

FREEDOM OF SPEECH AS A FUNDAMENTAL RIGHT WITHIN THE SITUATIONAL CONTEXT OF THE REPUBLIC OF MOLDOVA AND TRANSNISTRIA

Marin DOMENTE

Doctor of Law, University of European Political and Economic Studies „Constantin Stere”,
Chisinau, Republic of Moldova

e-mail: domente.marin@gmail.com

<https://orcid.org/0000-0002-7572-5271>

The right to freedom of expression and information is guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in all member states of the Council of Europe. The case law of the European Court of Human Rights (ECHR) applying Article 10 shall be considered an international standard of authority on the protection of this human right, including the right to express, transmit and receive opinions and information without the interference of public authorities. Freedom of expression is the most important and preserved constitutional rights in democracies. Freedom of expression has direct impact on all fields of social and political life and gets direct and indirect protection in every democratic constitution. The right to freedom of expression is a frequent subject in public speech and has been subject to a huge volume of legal. Ever since it has become a part of the Universal Declaration of Human Rights, under Article 19, the right to freedom of speech has been an important subject of protection in all relevant international treaties. Both at national and international legal levels, the freedom of speech is considered essential as a subjective right, as it contributes to the development of a person, and being a fundamental, sine qua non, right of a democratic society.

Keywords: freedom of speech, constitutional freedom, fundamental right, Republic of Moldova, Transnistria.

LIBERTATEA DE EXPRIMARE CA DREPT FUNDAMENTAL ÎN CONTEXTUL SITUAȚIONAL AL REPUBLICII MOLDOVA ȘI TRANSNISTRIA

Dreptul la libertatea de exprimare și informare este garantat de articolul 10 din Convenția europeană pentru protecția drepturilor omului și a libertăților fundamentale (CEDO) în toate statele membre ale Consiliului Europei. Jurisprudența Curții Europene a Drepturilor Omului (CEDO), care aplică articolul 10, este considerată un standard internațional de autoritate privind protecția acestui drept al omului, inclusiv dreptul de a exprima, transmite și primi opinii și informații fără interferența autorităților publice. Libertatea de exprimare este unul din drepturile constituționale cele mai importante și păstrate în democrații. Libertatea de exprimare are un impact direct asupra tuturor domeniilor vieții sociale și politice și primește protecție directă și indirectă în fiecare constituție democratică. Dreptul la libertatea de exprimare este un subiect frecvent în discursul public și a fost supus unui volum imens de acte juridice. De când a devenit parte a Declarației Universale a Drepturilor Omului, în temeiul articolului 19, dreptul la libertatea de exprimare a fost un subiect important de protecție în toate tratatele internaționale relevante. Atât la nivel național, cât și internațional, libertatea de exprimare este considerată esențială ca un drept subiectiv, deoarece contribuie la dezvoltarea unei persoane și este un drept fundamental, sine qua non, al unei societăți democratice.

Cuvinte-cheie: libertate de exprimare, libertate constituțională, drept fundamental, Republica Moldova, Transnistria.

LA LIBERTÉ D'EXPRESSION EN TANT QUE DROIT FONDAMENTAL DANS LE CONTEXTE SITUATIONNEL DE LA RÉPUBLIQUE DE MOLDOVA ET DE LA TRANSNISTRIE

Le droit à la liberté d'expression et d'information est garanti par l'article 10 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (CEDH) dans tous les États membres du Conseil de l'Europe. La jurisprudence de la Cour européenne des droits de l'homme (CEDH), appliquant l'article 10, est considérée comme une norme internationale, faisant autorité en matière de protection du droit de l'homme, y compris le droit d'exprimer, de transmettre et de recevoir des opinions et des informations sans qu'il y ait ingérence de la part des autorités publiques. La liberté d'expression est le droit constitutionnel le plus important et le plus préservé au sein des démocraties. Elle a un impact direct sur tous les domaines de la vie sociale et politique et bénéficie d'une protection directe et indirecte dans toute Constitution démocratique. Le droit à la libre expression est fréquemment évoqué dans les discours publics et il a fait l'objet de nombreux actes juridiques au fil du temps. Depuis qu'il a été inclus dans la Déclaration universelle des droits de l'homme en vertu de l'article 19, ce droit est protégé par tous les traités internationaux afférents. Droit subjectif fondamental, tant au niveau national qu'international, la liberté d'expression est considérée comme un droit sine qua non dans toute société démocratique.

