

THEORETICAL AND PRACTICAL ASPECTS REGARDING THE FREEDOM OF EXPRESSION

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Abstract: We read newspapers, we watch TV shows or we listen to music and, perhaps, we ask ourselves if the information we received is according to provisions from Romanian Constitution. So, the paragraph 7 from the art.30 establishes that any instigation to national, racial, class or religious hatred, any incitement to discrimination or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law. Are these provisions applicable in present days?

Key words: Romanian Constitution, instigation, national, racial, class or religious hatred, discrimination, public violence, morality.

Not a few times, reading the written press, listening or watching radio-TV broadcasts, we are tempted to ask ourselves which is the role played by mass-media nowadays. To inform us, to negatively surprise us through the often sinister content of the information, to culturally enrich us or to seed discord when, purposely or not, there are placed into the spotlight, social, ethnical or racial categories?

We do not hold the claim to offer at this very moment an answer to those above, however we try to remind and emphasize the necessity for the existence, even judicial, of the freedom of opinion and expression, as well as its manner of having been drawn up.

Above all, we deem necessary to emphasize we cannot speak of a unanimously accepted definition of the freedom of expression or of the freedom of opinion, the international and especially European organisms, continuously attempting at defining these concepts, at settling limitations and restrictions for these ones, as well as at identifying measures for their practical application.

Declared for the first time „a fundamental right of the human being and the foundation stone of all liberties consecrated by the United Nations” – the Resolution 31/I of the 9th of February 1946 – by the General Meeting of the United Nations Organization, in its first session from the year 1946, the freedom of opinion was registered in the art.19 from the Universal Declaration of the Human Rights. On this occasion, there was also enunciated in guise of principle that „Any person is entitled to the freedom of opinion and expression, which entails the right not to be disquiet for one’s opinions and likewise the right to search for, to receive and to disseminate, with no border considerations, information and ideas, through any means of expression”.

Subsequently, through the art.19 in the international Pact, upon civil and political rights, the provisions stated above were developed, specifying that no one must suffer because of one’s opinions. There was also emphasized that any person is entitled to the freedom of expression, which encompasses the freedom to search, to receive and to disseminate information and ideas of whatever type, across the borders, either under oral, written, printed or artistic form; or through any other means at choice. However, exercising these liberties entails special duties, a reason for which it can undergo some limitations, which must be nevertheless expressly settled by law, and which are necessary for observing

others' rights and reputation, as well for defending national security, public order, health and public morality. Art.20 in the Pact also brought forth other limitations of this right, limitations that make reference to forbidding by law, by every State, the propaganda towards war and any urge towards national, racial or religious hatred, which constitute discrimination, incitement to hostility or violence.

In the same sense, the European Convention of the Human Rights set and stated, through Art.10, that every person is entitled to the freedom of expression, a right that encompasses the right of opinion and the liberty to receive or to communicate information or ideas with no immixture from public authorities and with no consideration of borders, which however does not impede the States from undergoing their radio-broadcasting, cinematography or television companies to an authorization regime.

Nevertheless, much as the documents of the United Nations Organization, the European Convention of the Human Rights imposed through the paragraph (2) of the art. 10, limitations upon exercising this right, which stipulates that exerting such freedoms entails obligations and responsibilities, and may undergo formalities, restrictions or sanctions, stipulated by law, which constitute necessary measures, within a democratic society, for national security, territorial integrity or public safety, for order defending and crime prevention, for health or moral protection, for protecting others' reputation or rights, for impeding the confidential information dissemination, or for guaranteeing the authority and the impartiality of juridical power.

The makers of the European Convention of the Human Rights deemed freedom of expression as a generic notion encompassing in fact two liberties, which are the freedom of opinion and the freedom of information. This latter one would synthesize what Convention would mean through „freedom to receive or to communicate information or ideas with no interferences from public authorities, with no limitations given by the State borders”.

On the other hand, in awareness upon the beneficial consequences of drawing up as coherently and as adequately as possible the freedom of expression and of opinion, the Organization of the United Nations, through its working organisms, submitted several projects, such as the Project of Convention referring to the freedom of information or the Project of Statement, attempting at marking out and developing what was inscribed within the Universal Declaration of the Human Rights, as well as in the International Pact with respect to civil and political rights. Through these projects, it attempted at obliging the contracting States to observe and to protect every person's right to dispose of various sources of information, with no distinction, depending on the oral, imprinted or illustrated form, or through visual or audio procedures this information were licitly collected, received or transmitted. More than that, there was attempted, as for this right, at forbidding any discrimination based on politic, racial, sexual, linguistic or religious grounds. Despite all these, even through these projects themselves there was aimed at pointing out that exerting the freedom of information entails tasks and liabilities, on condition they should be defined by law and applied in compliance with these legal provisions, and also they should aim at: national security, public order, impeding systematic propagation of counterfeit news prejudicing the amiable relations among States, impeding incitement to war or national, racial or religious hatred, impeding attacks against the founders of religions, impeding the instigation to violence or to crime, protecting public health and morality, other's right, honor and reputation, equitable administering justice.

