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Freedom of Expression – between Liberty and Intolerance

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Abstract: Developing the present research, we took into consideration the importance freedom of speech has. The opportunity an individual has to express his true feelings and thoughts is a matter of the human being's essence and it is considered a natural right. Even so, throughout man's existence, the individual met enclosure in benefiting from his natural freedom of speech way too many times, people being severely punished for their attempts at expressing their true feelings and ideas. The gesture was often considered defiant. In Romania, one's right to free speech ceased to be censored in the post-communism era, fact which induced us the necessity of exposing how one's freedom of speech was perceived and enclosed in the communist era. Another topic addressed in this paper is related to the extent of freedom of expression. If in the past, expressing our opinions lead to an enclosed freedom of speech, nowadays we have the issue of those using this natural right abusively. People often use their freedom of speech without thinking clear, which leads to damaging another individual's rights and personal values, such as their personal dignity, the right to privacy, religion and many more. Consequently, we are found in the situation of naturally asking ourselves: Should we limit the freedom of speech? And if so, what would the extent of this natural right be?

Keywords: Freedom of speech; fundamental right; expression; limits

Introduction

Given the perpetual evolution of society, human rights, such a huge concept spread wide interpreted has undergone many transformations over time. (Pușcă & Ionescu Dumitrache, *Protecția internațională a drepturilor omului*, 2015, p. 8)

Thus, in eighteenth century, Americans elaborate the first document which laid the foundations of basic human rights ("Declaration of Colonial Rights") whereas, French Revolution brought its own contribution to the development of this concept through the "Declaration of Human Rights and Citizen", which are basically prior acts to "Universal Declaration of Human Rights", which currently underpins modern society⁴.

Romanian Constitution itself establishes its democratic character, highlighting the human need to express freely and unhindered own convictions, formed as a result of guaranteed access to information.

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⁴ For more details about the historical and judicial evolution of Human Rights, See: (Ionescu Dumitrache, 2015, 2015, pp. 208 – 215).

We note that the basis of modern society is the will of the people, without any interference of public authorities and without regard to borders.

Hence one of the basic principles of a democratic society is represented in general by the freedom of expression (consecrated in article 10 of the European Convention on Human Rights), whose objective is this study.

1. The Concept of Freedom (Pușcă & Ionescu Dumitrache, 2015, pp. 11-13)

Montesquieu emphasized that “freedom is to exercise our will, or at least the belief that we have, that we will exercise”. Based on this observation, we can say that, generally, freedom is the possibility of the individual to act according to his own will, enjoying the fullness of political and civil rights in the state. However, Voltaire said that “to will and to act is to be free” and “understood freedom lifts the spirit, while slavery forces it to crawl on the ground.” So, strictly speaking, the freedom is an important attribute to human personality which consists in the possibility that each member of society must have, in order to act according to his wishes and interests, without being subjected to physical or psychological constraints. (Mihaela, și alții, 2013, pg. 132-135)

Freedom of expression constitutes one of the prerogatives derived from the fundamental principle of freedom of the individual, finding his own dedication to the most important treaties and conventions of the world regarding the protection of human rights.

Romanian Constitution enshrines and guarantees the utmost freedom in Article 30 paragraph. 1-8. According to constitutional provisions it follows that this concept is the base of the idea that communication and expression of thoughts can be considered not only a possibility but at the same time a necessary condition of human existence, of society organized according to the criteria of civilization determined historically.

Therefore, freedom of expression is a natural right that allows the individual to externalize his own thoughts, feelings, opinions, etc. by words, in writing, in pictures or through any other means of communication.

International Convention on Human Rights (ICHR) considers that “freedom of expression is a mean of changing ideas and information among persons; this includes the right of a person to try to communicate to others his point of view, but also involves the right of all to know opinions and information. For an ordinary citizen to know other persons’ opinion or information available to others it is as important as to share people his own.” (Udroiu & Predescu, 2008, p. 237)

According to specialist literature, there have been numerous attempts to outline the specificity of this right guaranteed to every individual. It was found that, as stated in Article 19 of the Universal Declaration of Human Rights (adopted by the United Nations in 1948), freedom of expression constitutes a legal phenomenon as unusual as it could not be i.e. it can be interpreted as rights indispensable or, where appropriate, prejudicial to achieve other rights. According to the first interpretation, it may be noted that freedom of expression and information is essential to freedom of assembly and, on the other hand, can be a threat in relation to the right to privacy and family or private life, more specifically, on everything that touches the inner human being.

Article 11 of the French Declaration of the Rights of Man and Citizen (1789), later became exposed fundamental principle and reflective of society as “a democratic right par excellence and one of the most precious rights of man.” It follows that all these considerations have been taken and refined by

the legislator so as to draw a clearer line on the rights that man can enjoy and whom they are recognized under the law.