Mots-clés: liberté d'expression, liberté constitutionnelle, droit fondamental, République de Moldova, Transnistrie.

СВОБОДА СЛОВА КАК ФУНДАМЕНТАЛЬНОЕ ПРАВО В СИТУАЦИОННОМ КОНТЕКСТЕ РЕСПУБЛИКИ МОЛДОВА И ПРИДНЕСТРОВЬЯ

Право на свободу выражения мнений и информации гарантируется статьей 10 Европейской конвенции о защите прав человека и основных свобод (ЕКПЧ) во всех государствах-членах Совета Европы. Прецедентное право Европейского суда по правам человека (ЕСПЧ), применяющее статью 10, должно рассматриваться как международный стандарт власти в области защиты этого права человека, включая право выражать, передавать и получать мнения и информацию без вмешательства государственных органов. Свобода выражения мнений является наиболее важным и охраняемым конституционным правом в демократических странах. Свобода выражения мнения оказывает прямое влияние на все области социальной и политической жизни и получает прямую и косвенную защиту в каждой демократической конституции. Право на свободу выражения мнений является частым предметом публичных выступлений и регулируется огромным объемом законодательства. С тех пор, как оно стало частью Всеобщей декларации прав человека в соответствии со статьей 19, право на свободу слова было важным объектом защиты во всех соответствующих международных договорах. Как на национальном, так и на международном правовом уровне свобода слова считается важным субъективным правом, поскольку она способствует развитию человека и является фундаментальным, sine qua non, правом демократического общества.

Ключевые слова: свобода слова, конституционная свобода, основные права, Республика Молдова, Приднестровье.

Introduction

The actuality and importance of the theme.

The main form of organizing the legal relationships between the governmental powers and individuals is expressed in constitutional democracy. In its essence is characterized the presence of a written or unwritten constitution that represents the supreme law in the state and serves as a guarantee against the infringe,

even by the governmental powers, of the main human rights, that due to historical and rational circumstances, people cannot be deprived of, such as the right to live, freedom, property rights, equality, education and vote. Freedom of speech is one of the most important, a sine qua non right of all constitutional rights.

With regard to this fact, freedom of speech shall be defined as a fundamental, natural rights

according to which individuals must have the rights to express ideas through oral language and in writing, gestures or images, in any material way and concerning different matters, politics, religion, economy, history, social matters, legal issues, without fearing or suffering censorship or punishment. Even though, despite of how broad this concept might be interpreted, freedom of speech is not conceived as a right that grants the possibility of individuals to express everything that can be uttered. In the field of free speech legal doctrine, for example, the freedom of speech protection shall not be granted to an individual falsely shouting fire in a public place and causing panic. This eloquent example expresses an opinion that stays as one of the most powerful in free speech thinking and ruling everywhere: freedom of speech is a limited right and does not cover all kinds of public expression.

The right to free expression is one of the main fundamental human rights. Consecrated in the Constitution of the Republic of Moldova, it explains on the one hand the importance of application as a mean of guaranteeing the expression of opinion and involvement of civil society in the legal evolution of the state, and on the other hand evokes the qualitative expression of defending citizens' rights and freedoms.

The actuality of the approached subject also lies in the fact that by constitutionalizing the right to free expression, at least two main goals are achieved: firstly, the right of citizens to freely express their personal opinions is guaranteed; secondly, the citizen who resorts to this possibility, is protected by the constitutional norm, against any acts of persecution, sanctioning and punishment for his opinions expressed according to the law.

Free speech is commonly thought to promote democracy. Democracy rests on the principle of self-government, whereby political decisions ultimately belong to citizens either directly or through representatives. In the logic of the system, freedom of speech fulfills central functions, such as allowing voters to make

informed choices in elections. Also, thanks to freedom of speech, people can influence public policies, and authorities are subject to criticism that may lead to their replacement. Abuse of power and corruption can be denounced and maybe prevented by fear of revelation. Beyond that, conflicting interests in the community are identified and accommodated in favor of social stability, and individuals and minorities that openly dissent may relieve frustrations and do not need to use violence as an alternative to get power, to fight government programs or to gain attention for reformist claims. Finally, better political deliberations should be taken with the audience of all sides of debate.

The normative regulations, of the studies in the field and of the incomplete fundamental comparative analyzes confer an even more serious connotation on the researched issue, as the institution of the right to free expression presupposes one of the few means of defending the citizens against state abuses. Defective application of legal provisions in this regard affects the interest of society as a whole.

