

# FRAMEWORKING THE PRESS FREEDOM, AT THE BORDER BETWEEN LEGAL AND SELF-REGULATION

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## **Abstract**

*Freedom of the press is essential to democracy and to a pluralistic culture. Most journalists are against any form of legal regulation considering the creation of a press law as an interference with freedom of the press, while state authorities considered necessary minimum set of rules to sanction those who exceed the "normality" of free speech. If in the audiovisual field the legislation tends toward European standards, for print media all draft laws proposed so far by different political parties or the government have failed. Representatives of the major newspapers saw each time in these legislative proposals an attempt to "choke" the freedom of the press. In this context, self-regulation is seen as a way in which journalists can establish their own rules in order to protect themselves from the state attempt to regulate this area, a method of protecting against political manipulation and preventing the erosion of public trust, and it is also seen as a method of education within the profession.*

**Keywords:** *press freedom, legal-regulation, self-regulation*

## **1. Introduction**

This study is performed in a time when public debate on self-regulation in the media is very lively and already showing tangible results in Romania. I have started from the assumption that there is a serious need for to self-regulation rules in the media sector in order to build a greater confidence in the ability of the press to express the freedom of speech, and that is best that both systems coexist, in order to regulate the press area, legal regulations – made by the state - and self - regulations - as set own rules, created by journalists.

For the media and press are there is a legal framework consisting of rules created exclusively by the state bodies, which is one imposed by the state, even a democratic state. But, a complet freedom of expression in the media must, however, include a set of rules for journalists of their own creation, based on their professional ethics and created by their own bodies, in order to sanction those who violate the rules of the profession of journalism. The main purpose of this paper is to provide an analysis of what it means for media freedom of expression in its legal framework, within the limits of the law, followed by generating discussion, exchanging information and experiences about the advantages, applicability and implementation of self-regulation of the press in Romania. Most journalists are against any form of legal regulation considering that the creation of a press law is an interference with freedom of the press, while state authorities deemed necessary minimum set of rules in order to sanction those who exceed the "normality" of free speech.

The research is considered to be helpful especially in the context of the public debate on self-regulation in the media, debate that has been running in states with democratic experience and which is already showing tangible results, also within ex-communist states, with lack of experience about self-regulation. In Romania, progress has been quite high in

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terms of legislative reform in the press: the abolition of laws restricting media content, adoption of legislation on freedom of information, the development of a legal framework regulating the audio-visual and the transformation of private radio and television State Public Broadcasting Service. The result of the study aims to be an overview of the concept of self-regulation of the press in Romania and the forms in which it was implemented as an alternative to the set of legal rules that tends to suppress the absolute value of "freedom of expression". There are some benefits of self-regulation, and we are going demonstrated by this case study, benefits although not universally accepted, especially in countries like Romania, which have a relatively recent democratic experience. Here, the state has traditionally played an aggressive role and where topics such as privacy are regulated by law, is unlikely to be the desire to have a system of self-regulation. At least not from the state.

It is a fact that freedom of the press is essential to a democracy and pluralistic culture. A free press requires a variety of publications which would provide a variety of information and views. Out of these, people should be able to collect what themselves find useful in order to process information according to their own convictions. Thus, people can knowingly participate in social life, for the defense of democratic values. Media must be free so that the information brought to the public to be real and honest. The role of media is to play as real and accurate information on the one hand, but the media's role is also to problematize, discuss and debate political decisions, on the other hand. Most journalists are against any form of legal regulation, considering the creation of a press law as an interference with freedom of the press, while state authorities considers necessary the creation of a minimum set of rules to sanction those who exceed the "normality" of free speech. In any profession or sector, self-regulation involves establishing and implementing rules even by those whose conduct is to be regulated, with the ultimate goal of improving the services offered to consumers, beneficiaries or – in case of media - the services provided to general public<sup>1</sup>. Self-concept is well understood by journalists, NGO activists, lawyers. Self-regulation is seen as a way in which journalists establish their own rules to protect themselves against the state attempt to regulate the media, as a method of protecting against political manipulation and preventing the erosion of public trust, and as a method of education within the profession<sup>2</sup>.

