

# **FREEDOM OF THE MEDIA**

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## **Abstract**

This paper analyzes the importance of the freedom of the media and the freedom of expression as universal democratic values. The paper also highlights the greatest enemies of the freedom of the media, and contains the most important measures and criteria established by international organizations and institutions whose primary mission is fighting for the improvement of the freedom of the media and the freedom of expression worldwide. In addition, the paper processes the issue of censorship and self-censorship as restriction factors for the freedom of the media and the freedom of information.

**Keywords:** *media, freedom of media, freedom of expression, censorship, self-censorship.*

## **1. Notion of the freedom of the media**

The freedom of the media is a liberal value that comes from the philosophy of freedom and equality of citizens. It is an expression of democratic aspirations of citizens for greater political rights and the establishment of political control over political power. There is no absolute freedom of the media. The freedom of the press (media) does not mean absolute freedom of the media to write and publish any information. The philosophy of the freedom of the media means to determine the limits of that freedom, that is to establish a balance between media freedom and freedom of expression. In life there are situations when it is in the public interest to limit the principle of maximum telling the truth because of higher social interests. That the press, or the media, is powerful and that it represents a political power was noticed a long time ago by the French emperor

Napoleon Bonaparte: "Four " (Gruevski, 2007, p. 114), or "If I would let go the reins of the press, I wouldn't even stay in power for four months" (Gruevski, 2007, p. 114).

According to the theory of social responsibility, the legal right of freedom of expression is not unconditional. It is limited if freedom of expression causes (encourages) disorder and destruction of the constitutional order, defamation, and if it jeopardizes vital social interests. The media as the fourth estate sometimes called "*the fourth branch of government*". This name points to the idea that the media are an important control mechanism for the exercise of democracy and democratic processes in a country and that they have a huge social power. Journalists as the fourth estate, with their critical attitude towards the government, control the work of the elected and appointed officials, by being able to freely write about their actions and mistakes and inform the public (Zaket, D. 2007, 180). Of course, this implies that journalists have a special responsibility to truthfully report all relevant events of public interest (Zaket, D. 2007, 180). Despite the constitutional and legal regulation of freedom of the press in many countries as a great democratic achievement, in reality there is no absolutely free medium (press), as there is no absolutely free man in any sphere. Even in the most democratic societies in the world where journalism enjoys a high degree of freedom of expression and reporting, we think that there is no absolute freedom of the press, because some information relate to sensitive military, government, economic secrets or child pornography (Zaket, D. *Journalistic ethics*, 2007, p. 144). In order to avoid violating the freedom of the press (media) and informing, a reasonable balance should be made between the public's right to be realistically informed about events and other social obligations and objectives that can sometimes be in conflict with the desire to preserve unrestricted access to information. The only solution to this problem of course is to allow the freedom of the media, but to maintain the possibility of censoring information that is thought to be dangerous and harmful to the security of the state or (society) as a whole. However this practice may become a bad precedent, because the list can be quickly lengthened with other "important information" of security or similar character. There is no country today that does not proclaim the principle of the freedom of the press (media), but there is also no country that does not hold the reins of the press (media) in some other way. Media freedom is a battle that cannot be fully won because, as long as there are states and governments, there will also be a restriction of the freedom of the press. There is no absolute freedom of the media - only societies with more or less freedom of the media. The greatest danger in restriction or suppression of the freedom of the media is government. By definition, government is power. The famous German sociologist and political scientist, **Max Weber** (1864-

1920) gave a definition of the power according to which the power is "*being able to impose one's will on the behavior of others*" (Galbraith, J. K., *Anatomy of Power*, 1995, p. 16)

With its political and institutional power the government can affect the freedom and independence of journalists and the media. With its power it is able to pass laws, decrees and regulations with which it may restrict or place the media in a subordinate status. An example of this is Turkey, when after a failed coup attempt in July 2016, the president of the country put a padlock on over 100 newspapers, magazines, TV and radio stations, and arrested more than 200 journalists. The newspaper "Zaman" was purchased by the state.