Through these last projects, there was aimed at acknowledging the right to know and the right to freely search for the truth, as inalienable and fundamental rights of the human being; all individuals, either isolated or in association, having the right to search, to receive or to transmit information. The States, especially their Governments were

supposedly under obligation to promote a policy ensuring the free circulation of the information, both on internal level, and beyond the borders, as well as the obligation not to exercise upon the means of information dissemination such a control as to impede the existence of the information source diversity or to deprive the individual of the access to these sources. On the other hand, the information supplier would have rather been obliged to willingly verify the exactitude of the related facts and the observance of the nation's rights and dignity, as well as of the groups and persons with no distinction of race, nationality or faith.

Likewise, the former Board or the European Court of the Human Rights, through their practice, emphasized, among others, the fact the art.10 could not have been interpreted in the sense of guaranteeing the fact that an opinion, expressed even on the institutional path, such as the one of the referendum, might bring along the effects desired by the one who desired it.

There was also specified that the freedom of opinion „expresses” the freedom of expression, supposing that no one can be sanctioned, condemned for one's opinions, so that the one having formed an opinion could not possibly be sanctioned for the simple reason that you can't sanction what is not expressed and which only remains in a person's thoughts, the expression of this opinion cannot be limited, either for defending the rights and liberties of other rightful subjects, of other democratic values.

On the other hand, there was marked out the fact the freedom of information cannot but undergo some limitations, as it cannot only suppose „the freedom to disseminate information, but also taking at the same time into consideration the reader's, listener's, audience's freedom to freely receive information and out of different sources”. However, this cannot be translated through constituting some regime of previous authorization or censorship, incompatible with the freedom of information. This does not mean that the press, whatsoever its form of manifestation would have absolute freedom, but on the contrary and especially as the public, information supposes responsibility.

As regards Romanian regulations, we will briefly make reference, as follows, to those consecrated by our Constitution, through the art.30 and art.31. This way, the Romanian constitution, republished, consecrates that the freedom to express one's thoughts, opinions or beliefs and the liberty of the creations of any kind, orally, in writing, through images, sounds or through other means of communication in public, are inviolable, forbidding, *expressis verbis*, any censorship, as well as the possibility to suppress a publication.

Quoting from international and European regulations, reminded above, inclusively our constitutional regulation places some limits upon exerting the freedom of expression, stipulating the fact that it can neither prejudice the dignity, the honor, the private life of the person, nor prejudice the right to one's own image, being forbidden to defame one's country or nation; to urge to aggression war, to national, racial, class or religious hatred, there being likewise forbidden the incitement to discrimination, to territorial separatism or public violence, as well as obscene manifestations, contrary to good morals and manners. Furthermore, the constitutional text limits itself to consecrating that civil liability for the information or for the creation brought to public knowledge is incumbent on the editor or on the director, author or organizer of the artistic manifestation, on the owner of the multiplication means, of the radio or television broadcast channel, under the conditions of the law, specifying the press crimes are set by law. Through this text, in our opinion, the constituting legislator aimed at consecrating, as rough principle, that the public's information entails inclusively the informer's responsibility, but also that, if otherwise, its deeds do not necessarily have to put on the form of a crime. However, the same constituting

legislator correctly left to the ordinary legislator the task of developing those mentioned above, which out of more or less correct and objective reasons, has not yet been realized so far. Consequently, we cannot appreciate that Law of the Audio-Visual – Law no.504/2002 of the Audio-Visual, with subsequent modifications and completions, normative act published in the Official Monitor of Romania, Part I, nr.534/2002, as well as the rest of the regulations – decisions, instructions or recommendations, that the National Council of the Audio-Visual pending issues to the purpose of achieving the attributions settled this way, through the same normative acts, acts with a judicial force inferior to the law, may make for the lack of such a legal regulation. We deem that as 18 years have passed since the adoption and entering into force of the present Romanian Constitution, the political class and the civil society, as well as the mass-media representatives will prove to have the wisdom to initiate and adopt a law that should develop constitutional principles

There is necessary to remind that the freedom of information finds its expression in the art.31 within our Constitution, which indirectly distinguishes between the information of private interest and the information of public interest, consecrating that any person is granted the right to access any information of public interest. Public authorities are compelled, according to the competences incumbent upon them, to ensure the citizens' correct information upon public matters and at the same time upon issues of personal interest, mass media, public and private media being at their time under obligation to ensure the correct information of public opinion without distinguishing among the expression form of these information means – written, audio, TV, etc. The constitutional text imposes, this time, too, a few limitations. This way it imposes on one hand that these rights to information should not prejudice the youth's protection rights or national security. On the other hand, although it recognizes autonomy – which must not be mistaken, in our opinion, for independence – of public services of radio and television, it imposes them to guarantee for social and political groups the exertion of the right to antenna, placing their organization and activity under parliamentary control.

Consequently, we deem necessary and opportune, especially in the current context when the content, the correctness, the objectivity of the information leaves much to wish for, that the Parliament of Romania should adopt a law of press. We likewise deem necessary, in this context, that an organism much like the National Council of the Audio-Visual, however with increased attributions should find its set-up through such a normative act.

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