



ORIGINAL PAPER

Restricting the exercise of freedom of expression in a democratic society - communication or coercion?

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Abstract:

In a democratic society, freedom is not subject to power. Power is only a means by which freedom is protected. This limit is exceeded when freedom is attacked in two directions: either power becomes an end in itself, when the attack on freedom is open, or power attacks the content of freedom, claiming to fight attacks on it, in fact, doing nothing but legitimizing his own attack on freedom. "Freedom is just as endangered if it is attacked in the name of anti-fascism or overt fascism." (Fromm, 1998: 12). In order to highlight the two possible attacks on freedom and to be able to compare them in order to demonstrate that both pose an equally serious threat to freedom, we will compare the attacked freedom in the name of open fascism - taking as a benchmark freedom of expression and the attacks to it from the communist period, but also the freedom attacked in the name of anti-fascism - censorship of freedom of expression in a democratic society, under the pretext of protecting the individual's freedom to be informed correctly, thus intervening to regulate the content of freedom. The ultimate goal is to demonstrate that regardless of the society in which we place freedom - democratic or totalitarian, it is essential that the environment in which the power-freedom relationship takes place be one of communication, not coercion, otherwise freedom will be subject to the same abuses by state power.

Keywords: *democratic society; freedom of expression; censorship; individual freedom; power-freedom relationship.*

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I. Freedom of the press during the communist period

During the communist period, freedom was subject to the power that gave rise to an environment of coercion in which rights and freedoms were theoretical and illusory. During this period, although there were not the same large number of normative acts adopted, the normative inflationary phenomenon (Burci, 2019: 39-46) was flourishing.

The normative inflationary phenomenon is reflected in the communist period by the tendency of the state to subject to regulation a sphere of social life in which it should be forbidden to intervene: the press. In addition to this trend materialized by law no. 3/1974 (IndacoLege[5]), a law that regulates in detail the aspects related to "freedom of expression of the press", the normative inflationary phenomenon becomes all the more evident when the regulation converts the nature of freedom understood as a barrier to state power, in the midst of coercion for that power. Thus, the regulation did not ensure the freedom of expression of the press, but on the contrary, the regulation became the strongest instrument of coercion of the press, so journalists were punished if they expressed opinions contrary to the socialist regime, freedom of expression of the press is no longer understood as a means of communication of information, but as a means of coercion used by the state power in order to satisfy its own interests.

Article 1 of the law no. 3/1974 states:

„In the Socialist Republic of Romania, the press fulfills a high socio-political mission, serving, through its entire activity, the cause of the people, the supreme interests of the socialist nation.”

„The press is meant to constantly militate for the translation into life of the policy of the Romanian Communist Party, of the high principles of socialist ethics and equity, to promote progress, ideas put forward in all areas of life and social activity.”
[...]

From this article we extract two main ideas: the purpose of the entire activity of the press is to achieve the supreme interests of the socialist nation and the information presented in the press must reflect the high principles of socialist ethics. The only directions to be followed by the press were clearly outlined, any deviation from the purpose or object of the information presented being censored. Therefore, the necessary conclusion is that without the fundamental right to pluralism, power will remain, regardless of the society in which it manifests itself, an environment of coercion and not one of communication. Censorship can also take place in a democratic society in which pluralism is enshrined as a supreme value at the constitutional level, therefore, any regulation that infringes the fundamental right to pluralism, regardless of the society in which it occurs, turns communication into coercion and freedom into oppression.

Article 3. *„Freedom of the press is a fundamental right enshrined in the Constitution. All citizens are guaranteed the right and are guaranteed the conditions to express their opinions in the press on issues of general interest and of a public nature, as well as to be informed about events in domestic and international life.”*

Also, freedom of the press was a fundamental right enshrined in the Constitution, as provided by article 3 of law no. 3/1974, an article which, if taken out of the context of this law, offers the illusion of a true democracy - freedom of the press is a fundamental right. To be a fundamental right means to be a real barrier to state intervention, to be protected from any attempt by the state to infringe this right and to be

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exercised freely, the state can affect its exercise only under the conditions of the article 53 of the Romanian Constitution.