In the jurisprudence of the Court of Strasbourg we find all these considerations, this claiming since 1976 (in the case of Handyside against Great Britain) that freedom of expression means “one of the essential foundation of a democratic society, one of the basic conditions for its progress and fulfilment of each person”. However, freedom of information and expression “are the cornerstones of any free and democratic society.”

Furthermore, analysing of all these aspects, we can deduce that this principle is both an individual right for concerns freedom of conscience or the spiritual of each entity, but also a collective one because, by nature it exists only in the phenomenal, social expression of man. Also, man in his individuality, can state its own needs only interacting and communicating with other peers, setting up community and communion. From this perspective, freedom of expression is the foundation structure of social existence and beyond.

For our scientific approach we bear in mind the ontological dimension of the relationship between being and existence, so that on this basis, we can present shortly the correspondence between man individuality and depth of his being, on one hand, and his existence as the sphere of facts and manifestations that exhibited deep inside, on the other hand. (Ionescu Dumitrache, 2016, pp. 48 - 64)

2. Communism - the Tourniquet of Free Expression

“We used to have a better life under Ceausescu” we hear this more and more often, from different people, most of them middle-aged. We all know stories about the “Golden Age”, having heard them from our parents or grandparents and, eventually, experienced them on our skin.

Citizens who pronounce from time to time this phrase, are either contemporary to some advantages that socialist Romania gave them, or took imitating this slogan, but without living and being aware of those times. At that time, Romania provided jobs by one’s qualification; unemployment rate being extremely small one.

We will not deepen the advantages and disadvantages of this period, because the object of our research does not constitute deprivation of “golden age” and its tumult, but evolutionary dimension of freedom of expression, to understand current social and legislative instances of freedom of expression nowadays.

Although freedom of expression is a fundamental right, proper to humans, communism had manifested hostility toward it. People wanted to express their free will, not only by words but also by how to wear a cloth, and the old system didn’t have as target only political freedom but also the access to what they considered to be “products of decadent capitalism” and here we include cultural products (music, movies, books, etc.) and clothing. Thus the possibility of expression and personal development of citizens have been successfully limited.

Few of us know, however, that before 1989, typewriters were “enemies from the shadow” of the communist dictatorship, constituting a potential danger for the regime. Perhaps it seems absurd, but these instruments apparently ordinary and harmless, but they were generating words, a weapon of freedom of expression and therefore were subject to severe rules of control from state authorities.

Law no 23 of 1971 legislated the protection of state secrets, and typewriters, copiers and photocopiers had a similar regime as the one regulating the status of weapons, ammunition and explosives.

On 19.01.1963, in Romania appeared the first deeds in this field, a Decree of the State Council, which regulated the regime of “typewriters, multipliers and materials necessary to reproduction of writings” - “Possessing typewriters was allowed only upon authorization from militia, MAI”. Decree issued by the State Council since 1963, by Article 15, paragraph 2, showed that “can not be allowed to hold typewriters, people who, because of criminal previous past or behavior, were endangering public order and security state.”

Furthermore, the deed also stipulated that “holding multipliers as gestetners, mimeographs, heliographs and other similar and different writing materials necessary to reproduce molds, rubber letters, was prohibited.” Writing instruments were checked, fingerprinted and retained in databases of local militia departments.

It is understandable that people affected by the abusive interpretation of the law were people of culture, journalists, writers etc. However, many Romanians were able to defy the law, releasing on market offensive material against the communist regime. Fortunately for us, many have reached abroad radios (scrambled at the time), such as Voice of America or Free Europe Radio.

Nowadays, when most of us we have an Internet connection, a printer at home or in the office, we find absurd the idea of prohibiting of holding of such instruments. However, any owner of a laptop/PC, with a valid Internet connection, can be easily verified by an IP address by more or less legal methods.

3. Freedom of Expression and Damage of Human Dignity

As already mentioned, freedom of expression is a fundamental right of the individual, with a specific application in the field of media, protected as such by the European Court in Strasbourg in which is settled the importance of press freedom in any democratic society. In such a community, the general public expresses and, the same time, arises opinions about attitudes of political leaders¹ and overall about social realities. But this freedom is not an absolute one, it involves some restrictions caused by the need to protect other fundamental values such as the right to reputation, honor and dignity of the person, but also the need to avoid disseminating of confidential information. Their protection should not be preserved by the use of means of deterrence on the work of journalists, the right balance needed to be found that would ensure both freedom of expression and the right to protection of privacy of each of us.

