

CONSTITUENT AND FUNCTIONAL MILESTONES OF THE MEDIA LEGISLATION. REGULATION AND SELF-REGULATION OF MASS MEDIA IN ROMANIA AND MOLDOVA

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Abstract

The media is a force that brings together, unifies and gives coherence to social individuals and communities in the modern world, because it produces at the same time the same messages, which it distributes to very diverse categories of audiences in equally different spaces. Thus, the problems that influence or face certain individuals or social groups, once publicized, become common for the whole society.

Keywords: *Mass-Media, social media, media activity regulation and self-regulation, social journalism, social paradigm, media researcher, media pragmatism, public interest, free speech, information dissemination, positive communication cycle.*

Currently, the legislation in the mass-media field, both in Romania and in the Republic of Moldova, is considered to be of major importance, being regarded as a topic of urgent topicality. Thus, in this study, we considered the brief analysis and presentation in a synthetic form of how norms and legislation in the mass media sphere are applied in the written and audiovisual press both in the EU legislation and in the legislation of Romania and the Republic of Moldova.

The present study tries to analyse a controversial aspect, namely whether the current legislation has the role of reflecting the way in which the media regulate and self-regulate in Romania and Moldova, of course, with immediate consequences.

For example, mass media, *in concreto*, is based on creating the necessary conditions for the development of a positive communication cycle. This cycle involves seeking, receiving or broadcasting, listening to or the process of being listened to, understanding, creating or reproducing information. The rights of the individual through his expression in the media, his pragmatism, thus

encompass the right to participate in his own culture and to use his own language, to benefit from the advantages of the society, etc.

Regarding *the regulation and self-regulation of the media activity*, we consider that they represent two sides of the same coin. The former protects democracy by regulating content that in a democracy should be free, and the latter focuses on developing democratic practices through regulation by the media sector itself. A fair and safe regulatory environment encourages self-regulation, which in turn reduces the authorities' regulatory responsibilities and gives more freedom and independence to the press.

The public interest of the society towards the media represents the basic foundation of a democratic society. Thus, in order to preserve a healthy media landscape, democratic societies periodically introduce restrictions on acceptable mechanisms of free expression and dissemination of information (McQuail, 2010). Therefore, authorities typically limit media activity by prohibiting activities that harm democratic societies, including disinformation, libel, incitement to violence and hate speech. And these restrictions are supported by mechanisms meant to regulate the media activity.

Thus, in a democratic state, such as the one in present-day Romanian society, the media has the role of informing, commenting and criticizing, being considered "*the vital centre of public life.*"

The European Union is currently experiencing a democratic deficit after enlargement due to the absence of the European public sphere, being a conglomerate of peoples, with different aspirations and social realities including different political realities.

Currently, as far as the *EU regulation on the media* is concerned, there is talk about a post-national Europe, whose evolution will depend on the emergence of a new public, but especially political, sphere, without the unjustified interference of the US. The future development of the EU is closely linked to the existence of this sphere as a communication space (Popa, 2002). The European public space represents a mechanical summation of the national spaces of the EU countries, an attempt of a new reality that exists according to its own norms. European public space is in communication with the national public spaces and its consistency and legitimacy depend on what guarantees the agents of the national space offer. News in the European public space is produced and broadcasted from the national spaces. Let us recall that leading media in Europe recruit correspondents from nation states and rarely transmit on-the-spot news reported by editors in the central newsroom, which is why some information is truncated and unverified.

If we refer to the EU legislation on media freedom, we must emphasize that, in this regard, the European Commission adopted September 16, 2022 a European Law on media freedom, which includes a new set of rules designed to protect media pluralism and independence in the EU.

If one considers this Regulation carefully, it can be easily seen that it includes, among other things, certain safeguards against the political interference in editorial decisions and against media surveillance. Thus, the *independence and stable financing of public media services*, as well as the transparency of media ownership and allocation of state advertising, should represent a state policy at the level of each member country, to be taken into account by the governors.

The legal rule therefore addresses a new strategy, namely: the issue of concentrations in the media sector and the creation of a new independent *European Media Services Committee*, composed of national media authorities.

It should also be recalled that, in this respect, the Commission has also adopted a complementary recommendation to encourage internal safeguards in order to ensure editorial independence.

According to the European Commission, the European Media Freedom Act will facilitate the functioning of media – public and private – across borders in the EU internal market, without undue pressure and taking into account the digital transformation of the media space, thus breaking down social paradigms (Ec.europa.eu, 2022):

❖ *Protecting editorial independence* – this Regulation seeks to require Member States to respect the effective editorial freedom of media service providers and, last but not least, to ensure a better protection for the journalistic sources, extremely necessary for the journalistic activity, the immediate purpose being to ensure transparency and independence of individual editorial decisions.

❖ *Transparency of state advertising* – the new Community legal framework comes with novelties regarding the sources of funding for the allocation of state advertising to the media, in the objectification of audience measurement systems, which have a clear impact on advertising revenues, especially in the online environment.