However, the text of the law proves the opposite, being able to observe the state intervention even in the smallest aspects regarding the freedom of the press, such as: purpose and object of the information presented in the press, organization and development of the press activity, dissemination of the press, rights and obligations, relations between the media and citizens, defending the interests of society and individuals against the misuse of the right to express themselves through the press, etc.

Imperative regulation in a sphere that should be removed from the scope of any coercive regulation is tantamount to affecting the exercise of incidental rights in that sphere. Therefore, the freedom of expression of the press was a fundamental right only theoretically, its guarantee at the constitutional level not offering it the guarantees of protection against state intervention. Moreover, an excessive restriction on the exercise of a right amounts to the abolition of the right itself. From the text of the law we can observe that freedom of expression is only a set of rules established by state power, not a fundamental right of the individual.

The exercise of freedom of expression was carried out according to the indications provided by the state through the normative act, being established *a priori* all the aspects that govern this exercise, thus the notion of fundamental right was confused with the right whose exercise is organized in the smallest aspects by state power, more precisely, a right conferred by the state and not a right with which the individual is born.

II. Censorship in a democratic society

With a similar position of freedom of expression, we also faced in the post-communist period, in the case of the Party of Non-Communist and Ungureanu against Romania (the decision of February 3, 2005, final on July 6, 2005, IndacoLege[5]), in which a political party called the Party of Communists (Party of Communists who were not members of the Romanian Communist Party, PCN) and a citizen of the Romanian state, Mr. Gheorghe Ungureanu, notified the European Commission of Human Rights on 14 April 1997, pursuant to the former art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The applicants claim that the rejection of their application for registration of the PCN as a political party, by the Decision of the Bucharest Court of Appeal of 28 August 1996, infringed the right to free association, pursuant to art. 11 of the Convention. Considering the reasons retained by the courts for refusing registration, they are also considered victims of discrimination based on their political opinions, contrary to the provisions of art. 14 of the Convention.

The status and political agenda of the political party provided: "[The NCP] shall respect national sovereignty, the territorial integrity of the State, the rule of law and the principles of democracy. The statute prohibits all its members from defaming the country and the nation, incitement to war, national, racial, class or religious hatred, incitement to discrimination, territorial separatism or public violence, as well as obscene manifestations contrary to morals. [PCN] materializes the free association of citizens who militate for political pluralism, uphold the principles of the rule of democratic law, being the promoters of the option to assert their own interests, but not to deny others. "

The purpose of political formation: Communists (non-partisans) express, represent and defend the political interests of working people, regardless of ethnicity, sex, age, profession, beliefs and feelings. All those who earn their living through work

of any kind are people of work (...). In order to ensure the continuous increase of the living standard of those who work, the communists (non-partisans) act, within and with the legal means, admitted and allowed to all parties, to conquer political power, to guarantee the establishment of a democratic and human society.

Also, in order to remove any doubt, it was mentioned that: [PCN] is not a successor of the Romanian Communist Party with which it has no connection; it represents an extension of the anti-pecuniary resistance of before 1989. Initiated and formed by the communists who were not members of the Romanian Communist Party, [PCN] states that it does not deserve either the merits or the criticisms addressed to the Romanian Communist Party."(art.20)

Article 37, paragraph (2) of the Romanian Constitution provides: "*Parties or organizations that, through their purposes or activity, militate against political pluralism, the principles of the rule of law or the sovereignty, integrity or independence of Romania are unconstitutional.*"

Law no. 51/1991 regarding the national security of Romania also provides in article 3: „*The following constitute threats to Romania's national security: (...) h) initiating, organizing, committing or supporting in any way the totalitarian or extremist actions of communist, fascist (...), racist, anti-semitic, revisionist origin, separatists who may endanger in any form the unity and territorial integrity of Romania, as well as incitement to acts that may endanger the rule of law (...).*”

After examining the above texts, the European Court of Human Rights ruled: „*Analyzing the status and political agenda of the NCP, the Court notes that the texts insist on respect for national sovereignty, territorial integrity and the country's legal and constitutional order, as well as the principles of democracy, including political pluralism, universal suffrage and free participation in political life. It also notes that they do not contain any passage that could be considered a call to violence, revolt or any other form of rejection of democratic principles, which is an essential element to be taken into account, or to "dictatorship of the proletariat".*” (paragraph 54).

