship implies a direct control of public information or the blockage of this information, being *"tied to power and authority"* [14].

Walter Lippman's belief that propaganda is included in censorship and that without censorship, propaganda would be impossible[15], hints at the hypothesis that propaganda still exists in the liberal model that pretends to be democratic. Thus, barriers, or limitations of the access to the real environment arise between the public and the event, the product provided to the public becomes a "*pseudo-environment*."

Moral and legal norms in journalistic communication

The concept of freedom of speech includes nowadays the right to communication which guarantees the equal access of individuals to express opinions in the public sphere, but also to respect human rights as a basic element of democratic society. There are two limits with different meanings of liberty, according to the moral and legal norms which are stipulated in deontological codes, European conventions and constitutions:

1. **Freedom of speech cannot harm the dignity, honour or reputation of an individual.**

The Universal Declaration of Human Rights, adopted by the UN in 1948 stipulates in art. 19: "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

Article 10 of the European Convention of Human Rights guarantees freedom of speech, but also refers to the situations in which this freedom can be retrained or sanctioned by law, such as the cases in which national security,

[13] J. Keane, 2000, *Mass-media și democrația*, p. 86.
[14] Tim O'Sullivan, John Hartley, Danny Saunders, Martin Montgomery, John Fiske, 2001, *Concepte fundamentale din științele comunicării și studiile culturale*, p. 62.
[15] Walter Lippmann, 2009, *Opinia publică*, p. 61.

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territorial integrity or public safety, human dignity, health and the rights of others can be affected. Also, in article 10, freedom of expression includes freedom to receive information.

The International Covenant on Civil and Political Rights stipulates in art 19 (2.)|: "*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."* [16]

Article 30 of the Constitution of Romania points to the freedom of expression, including the liberty of the press, as well as artistic liberty, but also the limitations of this liberty: respecting fundamental rights, dignity, honour, private life, as well as avoiding the instigation to hatred, slandering one's country, discrimination, instigation to war, public violence.

The right to information is acknowledged in the Constitution of Romania in art. 31, and refers to the responsibility of mass-media professionals to inform the citizens **correctly** regarding information of public interest.

Acknowledging the right to information as a fundamental right, the Romanian state has regulated through Law 544/2001 the access to information of public interest. Regarding the access of mass-media to information of public interest, Section 2 contains the following special dispositions: Art 15 (1) The access of mass-media to information of public interest is guaranteed; (2) The activity of gathering and disseminating information of public interest, carried out by mass-media, constitutes a materialization of the citizens' right to have access to any information of public interest.

Freedom of expression appears in the New Civil Code in art. 70, with the limits stipulated in art. 75: (1) Everyone has the right to freedom of speech, (2) Exercising this right cannot be restricted save for the case and limits provided in art. 75 [17].

2. The right to freedom of expression is limited for the communicator or journalist under the pressure of the editorial policy or under the policy of the party which controls or censors the information.

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[16] http://www.hotararicedo.ro/files/files/PACTUL%20INTERNATIONAL%20CU%20PRIVIRE%20LA%20DREPTURILE %20CIVILE%20SI%20POLITICE.pdf, p. 7.

[17] Art. 75, Civil Code, paragraph 1: „*The infringements permitted by law or the international conventions and pacts regarding human rights that Romania has adhered to are not considered to be violations of the rights provided in this section ".*

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According to the Constitution of Romania (art. 30, paragraphs 2 and 4), the censorship and suppression of publications is prohibited.

In the Audiovisual Law, 504/2001, art. 6, censorship is prohibited:

(1) Censorship of any kind of audiovisual communication is prohibited.

(2) The editorial independence of broadcasters is acknowledged and guaranteed by the current law.

(3) Interference of any kind regarding the content, form or means of presentation of the broadcasting elements, from public authorities or any kind of natural or legal, Romanian or foreign person, is prohibited.

Art.8 of the Audiovisual Law, 504/2002 ensures the protection of journalists:

(1) Authorized public authorities ensure, on request: **a)** the protection of journalists in case they are exposed to pressures or threats meant to hinder or restrain effectively the free exercise of their profession.

Art 10 of the Audiovisual Law, 504/2002, requires respect for the pluralist expression of ideas and opinions about the content of channels aired by broadcasters who are under the jurisdiction of Romania.

Resolution 1003/1993, art. 6 and 8, includes the right to information of the journalist without changing the reality of facts, without interventions from public authorities or the private sector, but also the citizen's right to be informed correctly.