## 2. Content

**Written press legislation in Romania.** Even if in the audiovisual field the legislation tends toward European standards, for all written press, the bills proposed so far by different political parties or the government have failed. Representatives of the major newspapers saw each time in these legislative proposals, as an attempt to "choke" the freedom of the press. In recent years, journalists in Romania showed an increasingly strong opposition to state's attempts to adopt a media law. This opposition is based on concerns that, due to remnants of the old totalitarian mentality, any project seeking to ensure freedom of the press is proclaimed that, once inside the mixer of the Parliament, will come out as a law limiting the freedom of the press<sup>3</sup>. Unlike broadcasting, where appropriate regulations were adopted<sup>4</sup>, the written press, newspapers and other printed media still remained unregulated. Once, there was Law No. 3 of 1974, the Socialist Republic of Romania Press Law, a law that has been repealed by article 5 of the Ordinance nr.53/2000 except art. 42 to Article 75 governing the right of reply.

<sup>1</sup> Cristian Florin Popescu, *Journalistic ethics and media law*, (Bucharest: ANI Publishing House, 2006), 9-10;

<sup>2</sup> Miroiu Mihaela Gabriela Blebea Nicholas, *Introduction to professional ethics*, (Bucharest: Three Publishing, 2001), 23.

<sup>3</sup> Cristian Tudor Popescu, *De ce ziaristul?* Accessed February 22, 2014.

<http://bloguleditorialelor.blogspot.com/2007/06/.html> http:

<sup>4</sup> Law no.504/2002 Broadcasting Act, with subsequent amendments and completions, Accessed February,12, 2014, [http://legislatie.resurse-pentru-democratie.org/504\\_2002.php](http://legislatie.resurse-pentru-democratie.org/504_2002.php)

Later, in 2012, the law was fully repealed, including articles on the right of reply, by the Law nr.95/2012, and the right of reply was taken over by the New Civil Code, which entered into force in 2011<sup>5</sup>. The regulation of written press are is based on the applying the rules and principles of the Constitution relating to the rights and freedoms in general and freedom of expression, and the right to access to information, in particular, namely by art. 29, art. 30, art. 31. Of course, a meaningful interpretation of these items should be made by considering the entire constitutional text, both in letter and in spirit, by the systemic analysis of rules arising from the whole philosophy of the fundamental law. The provisions of the constitutional text will corroborate therefore to those of the Civil Code and with those of the Law No.544/2001 regarding free access to public information. This last law not only regulates the print media, but given the fact that the journalist has as main purpose the transmission of information to the public that can be "public interest", the reference at this act seems mandatory.

**The broadcasting legislation in Romania.** Broadcasting channels are the most popular means of mass information and education, for which broadcasters must enjoy effective regulation, adapted to cultural, social and economic realities, in order to ensure freedom of communication, accurate information and public education<sup>6</sup>. Legal regulation of the audiovisual field media in Romania is based on two pillars that provides the legislative framework governing the audiovisual: the Law no.504/2002, known as the Broadcasting Act, adopted by the Romanian Parliament and The Audiovisual Content Regulation Code adopted by the National Broadcasting Council (CNA) in 2006. This institution is a state body set up to monitor and control of communication through the audiovisual. Under the provisions of art. 10 para. (1) of the Broadcasting Act no. 504/2002, as amended and supplemented<sup>7</sup> " *The National Audiovisual Council ... is an autonomous public authority under parliamentary control and safeguard the public interest in the field of broadcasting.*"

Regulatory Code details the obligations of television stations licensed in Romania about the audiovisual content, in terms of editorial, as well as the obligations regarding correct information, the protection of human dignity, the right to reply, protection of minors and legal compliance of advertising and publicity.

**Self-regulation into Media in Romania.** In order to act as the "watchdog of democracy" journalists must maintain credibility with the public<sup>8</sup>. This requires the highest ethical standards. Creating effective systems of self-regulation to implement these standards increase the trust between the press and the public. Journalists that individual undertakes to comply with a code of ethics and strive to practice ethical journalism are accountable to their own conscience and can be held accountable to colleagues, according to accepted standards of professional association or union to which they belong<sup>9</sup>.