The Court notes that the political program and the statute of the NCP did contain passages criticizing both the abuses of the former Communist Party before 1989, from which it distances itself, including by its title, and the policy pursued after 1989 (paragraph 55). According to the Court, one of the main characteristics of democracy lie in the possibility it offers to debate through dialogue and without resorting to violence the issues raised by different political currents of opinion and this even if it bothers or worries. Indeed, democracy is based on freedom of expression.

In this regard, a political party that respects the fundamental principles of democracy cannot be concerned with the mere fact that it has criticized the country's constitutional and legal order and wants to debate it publicly on the political scene. In the present case, the national courts have not shown in any way why the program and the status of the NCP were contrary to the fundamental principles of democracy. Such a radical measure as rejecting the applicants' application for registration of the NCP as a political party, taken even before it began its activities, is disproportionate to the proposed purpose and, consequently, not necessary in a democratic society, being violated the article 11 related to freedom of expression.

We note how freedom of expression has been affected in a democratic society in which freedom should be understood in its two senses: freedom-autonomy and freedom-participation (Dănișor, 2018: 255-267). Taking into account only the status and the political agenda, although they were not contrary to the fundamental principles of

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democracy, the exercise of freedom of expression was restricted as a precaution. Such a restriction could take place after the party had been created, if the activities carried out had affected the fundamental principles of democracy.

This mode of operation in the sphere of freedom of expression is similar to the mode of operation specific to the communist regime, in which freedom of expression was restricted by establishing *a priori* all aspects governing its exercise, without existing, even to a small extent, issues that escape state intervention.

The proof of the similar way of acting can be found in article 69 of the law regulating the freedom of expression of the press during the communist period, which stated: „*Freedom of the press cannot be used for purposes contrary to the socialist order, the rule of law established by the Constitution and the other laws, rights and legitimate interests of natural and legal persons, socialist morality.*”

It follows that, as in the case of the Party of Communists and Ungureanu against Romania, the exercise of freedom of expression is restricted in a preventive manner, while also infringing on the fundamental right to pluralism. In the communist period, pluralism was an ideal difficult to achieve, there was no right to choice, only the unique option drawn by the state, but in the democratic period when the rights and freedoms of citizens and the fundamental right to pluralism are enshrined as supreme values, are allowed such interventions in the sphere of freedom of expression?

The transition from communism to democracy should mean leaving the environment of coercion in which power is manifested, and moving to an environment of communication, the main difference being that it eliminates the coercion that comes from the state and manifests on the individual, adopting horizontal communication, so that the relations of coercion between individuals and the state are reduced to a minimum, the rest of the normative space is intended for the communication environment in which the state is only an instrument that the individual uses to protect his rights and freedoms. The individual is the goal of any social system, says one of the principles of constitutional democracy (Dănişor, 2018: 27-34).

III. Case study. Freedom of expression of the press during the state of emergency in Romania

1. Freedom of expression of the press in democracy

Freedom of the press is protected in a democracy with a purpose other than that specific to the communist period. This time the press must not serve high principles established *a priori* by the state, but its purpose is related to the protection of the rights and freedoms of individuals, more precisely to the protection of the right to information. Thus, article 31 paragraph (1) of the Romanian Constitution stipulates that the right of the person to have access to any information of public interest cannot be restricted and paragraph (4) that the mass media, public and private, are obliged to ensure the correct information of the public opinion and that the public radio and television services are autonomous.

The consecration of the fundamental right to pluralism as the supreme value ensures not only political pluralism, but also pluralism that exists in all areas of social life, so that information received by individuals is not censored prior to public disclosure and is not conditioned by pressure from certain social and political groups. Therefore, one of the basic rules of categorical pluralism is that associations be independent of each other not only as a goal or objective, but also financially, even a relative financial

independence, when total financial independence is not possible (Dănișor, 2018: 262-264).

Therefore, the media's dependence on funding from social and political groups no longer guarantees the correctness and pluralism of the information presented, infringing the individual's right to information. Freedom of the press is protected in order to protect the right to information of the individual and whenever it is harmed, the main effect caused is the violation of the fundamental right to information belonging to the individual.