The most often applied method is certainly putting pressure on the journalist and the media to refrain from writing or publishing negative information. Great pressure on the media and journalists can come from security services, especially if they are beyond civilian control, "*through a system of blackmail, manipulation, sensationalism, demonstration of power*" (Cupic, C. *Media Ethics*. 2010, 54-57).

The biggest pressure on media and journalists are murders and arrests of media workers (mostly journalists).

In the period 2007-2006 a total number of 780 journalists were killed. Journalists were killed mostly in countries where there are armed conflicts. In 2016 the number of arrested journalists increased, especially in Turkey, where more than 100 journalists and media workers are in prison. In 2016, a total number of 348 journalists, including freelance journalists and bloggers were put in prison, which is 6% more than in 2015 (*Report, Reporters Without Borders*, 2016).

Pressure can be put on the media in the form of frequent checks and surveillance on lawful financial operations of the medium in order to warn the owners to be careful about what is published in their media. The government is not the only source of danger to the freedom of the media. In general, any powerful institution is a potential danger if by some information their interests could be violated. In addition, wealthy individuals can control the media and journalists ("the power of money"). If a very rich person does not want the media to write negatively about the violations of the laws or about financial mismanagement that he did, then that person with his/her wealth can bribe the journalist not to publish such news about him/her.

Economic power (power of money) is reflected also in the possibility to establish a medium that, if necessary, can function in the interests of a person or a group. Also, this power allows them to monopolize the media scene and manipulate it. With the help of such power the government can be

influenced, and attempt can be made to seize power.<sup>1</sup> In practice, we have examples of politicians who possessed a monopoly over the media and with their help they seized power. Such is the case with the media magnate Silvio Berlusconi and his party Forza Italia.

The Constitution of the Republic of Macedonia, Article. 16, in a clear and unambiguous way guarantees the right to freedom of belief, conscience, thought and public expression of thought, freedom of speech, public address, public information, free establishment of institutions for public information, free access to information, freedom to receive and transmit information, the right to respond in the public media, the right to a correction in the media, the right to protect the source of information, etc. The freedom of the press (media) is developing worldwide, but in many countries (Arab countries, North Korea, China, Cuba, many of the new states of the former USSR), are limited.

## **2. International standards and criteria for the freedom of the media**

Today globally there are several international organizations and institutions whose primary mission is fighting to improve the freedom of the media and the freedom of expression in the world. In 1951, the **International Press Institute** was founded based in Zurich, but there are other international NGOs such as **Reporters without Borders** and **Freedom House**. Furthermore, within the University of Missouri, USA, at the Faculty of Journalism the **Center for Freedom of Information** was established which developed the standards and criteria for determining the freedom of the press in countries, PICA-Press Independence and Critical Ability Index, which is based on 23 criteria:

**1)** Legal control over the press, excluding defamation and public insult laws (but excluding the laws governing official censorship, disrespect, forced corrections and withdrawal, suspension, privacy, security, incitement to rebellion, altercations, etc.); **2)** Special and additional legal control (threats, violence, imprisonment, confiscation, etc.); **3)** defamation laws; **4)** Organized self-regulation (the existence of press councils, courts of honor); **5)** journalist and editorial staff (for all media), in relation to which the government decides about licenses, certifications or appointments; **6)** Favoritism (of journalists) in access and publication of news from

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<sup>1</sup>In Macedonia a good example is A1 TV and its owner Velija Ramkovski who formed a party. Through the channel on his TV he put out propaganda of party views by which the public opinion was influenced.

