



## Freedom of the press: a global outlook



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# THE FREEDOM OF PRESS

The freedom of speech represents the fundamental base of any democratic order. If we take this principle as assumption, it appears simple to speak about the freedom to hold an opinion and to express it as a necessity. This necessity derives from the social utility which is recognised to a liberty of this calibre, which allows people not to hide personal opinions and convictions and to express them in order to discuss, criticise or shed a light on possible different points of view. It follows that in this perspective any State order which used its authority to put excessive restrictions to the freedom of speech of both who align with its policy and those who oppose to it, would nullify the social necessity of free thinking by preventing its own community to take part in its development and possible changings. According to Dutch philosopher Spinoza's political theory the freedom of speech must be defined as the first and inalienable liberty which is, at the same time, the most easily and stealthily manipulable.<sup>1</sup> Before the freedom of expression became a right guaranteed by several constitutions, history has been characterised by a long and bitter struggle. The recognition of this particular freedom has always been obstructed by political authorities as well as religious ones, because of two reasons: on one hand the concern that free expression could become a danger to the ruling power and to the social and political order and, on the other hand the thread represented by anti-dogmatism against theology. The turning point in the history of democratic societies was represented by the outbreak of American War of

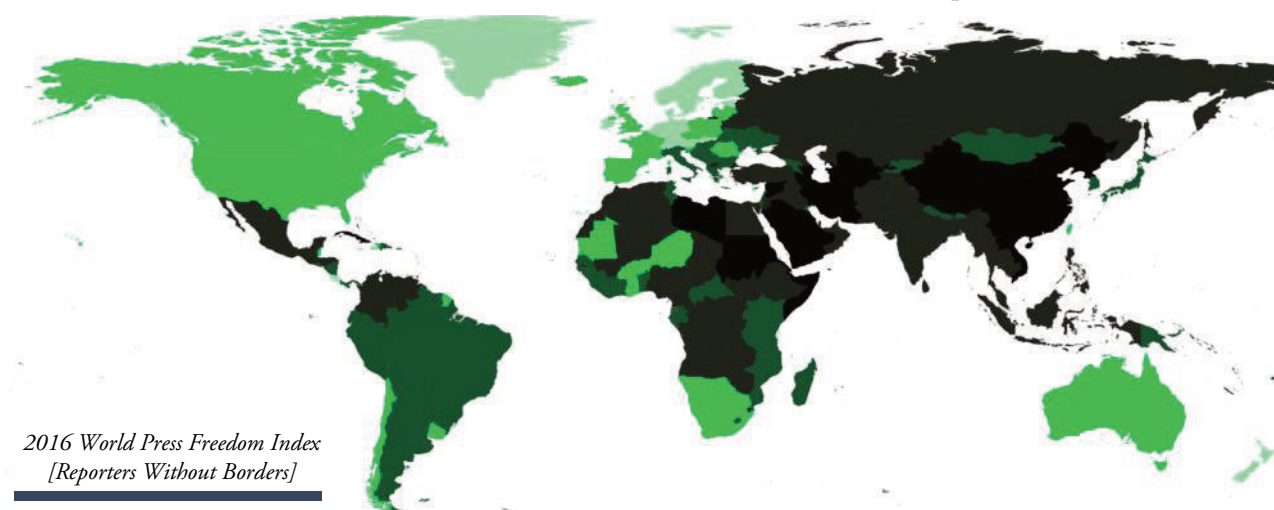
Independence in 1776, whose final outcome was the creation of the first modern democratic State along with the adoption of the first Constitution. Freedom of speech is now protected by many constitutions as a fundamental right and it is provided for by International law. First of all, the above-mentioned liberty finds its own protection within a milestone document in the history of human rights; the Universal Declaration of Human Rights, which was proclaimed by UN General Assembly in 1948. Article 19 of the Declaration reads as follow: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers"*.<sup>2</sup>

Hence, what is the scope of a legislative provision created with the aim of protect and guarantee the freedom of speech within the society? It is fundamental to understand that the freedom of expression includes in its sphere other important rights. As we can learn from the texts of various international documents as well as from some constitutions; recognising the freedom of speech, first, entails the necessity to provide for a proper protection to the freedom of information, as a corollary. The above-mentioned Article 19 of the Universal Declaration of Human Rights clearly refers to the right *"to seek, receive and impart information and ideas"*. Another regulatory act approved by the Council of Europe during the same period (1950), that we can make reference to, is the