Art. 6. Opinions in the form of commentaries on events or actions involving natural people or institutions must not reject or slander the reality of facts and data. The right to information – a fundamental human right.

Art. 8. It is the citizen who holds the right, and he also has the right to demand that the information offered by journalists be veracious in the case of news and honest in the case of opinions, without outside interventions both from public authorities and the private sector.

Case studies

In May, 2009, Feri Predescu alerted ECHR, motivating that her right to freedom of speech was violated because she criticized Mayor Radu Mazăre in a televised show. The Court of Constanţa sentenced Feri Predescu to present her apologies to the mayor, through a public letter, to publish the decision at her own expense in a mass-produced newspaper and in a central one, as well as pay non-material damages of 50000 lei and trial expenses of 7197 lei. The decision of the court violates article 10 of the European

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Convention of Human Rights, it was supported by the Court of Appeal and the journalist thoroughly fulfilled the provisions of the court. The government of Romania stated at ECHR that *"the interference in the freedom of speech of a journalist is admissible when his assertions have no real basis, the journalist does not complete all the stages for the documentation or foundation or does not accomplish them in good will*". The representative of the government showed the Court that *"the journalist's claims during the televised debate had nothing to do with Mr Mazăre's public standpoint, but with his private life, more specifically, his business, and this could be based on press articles which were part of a campaign against Mr. Mazare*"[18].

ECHR concludes the following:

1. Romania violated article 10 of the Convention in the Predescu case.
2. Romania violated the right to freedom of speech of journalist Feri Predescu, of Constanţa, sentenced in 2007.

Also, ECHR compels the state of Romania to pay the journalist the sum of 14000 euro as material damage, plus 45000 euro as non-material damage.

Journalist Mircea Barbu from *Adevărul* was fired in June 2017, after he refused to self-censor an interview. Mircea Barbu was chief of the video department of *Adevărul* when he interviewed Roger Stone, a political consultant from the U.S.A. and former campaign advisor of Donald Trump. After the interview, the management asked him to remove two questions and the subsequent answers of the interviewee, motivating that the questions addressed by the journalist were incompatible with the editorial policy of the newspaper. The journalist did not accept censorship and published the editorial pressures in the publication *Paginademedia.ro* and in the *online* edition of *Adevărul.* 15 minutes after the article was published on the website of *Adevărul,* the newspaper management erased his statement. Mircea Barbu was fired or „executed administratively" by terminating the department where he operated. We are witnessing the phenomenon of post-publishing censorship, a type of practice unacceped by the afore-mentioned journalist who defended his freedom of choice and right to inform correctly, criticised editorial pressures and abusive management, but who also respected the right of the public to be informed correctly. The press monitoring agency, ActiveWatch, The Association Kompatibil of the Romanian Broadcasting

[18] https://www1.agerpres.ro/social/2017/06/27/apador-ch-romania-condamnata-la-cedo-pentru-nerespectarea-libertatii-de-exprimare-a-jurnalistei-feri-predescu-16-38-04

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Company and the Centre for Independent Journalism reproved the dismissal of the journalist[19]. Journalist Ramona Ursu resigned in January 2017 from *Adevărul,* according to *Paginademedia.ro*. The chief of correspondents from *Adevărul* announces her resignation on her *Facebook* page, where she writes that" *the editor-in-chief reproached her about the editorials on Victor Ponta and Sebastian Ghiţă*". The journalist invokes pressures from the owner, due to the political articles she published: „*He told me there were pressures on him ever since last summer, in order to be dismissed from the paper for the editorials I write in the paper and which the owner Cristian Burci disagrees with. These pressures, I was told, increased after the parliamentary elections, taking into consideration the result of these elections*"[20]. Two months later, in March 2017, journalist Adriana Stoian, the host of the shows *Adevărul LIVE* posts on her *Facebook* page that she was dismissed from *Adevărul* and complains of the same political pressures: „*The official reason was, naturally, that they are doing employment restructuring. Of course, a fashionable phrase these days, especially when the voices which grapple with political power are involved :) Which is something I will always do, regardless of the cost, because I believe this is the meaning of a journalist, but also of any citizen when politicians stray"*[21]. We notice the deviations from moral and legal norms stipulated in national and international treaties, art. 19 of the Universal Declaration of Human Rights, art. 10 from CEDO, art. 30 and 31 from the Constituion of Romania, art. 70 from the New Civil Code, Law 544/2001 regarding the access to information of public interest, art. 6 and 8 from the Resolution 1003/1993. Even the Deontological and Conduct Code of the „Adevărul" Journalist claims, but does not apply, in the case we mentioned that „*the journalist is protected through the international treaties and conventions which Romania is part of and which guarantees the freedom of expression and the free access to information, as well as all sources of information", „the journalist has the right to oppose censorship of any kind*" [22].