Correct information of public opinion is a constitutional obligation of journalists, the individual having the right to demand that the information provided by journalists be truthful in the case of news and honest in the case of opinions, without outside intervention from both public authorities and the sector private (Resolution 1003/1993 of the Parliamentary Assembly of the Council of Europe on journalistic ethics, paragraph 8 and paragraph 2). Implicitly, the journalist is obliged to be objective, impartial and this is done by bringing as many opinions as possible to the center of public debate, even in opposition, so that, by comparison, citizens can form their own beliefs, a manifestation of the fundamental right to pluralism in the sphere of information.

2. Freedom of expression and freedom of expression of the press – identity or gender-species difference

Article 30 of Romanian Constitution - Freedom of expression:

„(1) The freedom to express thoughts, opinions or beliefs and the freedom of creation of any kind, by word of mouth, writing, images, sounds or other means of communication in public, are inviolable.

(2) Censorship of any kind is prohibited.

(3) Freedom of the press also implies the freedom to set up publications.

(4) No publication may be deleted.”

We notice that at the level of terminology there is a difference between freedom of expression and freedom of the press. Thus, the freedom of expression of thoughts, beliefs is distinguished at the terminological level from the freedom of creations or the freedom of the press. The question is whether there is a gender-species relationship between freedom of expression and freedom of the press, or whether freedom of the press tends to be assimilated into the wider sphere of freedom of expression. We can clarify this aspect starting from the purpose of protecting the freedom of the press - the protection of the individual's right to information. The individual's right to information is ensured not only by the information coming from the press, as an official body, but given the way technology has evolved, most often the individual is informed using websites, reading articles published on various blogs or following the pros and cons expressed on the applications through which the communication is ensured.

Therefore, freedom of the press can no longer be limited to the press as an official body, but must be extended to all media used by the individual. The problem arises when we want to qualify a means of information as whether or not it is part of the press. What are the criteria we use: the number of followers, the nature of the information, the target audience? The right to information should be protected beyond these objective criteria, hence the freedom of the press.

Censorship will not be allowed under any circumstances, regardless of the means of information used. Even a single individual who wants to inform the public about a certain aspect can invoke the freedom of the press to do so. Therefore, although there is

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a terminology difference between freedom of expression and freedom of the press, nevertheless, freedom of the press tends to be assimilated to freedom of expression and to lose its specific character, by the fact that any individual, not only the official media, can become a means of information for those around.

3. Censorship of freedom of expression of the press during the state of emergency

In a democratic society, the state of emergency can become the perfect context in which the freedom of expression of the press is restricted. We must understand, first of all, that freedom of the press does not relate exclusively to the freedom of the official body - all the elements of the media that deal with the provision of news, such as newspapers, magazines, radio, television and the Internet, online publications and blogs (Wikipedia). Rights and freedoms belong only to the individual, the only one who can be a subject of law, the reason being that any right and any freedom is, first of all, inherent to the human nature, this inherence being the basis for future express legal consecration of rights and freedoms, in order to guarantee their legal protection.

Thus, freedom of expression cannot belong to the press as an official body, but belongs to those who express themselves through this official body and to those who have the right to information, respectively to the one who issues and to the one who receives the information. Freedom of the press is our freedom, of those who need to be heard and of those who need information. That is why by freedom of the press we must mean a two-sided freedom: the freedom to express ourselves through the official body of the press and the freedom to receive the information that is intended for us through the press.

This is also the reason why the press must be free, a freedom of speech that comes out of the influence of political and social groups, through financial and functional independence. Otherwise, it is as if our freedom is constrained, made dependent on social and political influences, unconstitutionally restricting our exercise, without respecting the conditions of article 53 of the Romanian Constitution. The same is the case where in the context of a state of emergency, freedom of the press may be restricted through censorship. It is true that in the context of a state of emergency a restriction on the exercise of certain rights or freedoms may be permitted, but this restriction may not exceed the limits of article 53 (Article 5 of the law 453/2004). Closing sites under the pretext of combating false information without a prior trial that an independent court decides on the closure of a site is a major intrusion into the sphere of freedom of expression.