European Convention on Human Rights whose Article 10 begins by including into the right to freedom of expression, the “*freedom to hold opinions and to receive and impart information and ideas*” as well. A further completeness of formulation may be found in some of the most recent acts, for instance, within Article 11 of the Charter of Fundamental Rights of the European Union which corresponds to Article 10 of the above-mentioned Convention on Human Rights and which is entitled “Freedom of expression and information”. It follows that to guarantee a freedom to information, which may be further split into right to inform and right to gain information from sources accessible for everybody, requires for protection

summarise some of the common limitations on free expression by mentioning hypothesis related to hate speech, classified information, liber, right to privacy, public security, political correctness and so on.

The following pieces of work aim to conduct an analysis of the current situation which characterises the freedom of the press in different countries. The freedom of press may be considered as the most traditional among the other means of communication. There are entities which work with the commitment of promoting and defending freedom of information and freedom of the press, such as French NGO Reporters Without Borders



over the different means through which opinions and information can be delivered. It is at this point that we can understand the importance of a legislation whose objective is represented by the freedom of the media and the relationship between this freedom to other rights. The freedom of the media is respected as long as it is protected from interference by public authority and regardless frontiers as well as when media pluralism is safeguarded. But, legal systems impose limitations, at the same time, on the freedom of speech, in regards to those cases in which this liberty conflicts with other basic values or rights. It is possible to

(RSF) or American Freedom House. The work carried out by these organisations has gained importance by becoming more and more influential for government authorities. Particularly, their sphere of activity includes issues press releases, fact finding reports and periodical publications regarding issues related to the development of freedom of information in specific regions. A publication which may represent a good starting point for the dissertations is RSF’s World Freedom Index, which is being unveiled every year since 2002. The index aims to provide a measurement of the degree of freedom available to journalists in

180 countries.<sup>3</sup> The outcome of the survey is determined by the combination of both qualitative and quantitative data collected during a determined period of time. The qualitative analysis is conducted by pooling the responses of experts to a questionnaire, which evaluates data such as pluralism, media independence and media environment, self-censorship, legislative framework, transparency and the quality of the infrastructure that supports the production of news and information.<sup>4</sup> The questionnaire is targeted at the experts selected by RSF among lawyers, media professionals and sociologists. Therefore, quantitative data on abuses and acts of violence

against journalists, in the period evaluated, are considered in order to construct the index. The structure of the final outcome will describe the situation of press freedom in the 180 countries by dividing them into determined categories, which evaluate the freedom available to journalists as follows: good, fairly good, problematic, bad and very bad. Followings dissertations will deal with the tricky aspects related to freedom of the press by putting attention on different set of problems contextualising the issues within the framework of International Law and International Relations.

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## Notes

1: Full text available at: <http://www.ritirifilosofici.it/?p=1375>

2: Full text available at: <http://www.un.org/en/universal-declaration-human-rights>

3: More at: <https://rsf.org/en/detailed-methodology>

4: <https://rsf.org/en/detailed-methodology>



## THE INSECURE SITUATION OF ETHICAL JOURNALISM IN ITALY

**Freedom of expression as the “cornerstone of the democratic order”: possible threats and loopholes in the legislation**

*“Freedom of the press, if it means anything at all, means the freedom to criticise and oppose”*

George Orwell

### Introduction

Since 2002, French NGO Reporters Without Borders (RSF), have published every year the so-called World Press Freedom Index which intends to give a measurement of the degree of the freedom of press in the different countries of the world. The tool, as it is provided by RSF, has become a point of reference that is quoted by media throughout the world and is used by diplomats and international entities such as the United Nations and the World Bank (Reporters Without Borders)<sup>1</sup>. The paper intends to illustrate the result of the World Press Freedom Index, published in 2016, in regard to Italy which has worsened in its placement in the rank, losing up to 24 positions compared to the last years and aims to conduct an observation on the necessity of contextualise. The first paragraph is going to outline a general framework of the legal protection of freedom of expression provided for in the Italian legislation. Hence, the following paragraphs will continue with an understanding of the meaning, usefulness and purpose of Reporters Without Borders’ Freedom of Press Index, and will specifically illustrate and analyze the outcomes highlighted by the NGO in regard to

Italy. In conjunction with the above-mentioned topic, paragraphs 3, 4, 5 will try to show to what extent organised crime; particularly Mafia-type clans, crime of defamation and “Vatileaks 2” scandal reflect the situation described by the index, which quotes this issues as main threats to freedom of press in Italy. The line of argument will end by raising a question about whether an index can be considered truthful in comparison to the reality of things or if some further observations are necessary.