[19] http://epochtimes-romania.com/news/jurnalist-concediat-dupa-ce-refuza-sa-cenzureze-un-interviu-activewatch-condamna-abuzurile-in-serie---262899

[20] https://www.paginademedia.ro/2017/01/ramona-ursu-a-demisionat-de-la-adevarul-acuzand-presiuni-din-partea-conducerii

[21] https://economie.hotnews.ro/stiri-media_publicitate-21680263-jurnalista-adriana-stoian-anunta-fost-concediata-adevarul-motivul-hartie-fireste-este-fac-restructurari.htm

[22] https://adevarul.ro/codul-deontologic/

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In 2011, journalist Ștefan Mako publishes on his personal blog the news of his resignation from the newspaper *România Liberă, "after being forced by his superiors to conduct a blackmailing "investigation" against AVAS, an institution which performed foreclosures at the firms of the RL owner, Dan Adamescu"*. Ștefan Mako states that he was forced to publish "*a series of unproven accusations, unsupported by declarations and subsequent documents".* The management refused to comment on the accusations, according to *ActiveWatch,* an organization which monitors the Romanian press[23]. We notice the violation of art. 19 of the Universal Declaration of Human Rights, art. 10 of ECHR, art. 30 and art. 31 of the Constitution of Romania, art. 70 of the New Civil Code.

In October 2017, *România Liberă* was left with no editorial management due to the fact that many more journalists announced their resignations, „*in the context of the owner's intention to perform massive restructuring which target the managing director Sabin Orcan"*: Răzvan Chiruță (editor-in-chief) and the senior editors Mihai Duță, Mircea Marian, Silviu Sergiu, Cătălin Prisăcariu, Petre Bădică. *Paginademedia.ro* states that „ *the journalists who decided to leave joined Sabin Orcan, who was asked by the owners to leave the paper, due to financial issues"* [24]. Journalist Sabina Fati points out and criticizes, in October 2017, in the *online* edition of *România Liberă,* censorship, abuses and political pressures: „*Romania is returning to the times preceding Adrian Năstase, in which the press was bought, constrained, blackmailed not to conduct investigations and not to write against the PSD leader. Times when any opponent was intimidated, any independent-minded magistrate was eliminated or put in his place, when institutions worked almost exclusively in the service of interest groups which ruled the country*"[25]. Sabina Fati writes that „*there are blacklists of journalists, prosecutors and judges who are inconvenient and who must be taken out of the equation*". We notice the violation of art. 19 of the Universal Declaration of Human Rights, art. 10 of ECHR, art 30 and art. 31 of the

[23] https://www.cotidianul.ro/un-jurnalist-de-la-romania-libera-a-demisionat-pentru-ca-i-s-a-cerut-sa-scrie-articol-santajist/

[24] https://www.paginademedia.ro/2017/10/plecare-in-masa-de-la-romania-libera-conducerea-editoriala-paraseste-ziarul, http://mobile.hotnews.ro/stire/22040041

[25] Sabina Fati: Ultimul editorial pentru România liberă, înainte ca ziarul să fie masacrat în așa fel încât Dragnea să nu mai fie deranjat
http://mobile.hotnews.ro/stire/22040041

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Constitution of Romania, art. 70 of the New Civil Code, Law 544/2011 regarding the access to information of public interest, art. 6 and 8 of the Resolution 1003/1993.

Dragoș Pătraru, a former journalist of Digi24, criticizes the editorial pressures he was subjected to in the show that he made with his team: "*At Digi24 I was told to represent the interests of the company that pays me. They did not understand that I should not do this. I hold a BA in Public Relations, maybe this misled them, but I can only represent the people who watch television. Anything else is PR. I terminated the contract on mutual terms, after we got to an agreement with the management of the company RCS RDS who did not understand one thing: that we, journalists are in the service of the public, not the companies that pay us."* Also, when he starts work at TVR, in January 2018, Dragoș Pătraru runs against the same interferences in the editorial content and he claims he is also restricted at TVR: "*If everything goes well, out of reasons that are beyond me, we will see each other on the 8t of January still here. Naturally, I will tell you all about it. If not, it means the party and censorship won once again. Starea Nației"*[26]. In June 2018, the show Starea Nației is removed from the TVR network, the management "*invoking the claims made by producer Dragoş Pătraru in the public space, as well as in his show"*[27]. The journalist points out the "*irregularities within the institution*", the pressures exercised by the TVR owners on himself and his team: "*Those were seven months in which these people did nothing but bully us, threaten us, they tried to censor us, but, despite all of this, so that people won't say that we are troublemakers or whatnot, we stayed, we overcame it and we did the show*" [28]. On Paginademedia.ro, the journalist talks about the excess of power in TVR in a video interview: "*I think these people are very much in the wrong and this is the drunkenness of power…this*