**Media Organizations Convention and Code of Ethics.** Convention of Media Organizations (COM) was created in 2001 as an informal coalition of 35 professional associations. Two NGOs, the Centre for Independent Journalism (CIJ) and Media Monitoring Agency (MMA) provides secretariat and, to some extent, the management of COM, although they are not members of the Convention. COM has created Journalist's Statute and the Code of Conduct, which were adopted at a meeting in Sinaia, July 2004.

The Statute's aims are:

<sup>5</sup> <http://www.ziuanews.ro/dezvaluiri-investigatii/lasati-presa-libera;> Accessed February 22, 2014, <http://www.romanialibera.ro/opinii/editorial/presa-un-maidanez-la-portile-parlamentului-201122.html>. Accessed February, 12, 2014.

<sup>6</sup> Ștefan Deaconu - "Freedom of expression in the public radio and television", *The Law 1* (2001) :11, quoted by Emil - John Moțiu in the "Autonomous administrative authorities of national security and coverage information" ( Bucharest: CH Beck, 2010), 179.

<sup>7</sup> Published in Official Monitor of Romania, Part I., No.. 534 of 22 July 2002.

<sup>8</sup> Ș. Deaconu, "Freedom of expression in the public radio and television", 180.

<sup>9</sup> Ibidem, p.179.

- Defining journalist relationship with society;
- Declaring the profession of journalist as independent and free and offers a free definition of the journalist as a person exercising the right to free speech and whose main source of income comes from journalistic activities either as an employee or as a freelance, in any environment (online, print, audiovisual, etc.)<sup>10</sup>.

**Journalists' Code of Ethics.** Journalist Code of Ethics is considered an integral part of Journalist's Statute in Romania and it stipulates the role, the professional conduct, the rights and duties of journalists. The Code includes a definition of the public interest as - among others - any issue that affects the community, the way that the government, authorities and state institutions are working, facts about the management of power and information about violations of human rights<sup>11</sup>. The Section cover story about professional behavior refers to the press - offenses (presumption of innocence), the respect for privacy, the respect for the interests of minors, victims of accidents, and, also speaks about the journalist's obligation to avoid discrimination of any kind, to separate the facts from opinions, to make efforts to present the views of everyone involved, and to maintain the confidentiality of sources<sup>12</sup>.

The Code refers to corruption and conflict of interest and puts the responsibility of the right of reply on the journalist's shoulders, recommending an immediate error correction and publication of excuses, when necessary<sup>13</sup>. Journalists' rights includes the right to invoke the conscience clause, which means the right to refuse any journalistic activity which it considers against ethical principles or against its own principles, and to refuse to require advertising contracts for the institution they work in. This refers to the common practice of asking journalists to provide the norm for advertising contracts to ensure their salary<sup>14</sup>.

**Romanian journalists' point of view.** Although most journalists believe that the media in Romania is facing serious problems regarding compliance with ethics, media experts and the the specialized public rejected the idea of legal regulation of the media (press law). The rejection is being motivated by the fear that a bill could restrict freedom of expression of journalists<sup>15</sup>. In democratic states, as well as in Romania, the law regulating the freedom of the press is rejected by the public and journalists, is considered a threat to freedom of expression in general. The solution of self-regulation is not denied, but is considered unfeasible in these cases, due to<sup>16</sup>:

- employers' reluctance to enter into such an agreement would affect their own interests;
- the lack of credibility of those who have initiatives of self-regulation;
- the impossibility of creating a system which would ensure and enforce sanctions because there is enough credible people to manage it;
- the experience of unsuccessful attempts to create a regulatory body and a single code of ethics<sup>17</sup>.

<sup>10</sup> Carmen Monica Cercelescu, *Legal Regime of the press, the rights and obligations of journalists*, Teora Publishing House, Bucharest, 2002 : "According to those who wrote the status, it is not intended to impose or to regulate this definition, but only to clarify how COM sees the profession of journalist", 102.