### Freedom of expression within Italian legal system

The freedom of expression is the fundamental base of a liberal conception of the society. Constitutional jurisprudence has defined this liberty as the “cornerstone of the democratic order” as it represents the condition of the way of being and the development of the identity of a country in all its cultural, political, societal aspects (Traccani enciclopedia)<sup>2</sup>. In the framework of the Italian legal system the freedom of expression finds its own protection within the Constitution of the Italian Republic, which entered into force in 1948. The guarantee is provided for by Article 21, whose specific object is the freedom of thought which is ensured to every person as inviolable right. The first subsection of the above-mentioned article reads as follow: “All persons have the right to express freely their ideas by word, in writing and by all other means of communication”.<sup>3</sup> The very first analysis of the text leads to a precise interpretation of the

guarantee, meaning that the State must protect the freedom of every person to have and to express his own opinion on facts and persons as well as the freedom to join a political ideology and to understand human and social relations. But, equally, the protection ensured by the Constitution includes the right to privacy, therefore the right to not to express personal opinions, intentions, beliefs about politics, religion and so on. So, said that, what really matters to the democratic environment is the safeguard of the freedom to communicate to others personal opinions and convictions. Regarding this assumption, Article 21 contains reference to the possible ways of expression. It starts by mentioning the most common means such as “word” and “writing” and completes the legal provision by adding a general formula which allows to include every other possible means such as telecommunication, broadcasting, cinematography. This statement guides through a deeper interpretation, because it imposes a further step towards the importance of the influence that opinions and thoughts that are being expressed have on the way of thinking of other people. It is at this point that the freedom of expression provided by the Constitution features the right to propaganda as well as the right to information and to report as subsequent fundamental rights. The constitutional jurisprudence has given a unanimous interpretation on the freedom of information’s aspect, stating that Article 21 ensures not only the right to inform, which implies freedom of thought and of report, but also the right to obtain information within a system which provides for a plurality of sources of information.<sup>4</sup> Speak about the liberal conception of the democracy means make reference to a construction of the society in which the ideological pluralism appears as



intrinsic. Therefore, the possibility to have a debate, free of constraints, between different ways of thinking becomes a necessity and the right to express opposition against dominant opinions becomes an undeniable condition.

### **World Press Freedom Index, 2016**

On April 20, 2016 Reporters Without Borders’ World Press Freedom Index was unveiled, as an advocacy tool whose aim is to provide a calculation of the degree of freedom available to journalists in different countries of the world. Precisely, the index, which has been compiling since 2002 by the French NGO, ranks 180 countries and, on the basis of the principle of emulation between states, it uses pluralism, media independence, media environment and self-censorship, legislative framework, transparency, and the quality of the infrastructure that supports the production of news and information as main criteria in order to evaluate the single performances (Reporters Without Borders 2016). The index requires to scroll down the list until the 77th position to find Italy’s placement; an outcome which certifies a worsening compared to the last years and awards Italy as almost lagging behind among the European Union, followed only by Cyprus, Greece and Bulgaria. Therefore, Italian

media freedom's situation finds its place within the third bracket (brackets are in total five) which entails its definition as "problematic". In terms of general observation on the results of 2016 index, Italy ends up to provide an example of how freedom of the media has decreased not only in those countries which are traditionally repressive, but also in Europe. Same outcome about Italian situation has been confirmed by another index compiled by the American Freedom House Institute, which outlines an ambiguous reality, in which political rights and civil liberties are fully guaranteed as well as freedom of the Internet, but regarding the freedom of the press it is labelled as "partially free" (Tranfaglia N. 2016). The presentation of the World Press Freedom Index by the French NGO numbers a total of "40 Enemies" which represent common threats to freedom of press in different countries. Politicians, State officials, religious leaders, terrorism and organised crime are the main factors which feature among the so-called predators to the freedom of the press, according to the dossier. As regards Italy, the report denounces the high risk of pressures, intimidations and violence to which journalists are subjected. This set of problems is explained in further details by the NGO, which makes specific references to: first of all, the fact, reported by the Italian national newspaper *La Repubblica*, concerning "between 30 and 50 journalists living under police protection" and, moreover, the recent so-called "Vatileaks 2" scandal, involving the two journalists Gianluigi Nuzzi and Emiliano Fittipaldi, who have been put on trial by the Vatican State for having published books which reveal episodes of corruption within the Church (*Il Fatto Quotidiano* 2016). On May 3, 2016 on the occasion of the World Press Freedom Day