❖ *The independence of the State Media* – here it is the case that there are also those public media institutions, especially the funding granted to them, which, in our opinion, should be as adequate and stable as possible, in order to ensure complete editorial independence.

❖ *Testing media pluralism* – the new regulation on media freedom requires Member States to assess the impact of concentrations in the media market on media pluralism and editorial independence. It also requires that any legislative measure that could affect the media be legally justified and proportionate.

❖ *Non-use of spyware against the media* – The Media Freedom Act includes strong safeguards against the use of spyware against the media, journalists and their families.

❖ *Protection of online media content* – Building on the Digital Services Act, the Media Freedom Act includes safeguards against the unjustified removal of the media content produced in compliance with professional standards. All complaints submitted by media service providers will have to be processed by the respective platforms as a matter of priority.

❖ *The user's right to personalise the media offer* – The Media Freedom Act will introduce a right

to personalise the media offer on devices and interfaces, for example on connected TVs, allowing users to change the default settings in order to reflect their own preferences.

For example, in the text of the law, users are encouraged to ensure the necessary conditions for the independent creation of editorial content, to give journalists the opportunity to participate in important decisions for the functioning of media outlets, and to develop strategies in order to ensure the long-term stability of news content production.¹

Referring strictly to *the issue of media legislation in Romania, the role of mass media* in preserving national culture is recognized, speaking of the inherent nationalism of mass media, which emphasizes the relations between new media and the representation of symbolic national complexes (Coman, 1999). The influence of mass media on the European public space is associated with the relationship with the national environment. If there is a crisis of credibility in the relationship between politicians and the media in the national public sphere, it can create a problem for the functioning of the European public sphere (McQuail & Windahl, 2004).

The issue we analyse in this article is exclusively related to the regulation of the media in Romania compared to the legislation in the field in the Republic of Moldova.

Concretely, the situation and legal framework regulating the media activity in Romania is almost null and void, simply because of the unwillingness to regulate the press – therefore, in Romania, paradoxically, *there is no press law*.

Analysing from the point of view of contemporary Romanian realities in general and of the media in particular, we notice that, currently, there is only one legal norm regulating media aspects in the audio-visual field, namely the Audiovisual Law no. 504/2002 (Lege5, 2002).

In this respect, the legal framework and regulation of the Romanian media is circumscribed as the main instrument of a democratic society and implies two fundamental rights: the right to information and the freedom of expression. Beyond its functions, however, the media, as a means of informing the society, is exclusively a product of the society which is formed and functions.

Within this framework characterized by freedom and participation, the Romanian media has a role in strengthening the new society, supporting and monitoring a true democracy and it tends to participate in just governance and economic development. As the “*fourth power in the state*,” as an opinion former, the press creates the new public opinion and the new civil society. The risks of fulfilling their duty and daring to implement their freedom of expression have, however, often had irremediable consequences.

At the same time, the freedom of expression, both of the media and of the individual in general, is affirmed as a fundamental right. Freedom of expression may not prejudice the dignity, honour, private life of the person or the right to one’s own image. The exercise of the right to freedom of expression encompasses both duties and responsibilities.

As a participant in the sacred foundation of human rights, the freedom of the press is mentioned in numerous international treaties, conventions or agreements and is guaranteed in various forms in almost all national constitutions and legislations.

In contemporary Romania, the media is regulated in different norms and legal texts, as follows: *the Romanian Constitution, the New Civil Code, the New Criminal Code and the criminal liability of the journalist*, Law no. 504/2002 on audiovisual, Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination.

We consider as strictly necessary and of utmost urgency a unitary regulation through an organic law on the profession of journalist.

In order to defend the professional journalist in the current conditions, we consider *de lege ferenda*, to promote and adopt a law regulating all aspects of the journalistic profession. The vast majority of Romanian journalists call on the entire media community to draft an authentic Press Law, with a clear, unambiguous regulation, so that all journalists have to be responsible and show respect for the rules of the profession, but also for the public; despite economic and political pressures, journalists must at least appeal to the conscience clause, which is a matter of education and training.

The capacity to generate norms that respond to the economic realities is limited by the current institutional design itself, which defines the media primarily as a cultural institution.

In a constantly changing world, which is driven by rapid globalization processes and where financial dimensions become more important than even the national political decisions, the institutional locus of media decisions in Romania becomes anachronistic and cumbersome.

Compared to the legislation in the media field in Romania, in the regulation of the *Media in the Republic of Moldova*, there is a concrete regulation of this area, and there is even a Law on the press (Lege.md, 1995).

Promoting media pluralism in Moldova remains an important priority for the Council of Europe, a commitment promoted by the Council of Europe Action Plan for Moldova 2021-2024.