Taking into account the citizen's involvement in the decision-making process through the right to free expression, we express our belief that at the moment the issue of studying and ensuring the free expression of opinion is of unquestionable actuality because:

- we are in a process of transition to democracy, which shows that we are barely learning what democracy is, which implicitly involves ensuring the realization of the right to free expression;

- the mechanism for realizing the right to free expression is in continuous formation with the involvement of new circumstances due to the evolution of social life.

- the legal regulation and the realization of the right to free expression require a permanent analysis both of the legal framework in the matter and of the practical activity of the authorities in order to assess its efficiency and the responsibility with which it is respected;

- the situation of power in the state and the decrease of the citizen's trust in the state authorities became more and more accentuated, moment that emphasizes more and more the need of viable solutions for the consolidation of the trust and of the constructive dialogue between these subjects.

Taking into account the stated moments, we consider that the scientific investigation of this subject is fully current, in order to elucidate the solutions likely to strengthen the role of the right to petition for the development of democracy.

Destined for the multifaceted research of the right to free expression from the definition of philosophical concepts to the forms of realization it covers in all social relations, there is also the need to substantiate unique concepts of the institution of the right to free expression, with the possibility of correct application. material law through those of formal law.

The actuality of the paper derives from the fact that in the field literature, it will bring its additional contribution through the legal approaches performed, so it is a paper following the implementation of scientific syntheses, research, able to result in clear concepts, rules, procedures, implementation based on strict observance of legal provisions.

Scientific research methodology. The process of investigating issues related to the constitutional guarantees of freedom of expression is based on the study of theoretical, normative-legislative doctrinal material, the jurisdictional experience of the ECHR, as well as the Republic of Moldova.

Regarding the methodological and theoretical-scientific support of the paper, it manifests different research methods, such as:

a) the logical method that represents different arguments on the deductive way;

b) the comparative method, extremely useful in comparing the acts that regulate and guarantee the freedom of expression of opinion;

c) the historical method based on revealing the meaning of past events;

d) the sociological method that includes different sociological instruments;

e) the quantitative method that contributes to the systematization and legislative evidence, storage and systematization of legal scientific information.

Using the methods highlighted above, it was possible to study and analyze the whole complex of issues related to the international and national regulations of the current constitutional of the Republic of Moldova on the right to freedom of opinion and expression.

Freedom of expression is among the most respected and appreciated constitutional rights in constitutional democracies. It was adopted and applied in almost all modern and contemporary constitutions, as well as in international treaties establishing the main human rights and liberties. In most of cases it is classified as an essential right protecting individuals from abuse and infringe of other rights by the state. It is considered to be fundamental to contemporary democracies either in the idea that it is a premise to the emergence of constitutional democracies and/or that it is closely related to essential democracy values such as independence, individual sovereignty, dignity and liberty. At the same time, the goal of what speech is defined as, what speech should to be protected, the importance or the value given to the protection of freedom of speech with regard to other rights or policy concepts, and the reasons of its protection are highly disputed. These disputes have essential political and legal implications and are reflected in the differential protection granted to speech in different jurisdictions.

Freedom of speech, case of the Republic of Moldova and Transnistria

The main doctrinal and theoretic issue is to determine if the freedom of speech should be protected in a wider manner or in a different manner than non-speech activities. While pro-

tecting the freedom of speech we give more importance to speech related issues than to non-speech ones. The doctrinal debate with regard to the arguments for protecting speech also discover of what can be considered as speech. Only the action of expressing thoughts and ideas that at emphasize and give value to the concepts underlying the protection of speech could be considered as speech. As a consequence, recognizing of the standards that are the basis of the protection of free speech also determines what actions can be considered as speech. That is why in legal and normative definitions we can find what namely is considered speech and what is considered protected speech, notions that are often interrelated.

The issue of what can be considered free speech is one of the most controversial theoretical and legal disputes. Often the idea of what could be considered speech is determined by normative regulations. Even though, it is obvious that the discussed term is much too narrow to describe all the actions that are usually named by the right to free speech. The usual meaning of speech does not cover in full the concept of free speech protected nationally and internationally. Actions like waving a manifest during a meeting, promotion of political parties and ideology by wearing the signs of that party and production of art related objects are also under the protection of the right to free speech. Differently, there are actions that are namely speech that are not under the protection of the right to free speech, such as social hate promotion. In many cases the freedom of speech gives protection to spoken activities like the activities that convey ideas, expresses feelings, or express attitudes. Yet not all activities in the field of communication are under protection, for example the physically attacking a person as an expression of racial and/or sexual hatred is not protected by the right to free speech even if it is an expression of thought.