Claudio Fava, in the capacity of vice-president of the Anti-Mafia Committee and coordinator of the Committee that deals with mafia and information, stated that Italy is the country within the European Union with the highest risk for those who work as journalists and this is a reality which arises from not only "physical and verbal threats but also from those ones which are reckless". Concrete information has been provided recalling the fact that Italy itself numbers 28 murdered journalists, 2800 threatened ones and almost 15 living under guard. In the world, journalists who have been victim of murder represent a total of 1410 (Fava C. 2016). In the first row, Italian mafia is still playing the role of dragging the freedom of press' development down. Since 2010, Italian 25 mafia-type criminal organisations such as *Cosa Nostra*, *Camorra*, *'Ndrangheta*, *Sacra corona unita* have been included into the above-mentioned list of "predators". But crime rate is not the only problem, as political power appears to contribute to penalise the Italian State. *Reporters Without Borders* has given a general comment on the outcome of 2016 index through which it has shed a light on how, nowadays, political leaders are being "paranoid" towards journalists and how "the survivor of an independent information is becoming more and more unstable, whether regarding private media or public ones, because of ideologies, especially religious ones, which are hostile to the freedom of press".

### **Organised crime: Mafia**

"Every writer who deal with mafia groups have been, sooner or later, put under guard" claimed *Reporters Without Borders* in the 2010 index. Pinpoint why mafia-type organisations represent an actual threat to those people whose

job is to look for and present the truth may be easy, but there is a tricky tangle which is interesting to explore, concerning the reasons why mafia's point of view on freedom of the press speaks about "a dictatorship". The clash between the Italian State and mafia reached its peak in the history during the so-called period of the bombs of 1992-1993. Speaking about those years means to recall episodes through which mafia intended to hit at the heart of the State institutions, trying to weaken the basis of the civil society. It was in this context that bomb attacks took place as a sort of warning signs whose targets were represented by those people who stood at the forefront of the fight against mafia. On May 9, 1978 Italian journalist and political activist Giuseppe Impastato, who became known for his reports against mafia clan Cosa Nostra, showing its activities of illegal trafficking and collusion with politicians, was murdered by a charge of TNT placed under his body, which had been stretched over the local railway line. It followed the above-mentioned period, during 1992-1993, when Giovanni Falcone and Paolo Borsellino, two anti-mafia prosecuting magistrates, became victims of the same tragic destiny, being both assassinated in a bomb attack by the Sicilian mafia. Giovanni Falcone and Paolo Borsellino are both remembered as the main symbols of the battle of the State against the Mafia, in the Italian history. The turning point towards a reaffirmation of Italian journalism has been determined by Mafia's opinion on what we may refer to as the contemporary activity of journalists, following 1992. A university thesis quoted by Italian NGO Ossigeno per l'informazione, in an article about freedom of press published in 2014, reports statements contained in some interviews done with mafia bosses during their time in

prison. The interesting outcome of the research is represented by the way mafia understands and blames journalists' work. After the tragic events of the 90s, Italian journalism reclaimed and took back its role as guardian of democracy with the commitment of bringing such important truths to light. It was the great interest shown by the media towards the trials started after the massacres to be interpreted by mafia bosses as a further conviction than justice (Ossigeno per l'informazione 2014). Therefore, bosses started to believe that journalism has become an instrument in the hands of the State used to hit and, moreover, to vindicate throughout more incisive "calumnies" than trial charges 1992 attacks. This reality is what boss Carmelo Vasta defines, in the interview, as "dictatorship" of journalism, claiming that "magistrates, newspapers, television are weapons used by the State to react to the illegal attacks committed in 1992, giving rise to a vindictive and justicialist power system, which is hostile towards every person who is suspected to be a part of a mafia association. The line of reasoning explained by mafia exponents continues condemning this reaction of the State as in contradiction with the rule of law. According to this perspective magistrates and media are accused to bow to the willing of government bodies, casting everyday "sentences in the absence of proofs". To the question about what is more fearsome between the press and justice, Carmelo Vasta answers: "journalists and press". These worries are due to the fact that justice ensures a complete trial through which proofs are verified. On the contrary, the press does summary trials, using suspicion to create guilty parties and at the end justice follows the theories of the press." (Ossigeno per l'informazione 2014). What comes to surface is the antithesis between mafia and information

alongside the constant battle between those who work for an ethical journalism and those who aim to obstruct the freedom of the press.