During the state of emergency, the decision was made to close a series of sites in Romania on the grounds that they had published a series of articles, spreading false information about the coronavirus pandemic. The sites were closed by ANCOM, the National Authority for Administration and Regulation in Communications, an autonomous public authority, under the control of the Romanian Parliament, with the role of regulation and supervision in the field of electronic communications and postal services (ANCOM). The decision can be challenged in court, but *a posteriori*, after those sites have already been closed. In the following, we will examine the conditions imposed by the article 53 regarding the restriction of the exercise of freedom of expression of the press.

1. „*Restriction to be made only by law*”(Dănișor, 2018: 367-369). By law, it must be understood, exclusively, the normative act issued by the Parliament, the

Parliament being the one that, as a rule, exercises the legislative function, as the representative body of the Romanian people, which ensures the exercise of sovereignty belonging to the people. The presidential decree cannot restrict the exercise of certain rights or freedoms, as is the case of the Decree extending the state of emergency on the territory of Romania no. 240/2020, which provides in article 91, paragraph (3):

"Hosting providers and content providers are obliged, at the motivated decision of the National Authority for Administration and Regulation in Communications, to immediately interrupt, with informing users, the transmission in an electronic communications network or the storage of content, by eliminating it from the source, if that content promotes false news about the evolution of COVID-19 and protection and prevention measures. "

2. *"Restriction must be imposed"* (Dănișor, 2018: 369-372). Imposition is related to the nature of the situation that determines the taking of this measure. Thus, in the context of the state of emergency and the need to ensure the veracity of the information received, it was considered that the closure of these sites was necessary. It follows that, without the closure of these sites, the rights and freedoms of the individual, namely those of receiving real information, would have been seriously affected. Thus, the right to receive information is restricted in order to protect the right to receive real information.

But who judges the veracity or falsity of such information? Of course, when we are dealing with events, announcements, stories whose falsity is obvious and can be proven, because the opposite proves their falsity, taking certain measures is justified. This is the case of some sites that announced the fact that the supermarkets are closed from a mentioned date, which was proven to be false by proving the opposite. But in the case of sites that present information such as: *"The state of emergency and the pandemic are the pretext for abusive laws and the limitation of human rights"*, the information presented is subjective, related to the author's opinion, not some objectives that can be proven otherwise. Can a man be condemned for his opinion? Can his freedom of expression be suppressed (because it is about suppression, not restriction), just because he dared to question the measures taken by the state? Is it necessary to restrict in such a situation?

3. *"The restriction must be made in defense of the social values strictly listed in article 53"* (Dănișor, 2018: 369-372). In the context of the state of emergency underlying the covid pandemic 19, national security, public health and the protection of rights and freedoms are social values that may be incidental. But the protection of these strictly enumerated social values is not the purpose of the restriction, but only a means leading to the ultimate goal: the protection of the rights and freedoms of individuals. We protect public health not as the ultimate goal, because public health as a social value does not have a predetermined content, it is not a substantial social value, but only a procedure for the protection of the rights and freedoms of individuals.

The problem we face is that of identifying the rights and freedoms that need to be protected by restricting the freedom of expression of the press. As we have established, it is about the individual's right to real, truthful information. Therefore, the right to information is restricted for the purpose of the right to real information, for which purpose censorship is allowed. But what is more useful to the individual? To receive information censored by bodies with the role of determining what is true or not in matter of opinion, or to receive the necessary information that can pass through the filter of his own thinking, in order to decide for himself on their veracity? Such a

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restriction translates as follows: the right to pluralism of sources of information is restricted in order to provide the individual with a single source of information: the source considered real by national authorities. We thus return to the status that the press had in communism: to serve the purposes of the communist state and to present information that could only be in its favor, without being able to have a contrary opinion.

4. „*Restriction should be necessary in a democratic society*”(Dănișor, 2018: 383-387). In a democratic society, a restriction of the exercise of rights and freedoms is necessary only if it preserves, protects and develops the freedom to choose: the freedom to choose the information that you consider or not to be real, to have the opportunity to choose from several uncensored sources of information. Regardless of the sphere of social life in which it is incident, freedom of choice is closely linked to the fundamental right to pluralism and is one of the ideals of the 1989 Revolution, ideals that are imposed constitutionally as a vector of supreme values, in the sense that the fundamental right to pluralism must be understood in the spirit of them (Dănișor, 2018: 191-200).