[26] https://www.stiripesurse.ro/drago-patraru-acuza-ca-e-interzis-la-tvr-partidul-i-cenzura-au-invins-inca-o-data_1241102.html

[27] https://adevarul.ro/entertainment/tv/reactia-dragos-patraru-fost-dat-afara-tvr-doamna-gradea-actioneaza-zicala-statul-eu-Ii-asigur-telespectatori-revenim-tv-1_5b336ca2df52022f7594e01b/index.html

[28] https://adevarul.ro/entertainment/tv/reactia-dragos-patraru-fost-dat-afara-tvr-doamna-gradea-actioneaza-zicala-statul-eu-Ii-asigur-telespectatori-revenim-tv-1_5b336ca2df52022f7594e01b/index.html

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is the definition of arrogance. You cannot raise a wall against the public"[29]. The pressures of management violate constitutional rights, art 30 and art. 31, art. 10 of ECHR, art. 70 of the New Civil Code, Law 544/2001 regarding the access to information of public interest, but also the Audiovisual Law 504/2002 which provides for editorial independence, the prohibition of interference in the content or form of journalistic materials and the protection of journalists.

In March 2018, the show "Ora de știri" broadcast on TVR is removed from the public television network, being replaced with a documentary. Mihai Rădulescu, the producer of the show got, instead, the midnight section, for a news journal of 17 minutes, with no debates, according to *Paginademedia.ro.* On his personal *Facebook* page, the journalist posts the following message: "*the only solution to hope that TVR regains its credibility and, implicityly that of the public is to oust the current management"*[30]. On *Paginademedia.ro*, the journalist warns: "*The current management of TVR mocks the spectators and the profession of its employees. I considered it my duty to make this warning public, the more so as I am an alternate member of CS, elected by hundreds of employees".* Also, the journalist sent his colleagues a letter in which he warns that TVR is on the brink of collapse and if the situation does not change, it will become irrelevant[31]. The journalist believes that those to blame for what is happening are not just the "*sham politicians leading us",* but also the employees of the public television: "*Once again, Pătraru is right. TVR got in this situation not just because of them, the sham polticians in the lead, but also because of us"* [32]. The pressures of management violate constitutional rights , art. 30 and 31, art. 10 of ECHR, art. 70 of the New Civil Code, Law 544/2011 regarding the access to information of public interest, but also the Audiovisual Law 504/2002, which provides for editorial independence, the prohibition of censorship or interference in the content or form of journalistic

[29] https://www.paginademedia.ro/2018/05/video-dragos-patraru-suntem-in-grila-pana-la-14-iunie-pe-6-august-incepem-un-nou-sezon-dar-unde

[30] https://www.paginademedia.ro/2018/05/mihai-radulescu-fost-realizator-ora-de-stiri-singura-solutie-e-inlaturarea-actualei-conduceri-a-tvr

[31] http://m.adevarul.ro/entertainment/tv/Inca-jurnalist-tvr-iese-fata-mihai-radulescu-accepta-fruntea-institutiei-incompetenti-mentalitate-sluga-1_5af9a988df52022f75f751d0/index.html

[32] https://www.paginademedia.ro/2018/05/mihai-radulescu-fost-realizator-ora-de-stiri-singura-solutie-e-inlaturarea-actualei-conduceri-a-tvr

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materials and the protection of journalists.

Conclusions

The right to freedom of speech is acknowledged by ECHR, which ammends the deviations of the Romanian state from art. 10 of the Convention, after the referral of a journalist who was wronged by Romanian justice. Both public press institutions and private ones are politicised and they limit the right to expression of Romanian journalists, although there are national and international regulations which do not allow censorship and ensure freedom of speech. The only space where journalists can express themselves freely, after being censored by their editorial board, is the online space and their personal blog, their *Facebook* page, but also *Paginademedia.ro* , which defends the rights of journalists.

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