government sources; **7)** How much the media are allowed to use the services of foreign news agencies; **8)** Government control over domestic national news agencies; **9)** Press media for which the government issues licenses; **10)** Government control over circulation and distribution, with the exception of postal services; **11)** Degree of criticism of the press toward local and regional governments and their representatives; **12)** Degree of criticism of the press toward the national government and its representatives; **13)** State or state-party-owned media (including radio, television and domestic news agencies); **14)** Prohibition of publications of opposition political parties; **15)** Broadcasting organizations or printed media, owned by networks and chains (concentration of ownership); **16)** state control over printing paper; **17)** state control over foreign exchange and over purchase of equipment; **18)** Government subsidies and / or bribing the press and journalists; **19)** Government loans to the media; **20)** Dependence of the media on state advertising; **21)** Tax liabilities of the press (higher or lower); **22)** Pressure of professional associations and trade unions (to influence editorial policy, for termination of publications; **23)** The number of marginal (economically disadvantaged) printed media.

Information and freedom of expression are the foundation of democracy. Without free exchange of ideas, citizens cannot successfully accomplish the task of democratic self-governance. If the actions of those who make decisions and govern the society are not transparent, citizens cannot participate in social life. Practice shows that most governments want their activities to be as far away as possible from the public eye. They often have a reason for this, such as national security, fight against organized crime and similar. But still, the practice in various states and the European Court of Human Rights show that they are often misused.

### **3. Freedom of expression**

Historically, freedom of expression developed as a permanent struggle of man with government and other power centers that banned or restricted it. Political freedoms and rights express political subjectivity of citizens and allow them to participate in the political life of their community (country). Freedom of expression is a democratic right and an essential expression of democracy. Therefore, this right is one of the central rights the existence of which depends largely on the exercise of other political rights, i.e. it is the prerequisite for enjoying other rights and freedoms guaranteed by the European Convention on Human Rights. It is regulated in Article 10 paragraph 1 of the ECHR, for which its creators were inspired by Article 19 of the Universal Declaration of Human Rights (1948), the First Amendment

to the US Constitution, Article 11 of the French Declaration of the Rights of Man and of the Citizen, etc. Along with other rights and freedoms, it protects the right of individuals to form and express their opinion, and the right to establish associations that promote and disseminate their collective opinions on the social reality. Freedom of expression stems from the basic human birthright – *the right to freedom*. This means that without freedom there are neither free individuals nor freedom of society. Other specific freedoms, such as freedom of spirit and freedom of communicating with other people, arise from this fundamental right. Within this freedom of spirit fall the freedom of thought and conscience and the freedom of expression, i.e. freedom of thought and conscience and the freedom of expressing opinions and ideas - *freedom of information*.

An analysis of 142 world constitutions shows that 124 of them, or 87.3%, contain a guarantee of freedom of expression. In contrast, only 66 constitutions or 46.5% prohibit torture or cruel, inhuman or degrading treatment (*Janis M., Kay R., Bradley A.: European Human Rights Law, Clarendon Press, Oxford 2000*)

Freedom of expression gives any individual, even professional journalists, the right that no one can prevent (state, government, or opposition) them to freely express themselves. If with certain actions of individuals, groups, or institutions "*expressing opinion, publication and finding out facts, data, events, are questioned, restricted or prevented, there is neither democratic public nor democracy there*" (*Dimitrijevic, Paunovic, Geric, Human Rights, 1997, pp 318-320*).

According to Article 10 of the ECHR, the protection of freedom of expression refers also to information and opinions expressed by a small group or by one person, even if such opinion is highly unacceptable to the majority. In this regard, an interesting opinion was expressed by John Stuart Mill who, dismissing the tyranny of the majority, said: " If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind" (*Mil J. S., Himmelfarb G.: On Liberty (Penguin Classics), Viking Press, July 1982*).