<sup>11</sup> Journalist Code of Ethics, Accessed February 14, 2014 [www.paginademedi.ro/.../codul-deontologic-al-jurnal...;http://clubulromandepresa.ro/?page\\_id=322](http://www.paginademedi.ro/.../codul-deontologic-al-jurnal...;http://clubulromandepresa.ro/?page_id=322).

<sup>12</sup> Official website of the Convention of Media Organizations , Accessed February 11, 2014, [www.organizatiimedia.ro/docs/codul\\_deontologic.doc](http://www.organizatiimedia.ro/docs/codul_deontologic.doc) ; [www.ngo.ro/site\\_item\\_full.shtml?x=1284](http://www.ngo.ro/site_item_full.shtml?x=1284)

<sup>13</sup> Păiușescu, Cristina Anca, Duță, Oana, *The right of communication. Theoretical considerations and relevant legislation*, (Bucharest: University Publishing House, 2011), 167-168.

<sup>14</sup> Idem.

<sup>15</sup> Active Watch Report on freedom of expression, Accessed February 10, 2014, <http://www.activewatch.ro/stiri/FreeEx/Raportul-FreeEx-2010-Libertatea-Presei-in-Romania-307.html>, Accessed February 14, 2014.

<http://www.activewatch.ro/uploads/FreeEx%20Publicatii%20Press%20Freedom%20in%20Romania%20Report%20May%202011.pdf>, 31.

<sup>16</sup> Idem.

<sup>17</sup> Ibidem, p.14.

### 3. Conclusion.

**Arguments for and against of self-regulation of the press field.** Self-censorship is a sign of responsibility from the media. Through self-censorship, media can demonstrate its good faith to state regulations and it may impose alone to its self some of the information content criteria. By establishing a set of rules for transmitting additional information, newspapers and radio and TV can protect themselves against unpleasant consequences such as lawsuits for libel and slander, or the for violating the right of privacy. Self-censorship can be seen in this sense as something not automatically with negative connotation, but rather as a tool that can be used in a positive sense. Thus, when a media publishes an article / report only to the extent that it is considered to be of public interest, that trust performed an act of censorship. It does allow the emergence of potentially damaging information, or simply unnecessary. In this way is being protected the credibility of newspaper or radio/TV and the trust the media institution. Protecting the sensitivities of certain individuals cannot be complied without affecting freedom of expression. It can operate at the level of modification of information form to submit social and international usage on names of people or minorities, as long as an act of self-censorship in the press, does not harm the content of information. Thoughtless remarks in the media, such as those of racist or sexist, can affect both minorities and the media institution in question<sup>18</sup>.

To conclude, in the absence of a regulatory structure in the written press, self-regulation is preferable, so that the achievement of a mix of self-regulation for editorial and a single forum where all the media can join, seems ideal for the freedom of expression of the media in order for it be able to really manifest in a democracy. Media self-regulation can be effective only within a legal framework that provides strong guarantees for ensuring the fundamental right to freedom of expression and access to information.

In Romania, the state has traditionally played an aggressive role and where topics such as privacy are regulated by law, is unlikely to be the desire to have a system of self-regulation. This lack of enthusiasm can turn into suspicion to the suggestion that self-regulation should include actors outside the journalistic profession. In any state society in transition, politicians, big business and lobbyists believe that the media is a powerful tool in the struggle for power and influence. At the same time, many NGOs that have emerged after the fall of communism and who often calls as representatives of the public, are not always independent of any kind of influence, political or other. In this situation, it is perhaps not surprising that journalists are reluctant to participating in the self-regulation coming from strangers, non-journalists.

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<sup>18</sup> Cristian Tudor Popescu – accessed on February 22, 2014: <http://www.ziuanews.ro/dezvaluiri-investigatii/lasati-presa-libera> and <http://www.romanialibera.ro/opinii/editorial/presa-un-maidanez-la-portile-parlamentului-201122.html> - accessed on February, 12, 2014.

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