According to opinions expressed in the doctrine, any limitations on freedom of the press, including the sanctions against journalists must be “strictly proportioned and focused on assertions that actually exceeded the limits of permissible criticism.” (Sudre, 2006, p. 425)

A reference case for the Romanian media regarding the limitation of freedom of expression has been brought by the senator and editor of the magazine at that time Romania Mare or, also known as, Corneliu Vadim Tudor against Romania. In a brief presentation, the head of the respective publications and also the applicant of the charge, brought a series of articles (“Stop Dricu hell wants to take Ticu” and “We have official proof: CTD ratted Peasant/Taranistii and Legionnaires”/Legionari out to Security since 1949 which were offensive to one of his colleagues, who has been labeled as

¹ To be seen the Decision of 08.07.1986 related to the case Lingens against Austria, paragraph nr.42 - information retrieved 14 March 2017 from <http://jurisprudencedo.com/Journalist-acuzat-de-insulta-Lingens-contra-Austria.html>.

“fool, hysterical, dangerous mental patient, with the head rubbed of greasy nut oil etc...” invoking the connection of the latter with the Security. In this regard, the European Court found that the applicant’s assertions were part of a game of political flavor (both being MPs) and interference in the freedom of expression imposed the start of thorough controls.

Also, in terms of the proportionality of restricting freedom of expression, was reckoned the gravity of expressions in use and the facts alleged by the applicant to the victim. (Udroiu & Predescu, 2008, p. 278)

Finally, the applicant got a fine from the Supreme Court as a result of the offense of insult, obliging him to pay damages and costs incurred.¹

Another problematic meant to highlight the limits of journalistic criticism on the present case is the Charlie Hebdo - French magazine with satirical publication type, based largely on illustrations (caricatures and drawings), and disputed articles, jokes. Magazine has strong leftist, anti-religious views and is characterized by its criticism of Islam, Catholicism, Judaism and right-wing extremism. (Ionescu Dumitrache, 2015, pp. 675- 681)²

Criticized for its approaches not exactly subtle, the magazine has been repeatedly threatened by Islamic fundamentalists. However, publications maintained satirical tone, and Allah, God of Muslims, was caricatured in indecent poses.

Like any war, also this one between Charlie Hebdo and Islamists resulted in bloodshed and loss of lives, because on January 7, 2015, around 11:30 local time, two Islamist found appropriate to make right with weapons in hand. Thus, the two brothers, masked and armed, stormed editorial offices in Paris and started firing with automatic weapons. The attack was resulted in 12 dead and 11 wounded.

The unfortunate event divided the world into two camps: those who are called “Je suis Charlie” and believe that freedom of expression must be unfettered, and those who believe that the people at Charlie Hebdo abused, however, this right to spread messages with slandering and offending tint. Some considered the *absolute importance of freedom of expression in an open society should be supported - no matter how offensive it can be for some and how childish can become*³, while others shares the ideas of Pope Francis, who said that nobody has the right to provoke or insult other people's faith or to take in mockery, and that freedom of expression has its limits.

Given the above, we ask ourselves: is there freedom of expression without barriers? How far must extend that freedom? When it becomes a violation of other rights and freedoms of individuals?

Incrimination of insult and slander offers advantages and disadvantages. A possible condemnation of insult and libel can provide a huge weapon to all those with an interest in limiting freedom of expression, and people would be fearful to express sincere opinions for fear of being penalized in terms of criminal law. (Popescu, 2016)

It is also painful to get, for example, a political office, being a citizen in good faith and willing to bring an improvement in the system to provide overall a better future for the young Romanians, and however your image is to be assimilated to corrupted citizens in this country, because of which the Romanians have lost confidence in state management bodies. In this case, freedom of expression conflicts with injustice brought to citizens, thus touching the honor and the dignity.

¹ To be seen the decision CEDO- 15.06.2006- for more details. –information retrieved 18 March 2017 from http://www.dreptonline.ro/spete/detalii_speta.php?cod_speta=156.

² http://www.edlearning.it/proceedings/moreinfo/20150416_index.pdf, pp. 675- 681.

³ Bill Durodie- article published in The Conversation.

4. Freedom of Expression - The Mouthpiece in Romania of Protests in 2017

The protest, according to good authority of DEX dictionary, is a public act, a strong manifestation of citizens against actions/decisions that they consider unjust. Therefore, we deduce that the protest is a derivative form of freedom of expression, guaranteed to individuals.

Protest as the manifestation of the will of citizens is enshrined in the European Convention on Human Rights, Article 11. According to this article, any person enjoying privileges to associate freely and peacefully with others who share the same ideas and feelings, including the formation of labor unions or joining themselves in order to defend the promoted interests.