Therefore, any attempt to define pluralism as a possibility to choose from a bunch of limited and censored information by the state is unconstitutional, because the 1989 revolution had as its ideal the freedom of the individual to decide for himself on: what is just, true, good, moral, without being able to impose on him preconceived notions about good, moral, just. For example, if the Romanian Orthodox Church cannot impose an official direction on what is moral in a society, considering that morality is a subjective concept and is under the protection of the fundamental right to pluralism, why an authority like ANCOM can decide on what is true or not as a political-legal opinion?

Also, in the case of Law no. 45 of April 3, 2020 on the compulsory sex education in schools, which amended article 46, paragraph 3, letter i of law no. 272/2004, the Romanian Orthodox Church, although taking a stand against the promulgation of this law, failed to impose its point of view, considering that its opinion is not beneficial for the promotion and development of children's rights. But who has the power to decide what is beneficial for the development and promotion of children's rights? The Romanian Parliament? Then where are the rights and freedoms of the individual and the fundamental right to pluralism? Do not the parents have the right to choose from several possibilities the most favorable option for the protection and development of the child's rights?

The Romanian Parliament does not introduce an option, but an obligation, coming to regulate in a field of social life in which it is forbidden to intervene, imperialistically tending to exercise its monopoly of coercion on parental authority. How did religion become an optional subject and sex education a compulsory subject? We are a secular state, but secular translates not only as non-religious, but also as the impossibility of declaring oneself an atheist state or a state with a certain religious or moral doctrine, regardless of whether it materializes in a religion or not. Sexualism can be considered a moral doctrine that cannot be imposed on everyone.

If religion has become an optional subject, motivating that the citizens of Romania are not obliged to acquire all the moral and religious values promoted by Orthodoxy, then why did they necessarily impose sex education with the values promoted by it? From this point of view, it is clear a struggle of the state in order to impose a new religion, a state religion, which decides what is good and evil, moral and immoral, truth and falsehood, this new religion being imposed on the individual. It turns out that we are not dealing with a secular state, an opinion also expressed by the

communitarian doctrine, the state not being deprived of moral or religious options (Dănișor, 2018: 55-62). Therefore, the measure of restriction is not necessary in a democratic society, producing no effect other than the suppression of the fundamental right to pluralism, so that the state manifests its imperialist tendency by imposing its own conception of just, good, truth.

5. „*The measure shall be proportionate to the situation that determined it*” (Dănișor, 2018: 387-388). Regarding the proportionality of the measure with the situation that determined it, we will refer to the following aspects: *the measure must be able a priori to achieve the aim pursued*, experiments with individual freedom being not allowed; „*the measure must represent minimal interference in the sphere of individual freedom*”, on the contrary, that of the existence of a milder interference, the measure being unconstitutional; „*the concrete result that was produced by the application of the measure to be proportional to the purpose pursued by the legislator at the time of ordering the measure*”.

Regarding the first aspect, the purpose pursued by the censorship of these sites was to protect the individual against false information. Was the measure of restriction the freedom of expression of the press able *a priori* to achieve this goal? Has been eliminated the possibility of presenting erroneous, false, information to individuals, by closing the sites? Of course not! The Internet is an inexhaustible source of information whose veracity cannot be controlled or censored, as it would infringe the right to privacy. Thus, there are various methods of communicating information in groups, with the help of certain applications, so no one will be able to stop the dispersion of information of any kind. By closing the sites, only the economic aspect regarding the amounts of money obtained by their administration was affected, however, the dispersion of false or real information was not prevented. Therefore, censorship violated the fundamental right to pluralism, affected the rights and freedoms of those who run those sites, violated freedom of expression but also the right to information from pluralistic sources, without being able to achieve the goal: the elimination of unreal information. With regard to the second aspect, the closure of the sites certainly did not represent the minimum interference in the sphere of individual freedom, but on the contrary, amid the state of emergency, the widest interference was resorted to. Thus, article 53 was violated in terms of proportionality, although the state of emergency does not imply that the restriction of the exercise of rights and freedoms may violate the disposition of this article. Moreover, we believe that the freedom of expression of the press has been suppressed by an excessive restriction - the closure of the site. By closing the site, the administrator is unable to present any information to his followers, the excessive restriction of freedom of expression leading to its suppression.