**The case of Thorgeir Thorgeirson:** In June 1992 in the case **Thorgeir Thorgeirson** against Iceland about the conviction of an applicant (reporter) after the publication of two articles in a newspaper about alleged police brutality. The first article had the form of a letter addressed to the Minister of Justice who was called to establish a committee to "examine the rumors that are gradually becoming public opinion, that there is increasing brutality within the police force of the capital Reykjavik, and which are being hushed

up in an unnatural way" (*Thorgeir Thorgeirson v. Iceland A239 (1992) parag. 59-70*).

In doing so, this journalist indicates only one journalist who was a victim of police brutality. Describing police officers, he wrote: "as you are the Minister of Justice, and thus manage these wild beasts in uniform that are creeping around, silently or not, through the jungle of the nightlife in our city .... the young man's roommates told me that his injuries had been inflicted by some loudmouths in a restaurant and by some policemen. At first I could not believe it, so I asked in the hospital and yes, they were right; he was the victim of the night patrol in Reykjavik..." ( *Macovei, Freedom of expression, A guide to the implementation of Article 10 of the European Convention on Human Rights, 2001, p. 52.*). In the second article the journalist (applicant) pointed out that "the police conduct was typical of what is gradually becoming the public image of our police force defending itself: abuse, forgery, unlawful actions, superstitions, rashness, incompetence." (*Macovei, 201, p. 52-52* ).

#### **4. Article 19 and international principles on freedom of information**

The international non-governmental organization **Article 19** established the international principles known as *The Public's Right to Know*. These principles establish the standards of national and international systems related to the freedom of information.

It is about nine principles. **Principle 1** states "maximum openness." The main idea of this principle is that freedom of information is to be guaranteed by the Constitution and law. This means that public authorities are obliged to publish information and every citizen has the right to receive information. When the government wants to limit this right, it must stress what that information is. **Principle 2** refers to the obligation of public authorities concerning which categories of information to publish, in particular: **Principle 3** which states "promoting open government." This means that it should be provided by the law that public authorities shall provide training of their employees in terms of freedom of information, importance of freedom of information, procedural mechanisms for accessing information, protection from abuse and the like. **Principle 4** refers to the exceptions on the basis of which the right of access to information can be restricted. **Principle 5** states "procedures that facilitate access." According to this principle, public authorities should establish open, accessible internal systems to ensure fulfillment of the public's right to receive information. **Principle 6** refers to the possible costs of obtaining some information, and it recommends that fees should not be very high, because that could discourage

the search for information. **Principle 7** requires meetings of public bodies, such as elected bodies, to be open. This Principle provides for the holding of closed meetings, but only in accordance with established procedures and in cases where there are adequate reasons for reticence. **Principle 8** or "openness or advantage." It provides for change or abolishment of the laws that are inconsistent with the principle of maximum openness. **Principle 9** provides for the protection to those who reveal information on wrongdoing or committing a crime, unrule of law, corruption, abuse or dishonesty, or serious mistakes in administrative operations of a public body.

### 5. Censorship and self-censorship

**Censorship:** Beside legal, censorship also has an ethical aspect. To properly define and understand the essence of the meaning of the term censorship we have looked it up in a few dictionaries, lexicons and encyclopedias. In the famous *Lexicon of foreign words and expressions* by M. Vujaklija the term censorship is defined as: 1) assessment, review, critical examination; 2) Official preliminary review of works for publication for approval or printing and releasing them to the public (books, magazines, movies, theater plays, etc.). 3) State institution that performs this job; 4) Assessment (Prosvetno delo, p.1028, 1980).

Censorship is defined as: "control performed by authorities, church, political organizations, private individuals, of text, information intended to the media (press, radio, TV, shows, movies, theater, etc.) before publication or performance" (Politicka enciklopedija, 1975, p. 105), or censorship is defined as an "*official review of a printed work in order to ban it, if necessary, before its publication or distribution.*" (*Encyclopedia of self-management, 1979, Savremena administracija, Belgrade, p. 79*).