Freedom of speech and expression covers a much wider concept and phenomenon that

is expressed in different fundamental rights as speech, religion, equality, etc. So, the protection given by the freedom of speech and expression is a supplementary guarantee and covers other rights. One of the important issues of the doctrine of rights and a theory arguing the protection of any given right is to reason the arguments underlying the differential protection of actions, all of which tend to cause similar benefits and generate similar harms. In the context of freedom of speech and expression, it is most important to argue the reasons determining the differential protection of spoken and non-speech actions that have the same autonomy.

Among the usual arguments with regard to the freedom of speech is that the freedom of speech is a premise for any constitutional democracy and free society, because the concept of constitutional democracy is debatable, it is to be eloquent that there are more different constitutional democracy-based justifications for freedom speech and expression. The main advantage of a constitutional democracy is the creation of the procedure of guarantee of equity. Or constitutional democracies are based on the idea that most of the decisions are the expression of the people and are directed for the development of the society. That is why freedom of speech and expression guarantees the right of individuals that are not exponents of the state power to influence the decision process and/or to protect themselves from abuse of state power. Freedom of speech and expression is fundamental through those arguments and basic for the development of not only a constitutional democracy, but as well as, a participative democracy.

In order to develop democracy pluralistic state has to provide an overview of the principles on the basis of which it develops diverse options and program policy of governing the country, to organize activities transparent to government and to all public authorities, found its embodiment in expressing the diversity of

conceptions and opinions that are interposed between the individual and the state in the relations that take place between the members of the society and various state and non-state institutions [8, p. 37].

Ensuring pluralism in all species it's in particular pluralism political, is regulated by multiple documents and instruments international because at base basis philosophy of pluralism it is the very idea of freedom of the individual in the sense politically. With the freedom policy in her company pluralistic citizen continues to be manifest as in-a framework pluralistic institutionalized state [2, p. 26].

Being the center of numerous controversies and debates at level national and international, both from the perspective of theoretical, but also practical, theme achievement freely the right to express freely the opinion, presents a real interest, individually and collectively, create a framework generous the discussion also involves the need to clarify the report with other rights or interests fundamental belonging authorities national or individuals [6, p. 44].

Freedom of expression of opinion is a right integrator, a right generator, which generates and other rights and freedoms are inextricably linked with each other and there only in whole. In this sense, are the relevant statements of Frederic Sudre who believes that freedom of expression of opinion is both a right in itself and an as indispensable or injurious to the realization of other rights (freedom of speech is indispensable freedom of assembly, but may bring prejudice to the right to life private); both a right individual that takes the freedom spirit of each person, and a law convivial, allowing communication with others [8, p. 351].

The subjective right is the prerogative, conferred by law in virtue of which the holder of the right can and sometimes even must, to carry out a certain conduct and to ask others conduct a conduct proper law of his, under the sanction provided by law, in order to capitalize the inter-

est staff directly, born and actual, legitimate and legally protected, the agreement with interest general and the rules of social coexistence [3, p. 136].

Article 8 of the Constitution of the Republic of Moldova sets available through which undertakes to comply strictly and in good faith the obligations that in return the treaties to which it is part, and regulation of constitutional of Article 32 guarantees all member states the right to free expression of opinion.

Limits the exercise of the right to freedom of opinion and expression specifying -the fact well known that any right ends there where begin the rights of others. We attribute this sentence full legal quality, because, really, every holder of rights and freedoms has obligations, both in terms of legal, and morally to exercise rights in such a way that it should not to affect the rights and freedoms of others. Being disseminated in the public, it is normal that freedom of expression should be subject to some limitations of the freedoms of others and the needs of defense of the public interest [3, p. 24].

Organizing policy of any social human community gives rise to a complex variety of relationships between governors and the governed, to which regulation by rules has as objective to ensure a harmonization of interests, specific to different socio-professional categories, and exclusion of potential conflicts generated by the violation of rights and legitimate interests of citizens. No society can claim that has not failed to totally meet the full requirements of group or personal interests of people and to prevent abuses of the public administration, violation of rights and legitimate interests of citizens protected by law. This is the reason for which constitutions establish, in general, access to free justice and the right of any person aggrieved by an authority public to address court, to have their recognized rights violations by public government, or the right of citizens the address petitions to public authorities [1, p. 121].