There were measures with milder interference in the area of individual freedom, such as an initial warning, the removal from the site of information proven to be false (not those subjectively considered by the authorities to be false), or financial penalties. In no case, the closure of the site is not the mildest interference, but the last one that could be used. Regarding the third aspect, that of the proportionality of the concrete result obtained, with the aim pursued by the legislator, we have already demonstrated that the protection of individuals against false information was not achieved by closing the sites, the concrete result produced being the violation of the right to pluralism and freedom of expression, all this due to the lack of an analysis of proportionality, *a priori* to the measure of restriction, reaching the result of the experiment made with freedom of

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expression, an experiment whose consequences have occurred and can no longer be removed for the past, but only for the future.

6. „*The restriction shall be applied in a non-discriminatory manner*” (Dănișor, 2018: 388-389). This condition does not imply that the measure is discriminatory on the basis, but that its application is discriminatory. Apparently, the measure of restriction the freedom of expression of the press applies to all official bodies considered to be part of the press. But were all sites that presented false information censored? The attention was directed against sites that presented certain information of a political or legal nature, trying to signal irregularities of the legal or political system. As I mentioned above, to say that the declaration of a state of emergency is a pretext for abusive laws and the limitation of human rights, is a political and legal opinion, which cannot be censored as the facts whose veracity can be proved by the contrary (x chain store will be closed starting tomorrow). Therefore, the measure is considered to be applied in a discriminatory way by the simple fact that it censors the freedom of expression of the administrators of some sites that express their political and legal opinions, although the restriction measure can be based only on false information, not on subjectives political and legal opinions, that are contrary to those exposed by the state.

7. „*The measure must not affect the substance of the law*” (Dănișor, 2018: 389-391). The measure affect the substance of the law because: it lacks legal protection and excessively restricts the exercise of freedom of expression.

The restrictive measure lacks the freedom of expression of the press without legal protection, because the conditions of article 53 are violated, so that the strongest mechanism for protecting rights and freedoms (barriers imposed on state power represented by the conditions of article 53) is ignored. Also, the measure does not represent a simple restriction, because the freedom of expression of the respective press body is absolutely impeded, by closing the site. There is an excessive restriction, there is no possibility for those who manage the sites, not only to present certain public events, but also to express their opinions, thoughts, suspicions about them and in this way to sound the alarm for those who have the right to information.

IV. The relationship between individual freedom and state power-communication or coercion

The relationship between individual freedom and state power should take place in an environment of communication, not coercion. Thus, the freedom of expression of the press should have been restricted only after a prior communication report between this body with the role of informing civil society (the press) and the state authorities with the role of ensuring the correct information of the population.

The environment of coercion betrays a struggle between individual freedom and state power, being able to observe the mechanisms used by state power for the purpose of a broader intrusion into the sphere of individual freedom. The state wants to provide content to the notions of good, evil, moral, immoral, true or false, although these notions were not made to have a predetermined content, but to serve as a means of freedom of choice of the individual, an individual who always was endowed with free will.

The individual has no longer the possibility to choose, imposing more and more accentuated predetermined directives. He has no longer the right to choose about his own religious freedom, but must submit to the directives given by the state through which an intrusion is made in the individual consciousness, tending to change it according to their own conceptions of what may or may not be religious (see the

intrusions in the sphere of the right to manifest religious beliefs, during the state of emergency). Also, the individual is required to have a single moral option, the one that the state considers beneficial for good mental and physical development, without leaving the individual the right to choose. The state is neither secular or neutral. In his imperialist approach, he outlines his own religion and his own moral doctrines, which he tries to impose on the individual, in this sense, not differing at all from the totalitarian state. Democracy cannot be considered a simple form, it has a sap, an essence, a content. At the heart of democracy is freedom, the freedom that cannot be subjected to state power, but that imposes itself on any power or authority that would initiate an attack on it. Freedom cannot be eliminated, it can only be ignored. The freedom of the individual has always existed within his being, as God endowed him with free will. Democracy means recognizing (not attributing) to the individual, at the legal level, his freedom to choose and to eliminate any attempt aimed at imposing the unique, pre-established options, elaborated by the state entities.

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