)We can list many other definitions of censorship, but in general they all have in common the restriction of the freedom of the press. From the above mentioned, definitions of the term censorship we can draw a common conclusion that it represents a form of control and restriction of freedom of expression and media freedom, which represents a limiting factor of democratic trends in society and state. In other words, censorship of the press and the media is each procedure that stifles free disclosure and dissemination of information.

The notion of censorship comes from the Latin word *censura* meaning previous or additional assessment of printed works, which, if necessary can be banned before publication or distribution. Censorship is exercised by the state or some other organization and it applies not only to the press, but also to other forms of scientific and artistic expression and mass communication

(theater, film, radio, television). In the Middle Ages censorship was exercised by the church as the most influential organization at that time, and later by the state through its institutions. With the victory of the civil revolution the freedom of the press was officially introduced, and censorship abolished. Censorship is characteristic of undemocratic societies or authoritarian regimes. The fight against censorship and for the freedom of the press (media) is always an integral part of the progressive democratic theory and practice. The system of approval for printing was abolished in England in 1695, and with this the freedom of the press was for the first time formally introduced. Only with the Declaration of the Rights of Man and of the Citizen (1789) and the First Amendment of the US Constitution of 1791 the freedom of the press as one of the most precious human rights was openly declared, which definitely put an end to the intervention of the state in this sphere.

The freedom of the press (media) is an important tool for expressing and communicating different opinions, attitudes and views, as an important prerequisite for democratic communication between citizens and government and vice versa. Media freedom is among the oldest and most important civil and political rights. Through exercising this right, we are able to define how democratic or authoritarian a society is. In democratic societies there is a higher degree of freedom of expression in relation to authoritarian (repressive) political systems. Even in democratic countries, not every speech is free. Freedom of speech has to be in balance with the exercising of other human rights. This means that the freedom of the media should not be abused to infringe upon human rights (discrimination, lynching, Satanism, insults, disqualification). The problem is how to find the right balance between the possibility for the media (the press) to freely report on events, and at the same time to prevent the emergence of information that endanger the integrity of some individual and the safety of society. The freedom of the media (press) implies freedom of expression, freedom of speech, free transfer and dissemination of information in society without restriction.

Freedom of speech is one of the most important preconditions of freedom of personality and free society. Thomas Jefferson, the author of the Declaration of Independence of the United States who wrote a number of articles on this issue, was a big proponent of the freedom of the press (media). On one occasion he wrote to Elbridge Gerry: "*I am for.... freedom of the press, and against all violations of the constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents*" (Zaket, 2007, p. 151). The press, the only tocsin of a nation, is completely silenced there, and all means of a general effort taken away (Zaket, 2007, p. 151).

Censorship is a form of restricting the freedom of the media and of the journalistic profession. Censorship means control by the state (authorities) of the content of the text, of the information intended for the media (press, radio, TV, shows, movies, theater, etc.) before publication or performance (*Politicka enciklopedija, 1975, p. 105*). Today in the world, even in the most liberal democracies there is no absolute freedom of the press (media), as there is no absolutely free man. Article 16, paragraph 7 of the Constitution of the Republic of Macedonia prohibits censorship.

**Self-censorship:** Self-censorship is when a journalist/author of a text consciously makes the decision not to pass on the information to the public. Reasons for this are many, but in most cases it is fear of consequences. Self-censorship is also known as voluntary censorship. It is connected with the journalist's decision whether to report on an event or not, and if he/she decides to do it, then he/she thinks about which words to use, and whether the news (information) should be accompanied with images or not, and which images to publish. All this represents a kind of self-censorship because the journalist or the editors of the media decide what information content to offer to the public. Since such choices are made by journalists themselves and editors, without external pressures, self-censorship usually does not represent a violation of freedom of speech and freedom of the press. Self-censorship should be well balanced between the citizens' right to truthful information and the exercise of the freedom of the press. An example of self-censorship is when Jen, President George W. Bush's daughter said "I confess" to the charge that as a minor she consumed alcohol and the press mitigated it. (*Jaquet, 2007, p. 268*). Like all presidential children, they have a certain zone of privacy, and journalists do not follow them constantly (*Jaquet, 2007, p. 268*). However, as long as celebrities' children keep doing things that give headaches to their parents, they will become news and journalists will have to write about it. In the case of child pornography, it is standard practice among journalists to report on the proceedings, arrest, trial, and in general on the fight against this painful problem as an important part of the fight against crime, but their reports do not provide photos of child pornography. Journalists can effectively communicate all relevant information, but they cannot publish traumatic images. The same applies to many other areas of information.