In terms of realization and application of law mentioned we present and analyze the latest developments of this right both in the Republic of Moldova, as and in Transnistria.

Case study Transnistria

Authorities closely monitor and control the public media, and Sheriff Enterprises dominates private broadcasting, leading to widespread self-censorship. The territory's few independent print outlets have limited circulation. Critical reporting can result in reprisals including criminal charges, and the government also uses bureaucratic obstruction and withholding of information to inhibit independent journalism [10].

Legislation adopted in 2016 gave authorities even greater control over state media outlets, including the power to appoint editorial staff, and enabled officials to limit media access to their activities and bar the use of recording devices [10].

Travel restrictions related to COVID-19 further limited access to the territory for Moldovan and foreign journalists during 2020. Separately, telecommunications regulators in January suspended the license of LinkService, a smaller competitor of Transnistria's leading internet service provider, which is owned by Sheriff Enterprises. An appellate court blocked the decision in April and allowed LinkService to continue operating at least through the end of the public health emergency [10].

Legal restrictions on certain kinds of speech discourage free discussion. Among other provisions related to defamation or insult of the authorities, the criminal code penalizes public expression of disrespect for the Russian peace-keeping mission [10].

Speech-related prosecutions of dissidents, activists, and ordinary social media users have become more common in recent years, inhibiting expression by other residents. In addition to the cases against Communist Party politicians during 2020, a criminal investigation regarding

incitement to extremism was opened in March against Larisa Kalik, who had recently published a book documenting abusive conditions in the Transnistrian military. She fled the territory as a result. Also in March, it was reported that pensioner Tatiana Belova and her husband, Serghei Mirovici, had been sentenced to three years in prison for "extremism" and "insulting the president" via posts on Telegram in 2019. Belova was released in July, but Mirovici reportedly remained in prison [10].

Case study Republic of Moldova

The media environment is dominated by outlets connected to political parties. With few exceptions, nationally broadcasting television stations are owned by people affiliated with political parties. Reporters have previously faced difficulty accessing publicly important information and threats of legal action from public figures and politicians [9].

Journalists were also affected by the government's COVID-19 response. In March 2020, the Moldovan media regulator attempted to restrict outlets from quoting unofficial sources, before rescinding that decision a day later. Journalists also faced longer waits for the fulfillment of access-to-information requests due to COVID-19-related policy changes [9].

There is a good degree of academic freedom in Moldova. However, the Orthodox Church strongly indoctrinates the Moldovan educational system, with educational officials at all levels frequently promoting the church and Orthodox beliefs [9].

Individuals have generally been able to engage in discussions of political nature without fear of retribution. However, under the PDM's rule, there were credible concerns that criticizing the government or affiliated actors could lead to damaged career prospects. Private discussion was curtailed by surveillance against the opposition, journalists, and civil society actors. However, these fears subsided after the 2019 fall of the PDM government [9].

Conclusions

Mass communication became particularly of importance in politics and business to governments and society, due to the possibilities offered, to inform and influence people, which has caused a certain blurring of forms of traditional ways of communication. Political parties, especially those who are in government, but also those in opposition, are always in competition of disinformation, manipulation of opinion by creating opinions favorable to work their interests or ideology on which they promote. Misinformation must be banned and sanctioned.

Developing of modern technology in the means of communication made the society to confront with issues of regulatory policies particularly complex ones, in connection with written media, with broadcasting and television which are of nature to exert a great influence on public opinion. Thus, misuse can bring to significant harm to the rights and freedoms of the individual, as well as conduct the bases of democratic public life.

The information, in some cases, infringes honor, dignity and reputation of professional, and may be distorted by the critics, by manipulating opinion, by misinformation, by hiding the truth, through surveys of opinions or even by silence. Such a situation should be banned and imposed sanctions by standards legislation.

The right to free expression is the main topic discussed in many works of local as and foreign scientists which is represented as a mean of preventing an injustice.

In connection with democracy, freedom of speech tends only to justify the coverage of ideas and messages with political content or interacting in the political process. So, if democracy was the only basis for protecting freedom of speech, things like self-help literature, commercial advertising, sports journal-

ism and entertainment magazines would be left out of perspective. More important: the same could happen with allegedly defamatory or invasive statements. Probably, these types of speech would be understood as not belonging to the constitutional worries, and in this case, greater or lesser freedom related to them would then depend on the legislative power. But this is not how things are: freedom of speech is valued for reasons other than democracy, and then, it justifies much more than just political messages.

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