Romanian Constitution includes the right of freedom of expression through protests in Article 39 ("Freedom of assembly"). Thus, rallies, processions, demonstrations or any other assembly are free, except for a prerequisite: to unfold peacefully, without any weapons.

Public meetings are the core of the democratic, legally constituted state. They should facilitate the involvement of citizens in the public space, their tradition dating back to antiquity. Such meetings are today the best way to express your dissatisfaction towards injustice, to commemorate or honour the great names in the history or our lives, etc.

According to the Law no.60 / 1991, public meeting includes: meetings, rallies, demonstrations, sports competitions, processions and similar, which are to take place in squares, on public roads or elsewhere outdoors, during which citizens they can freely express their political opinions, social or otherwise. A public meeting may be organized by any group of people (preferably constituted a legal entity) who have no criminal records and have not been registered in associations or groups who damaged in the past the rights and values of citizens. It is also important that the organizers can prove that they have the human resources necessary to manage successfully a meeting, along with police forces.

In January this year, just two weeks after the inauguration of a new government, the Romanians, outraged upon hearing the possible intentions of the new leadership to develop a legislative mass pardon and amending the Criminal Code, led people to the streets to express dissatisfaction. This famous ordinance, in fact, was nothing but a trigger for the population, "the final straw" so that citizens could demonstrate and express their dissatisfaction on many aspects of Romanian society, mainly related to the political class and to show how corrupted members can affect the rule of law.

The number of protesters has increased significantly from day to day. People of all ages met in the street, without regard to weather conditions, to support their ideas and express their grievances peacefully through more or less creative messages.

A particular case of these protests is the one of a young man from Bucharest, who expressed dissatisfaction with the socio-political context making laser projections with specific messages onto a bank building in Piata Victoria. With these projections, the young expressed dissatisfaction, messages being marked by vulgar shades or intended to incite violence.

Less than two days after these screenings, the young person received at home (the apartment where he made the projections) summons from the local police station in which he was invited to come urgently to the police station; it was related to the projections laser he made onto the bank building, in case of absence, he might have been liable to a fine between 100-500 lei. The bank said publicly that they were not responsible for the police's action, offering to help the young man with any necessary information. Given that no one has claimed responsibility for the police's action, we ask ourselves obviously, if this act was not just programmed, aimed to suppress the young citizens the opportunity to

express their dissatisfaction, thus attracting on its share many people as indignant as well as the mass media.

Another controversial case is the one known as “the lone protester in Odobesti”. The man protested every night, expressing dissatisfaction with the shortcomings of the country, but also the poor management of the city in which he lives. He is convinced that in a small town such as his one (only 8000 inhabitants), people were afraid to protest for fear mayor and not because of the risk of having problems at work.

Following its discontents, expressed both online and by spoken words, the man was sued by the mayor, who solicited the court to prohibit the man the right to post on any social network “messages likely to harm privacy and image” of him and his family. “See how the mayor of Odobesti asks the court to censor me. Asking 150,000 lei for posting on Facebook, not even for swear words, it seems like a punch on the mouth applied to freedom of expression. Asking the court for CENSORSHIP, only in Vrancea this could happened”, said the man on his personal Facebook page, attaching also the application of summons. The man got a fine of 600 lei from the Police of Odobesti because he dared to criticize mayor's activity on his personal account on Facebook.

Recalling in this case art. 11 of the Charter of Fundamental Rights, which states that “Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of borders. Freedom and pluralism of the media shall be respected.”

5. Conclusions

By presenting the arguments above, we believe that freedom of expression is a fundamental right of every individual, a right that must be guaranteed by law. Throughout history it went from disclaimer of opinion into total freedom in which people's views are real weapons. Freedom of expression is the essence of democracy where people's words are a real power. An example of this were the protests in January 2017 in Romania, where hundreds of thousands of people demonstrated, expressing their discontent and finally managing to prevent the adoption of an emergency ordinance.

It is very important to know how to use this right. The fact that the law protects the individual's freedom to express thoughts, it should not be a pretext to make abuse of it. It's easy to harm reputation, dignity and honor of a person, but often the damage is irreparable.

Therefore, as *lege ferenda* (future law), we consider that it is not necessary to draft a law that punishes criminal acts that could prejudice a person's dignity and image, given that the prisons are overcrowded. Instead it would be necessary to elaborate a draft law on the civil branch to provide financial penalties for those who make allegations without substantiating official sources, against individuals or legal entities, including states and other entities, thus amplifying the misinformation phenomenon. With such a law, people will not risk ending up in prison with criminals who committed offenses more serious, whereas sanction through fines will determine people to think better before denigrating other peoples or with whom they have an obvious conflict.

We do not want people to be prevented from exercising their right to express freely, but to do that responsibly and constructively.

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