In the journalistic profession and media circles increasingly self-censorship (voluntary) compared to forced or external censorship is preferred because journalists themselves, starting from their own moral principles and guidelines, decide whether and how they will inform about something, taking care to keep the balance between the respect for the right

of citizens to information and the respect for other rights and freedoms of citizens (privacy).

### **7. Censorship and higher public interest**

The freedom of the media and the freedom of expression are not absolute or unconditional rights. These rights are enjoyed within the limitations of other legitimate social interests, especially if it is a question of public safety and protection of all members of the community. In reality we have situations where in real life public interest is more important than the principle of maximum conveying of the truth. However, when we have censorship because of overriding public interest good moral reasons must exist for it, and there must always be an explicit provision in the legislation for restoring journalistic freedom later, as soon as possible (termination of censorship).

**Strategic military information:** Sometimes, due to higher social and civil purposes (state security, emergency, war), media freedom is limited by censorship (control) of various forms of information content (news, books, information, movies, shows and etc.). In this context, journalists have a dual responsibility. The **first** responsibility is to the public (citizens), where journalists have the professional and moral obligation to timely and truthfully inform the public about events related to the security of the state. The **second** responsibility is of a higher moral and professional rank and it refers to their obligation to be alert and to prevent disclosure of sensitive military and security information from coming into the hands of the enemy. When it comes to informing from the aspect of national security, journalists should be able to establish a balance between the information and the security of the state. Confidential documents marked confidential, relating to national security and vital interests of the state, should not be publicly disclosed if it threatens defense of the state. Certain information relating to certain decisions of the military may also be published, but such information shall not contain details that can be used to the detriment of state security and of protection of citizens' lives. In circumstances where the security of the state can be significantly disrupted, the power to censor information can be justified.

**Child pornography** and sexual exploitation of children is also an important reason for denying information to the public due to higher social goals and public interest. There are generally two types of censorship: forced (involuntary) and voluntary (internal, self-censorship).

### **Conclusion**

Nowadays, the freedom of the media and the freedom of expression as universal democratic values on global level are greatly threatened. An attack on a journalist is an attack on the truth so that the half-truth or the untruth could win; if a camera is pushed, it is actually an attack on the freedom of the median and the freedom of expression. The greatest danger comes from the centers of economic and political power which, through various forms of pressure, fail to instrumentalize and control the media. In certain countries with authoritarian regimes there is a practice of killing and arresting media workers. Media freedom and freedom of expression are contemporary democratic values without which the functioning of democracy in a society is inconceivable. The more these rights are exercised in a state, the more democratic the state is. Media freedom and freedom of expression represent a battle that cannot be fully won because while there are states and governments, restriction of the freedom of the press and the freedom of expression will also exist. There is no absolute media freedom will-there are only societies with more or less media freedom. The greatest danger to restriction or suppression of media freedom and freedom of expression is power. Censorship and self-censorship are forms of restricting media freedom. However, in certain specific situations when it comes to achieving higher social goals and higher social interest (security of the state, national defense), journalists should know how to establish a balance in informing and the security of the state.

There are a number of international organizations worldwide that control the exercise of the freedom of the media in all countries and, if they notice that this right is not exercised in conformity with international standards, they react in an appropriate manner, often through reports and rankings of state concerning the level of achieving media freedom.

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