We mention that on October 27-28, 2015, in Chisinau took place the first *Forum of the media community of the Republic of Moldova*, which formulated, in a *Roadmap*, a series of constraints at the level of the normative framework for the functioning of the media, as well as at the level of media management, training of media professionals and editorial content, on the solution of which depends the development in our country of independent and economically sustainable media institutions (Mediaforum, 2015). Thus, the most important constraints are related to the unsatisfactory and inefficient legal framework in the most relevant aspects, such as: ensuring the real transparency of ownership and funding sources of media institutions; limiting the excessive concentration of ownership and legally regulating its weight in order to guarantee opinion pluralism and media diversity; the regime of competition in the media and the exclusion of anti-competitive practices in the advertising market; the exclusion of political, corporate and financial-economic influences in the process of appointing regulatory authorities and the distribution of audiovisual licenses/frequencies; a limited capacity to ensure the protection of domestic information space against propaganda media products from abroad, etc.

Although in Moldova there are mass-media institutions that respect professional ethics and

publicize reality in a balanced manner, however, in many cases, the editorial policies pay tribute to political clientelism, intensely promoting the interests and political preferences of employers. Media content monitoring reports were conducted by NGOs during and outside election campaigns (Api.md, 2014).

Even today, the media sector in Moldova requires profound systemic reforms, including to counteract the destructive effects generated by misinformation, propaganda and information manipulation. Thus, we believe that a *Media Development Strategy in the Republic of Moldova* should be developed in accordance with European practices, which would include provisions consulted and agreed by experts in the field and by most of the media community. A primary objective at this stage is the examination and adoption of a new *Audiovisual Code* with clear provisions on the legal regime of property in the audiovisual field, transparency of funding sources for media companies and actions aimed at limiting capital quotas and prevent the emergence of predominant positions in shaping public opinion.

We also consider that, in line with the above, supplementing the *Competition Law* ensures counteracting the concentration of ownership in the media and protecting fair competition on the advertising market (Legis.md, 2012). Moldova's national legislation in the field of advertising needs a review, and a new law on advertising should be widely debated with the participation of all interested actors.

The limitation of freedom of expression also stems from the general obligations of confidentiality and dignity that apply to journalists. Although every journalist has the right to express his or her personal opinion on matters that may or may not be related to their work, they cannot give the public impression, when acting in an official capacity, that they will act with subjectivity or lack of objectivity or moderation, which are necessary for the proper execution of their profession.

When a journalist expresses his disagreement with the measures proposed by politicians, the use of an inappropriate terminology would contravene his or her dignity, because this is a difficult exercise, there are those who believe

that the safest attitude for journalists is to refrain from public and individual statements on this type of issues.

Some journalists do not frequently work in the field of justice, and many of them are not trained in court matters. Thus, it may prove useful to provide information for journalists on general regulations, journalists' rights and obligations in covering court cases and the courts' expectations from the media.

This information can be provided in an easily accessible manner (i.e. website, app or other digital means), which is updated frequently and thus provides journalists with the best environment for offering fair and balanced articles to the public.

In case of strong competition, the media can watch and publish "exclusives," without considering the interests of an investigation; control over an extraordinary situation (terrorist attack, etc.) or protecting the privacy of the individuals involved.

In some countries, certain situations have persuaded political authorities to find ways to regulate the media activity. For example, in France, after the attacks of November 13, 2015, the legislature mandated the *Conseil supérieur de l'audiovisuel* to adopt the *Code of Good Conduct*, meant to prevent the excessive coverage of terrorist attacks in the audio-visual environment (television channels broadcast images of security forces preparing for an assault on terrorists, which could provide terrorists with information that could endanger hostages). This code of conduct was developed during meetings with journalists, experts, professional organisations, victims' representatives and the Paris prosecutor.

In other countries, a legitimate question may arise as to whether *self-regulation of journalists in the exercise of their profession is sufficient*. Codes of ethics and other regulations on journalists' rights and duties contain more or less precise regulations designed to guide the media in searching for and processing information.

In this context, we consider it opportune to reconsider the discussion on the institutional structure on which the media field is based, in order to create the premises for generating local creative and public interest formats and to encourage the formation of a new generation of

well-trained, responsible and creative journalists who can honestly earn their living from practicing this noble profession. However, it is encouraging that there is a real but timid dynamic in the media sphere, that access to the production and use of content has democratized rapidly in recent years in Romania.

The Romania' citizens know what the freedom of expression is and they exercise it with pathos, but there is still much to study in terms of valuing and cultivating the public interest, above the personal interests of each of us.

In conclusion, we are faced with a great dilemma: why would a "press law" be necessary in the current context if the vast majority of journalists support the fact that the guild can "self-regulate" as outlined above?

The answer to this problem, we believe, will be found as soon as possible. We specify that, so far, no agreement has been reached on the definition of the notion of journalist, although efforts have been made in this regard, which would allow, define and regulate the notion of *professional journalist*.

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Endnotes

¹ “In recent years we have witnessed various forms of pressure on the media. It is time to act. We need to establish clear principles: no journalist should be spied on because of their professional activity; No public media outlet should be turned into a propaganda channel. Today we are proposing, for the first time, common safeguards to protect media freedom and pluralism in the EU.” - said *Věra Jourová*, Vice-President for Values and Transparency.