In May 2016 Italian NGO Ossigeno per l'informazione carried out a study in the field of information, stating, once more, that mafia and information cannot coexist. But the study goes further into depth, highlighting the fact that journalists who have been threatened and intimidated are left alone by the system. These journalists end up losing their job, being socially excluded and in the worst case they are forced to live under guard or to escape the country. The NGO observes that a great part of the problem derives from a legislative vacuum, which prevents punishing those who impede the freedom of press. Although freedom of press represents a fundamental right which is guaranteed since 1948 by the Universal Declaration on Human Rights, which is provided for by International law, recognised by the Italian Constitution and safeguarded by the European Court of Human Rights; it is a weak right and journalists are not protected.<sup>5</sup> Ossigeno per l'informazione's project has resulted in a proposal which has been presented to the Anti-Mafia Committee. The goal is to include into Italian penal code the crime of "obstacle to freedom of expression", in order to allow the legal system to sanction every behaviour which aims to achieve this purpose. Anti-mafia Committee has agreed to the proposal and sent it to the Parliament.

### **Crime of defamation**

Going back to the World Freedom of Press index published by Reporters Without Borders, and to the indicators mentioned as negative factors about the Italian situation; pressures deriving from the political environment,

meaningfully, contribute to the worsening. Once again, this observation is linked to the importance of a proposal such as the one made by Ossigeno per l'informazione about including the crime of obstacle to the information. The regulation regarding the crime of defamation provided for by the Italian legislation is controversial. On May 3, 2016, in the occasion of the World Press Freedom Day, Italian professor and director of the "W. Tobagi School of journalism" in Milan Marco Cuniberti explained issues related to Italy's situation from the juridical point of view. According to Professor Cuniberti's speech one of the fundamental problems would be represented by the lack of a legal component in the field of the protection of freedom of press. Italian legal system, Cuniberti stated, still considers prison sentences for defamation's cases, explaining that according to the European Court of Human Rights prison sentence should be imposed only as a last resort in regards to particular cases involving so-called "hate speech", incitement to hatred or to racial discrimination.<sup>6</sup> Italy's legislation, in conclusion, is not in line with the provisions of the European Union (Cuniberti M., 2016). There are currently two draft bills waiting to be evaluated by the Parliament. On one hand, it has been submitted a draft amendment to the Penal Code which aims to increase the criminal penalties for those accused of defamation against members of the political class, the judiciary or public administration. Specifically, in this case, the intent is to raise the maximum sentence from 6 to 9 years in prison. Oppositions to the approval of the draft bills have been immediate, coming from the most important Italian, as well as European, associations of journalists. In 2013, the OSCE Representative on Freedom of the Media,

Dunja Mijatović, addressed a letter to the Italian Foreign Minister Emma Bonino, to remind her of the case-law of the European Court of Human Rights, which considers that prison sentences for defamation are a disproportionate sanction and a threat to democracy. On the other hand, Italian Parliament has been called to make an evaluation on the opposite proposal, which is about the decriminalisation of the crime of defamation. In the case of approval of both decriminalisation and pro-caste provisions the consequence would be a tightening of the penalty only in regard to the financial implications (Ruggiero B. 2016).

### Case study: “Vatileaks 2”

#### *The case*

The so-called Vatileaks 2 scandal broke out in Vatican State, during the beginning of November 2015. The event followed the previous scandal, involving the Church (Vatileaks 1), happened in 2012, which brought to light the discovery of internal divisions and conflicts linked to Vatican’s governing guidelines and the management of its Bank, the IOR-Institute for the Works of Religion. The happening came out because of a leak revealing to the public knowledge inner documents of a confidential nature. In November 2015, the second scandal was connected to the publication of information concerning public expenditure of the Holy See (which were already under investigation by the will of Pope Francesco). The event involved five people: Monsignor Lucio Ángel Vallejo Balda and his secretary Nicola Maio, Francesca Immacolata Chaouqui and two Italian journalists Gianluigi Nuzzi and Emiliano Fittipaldi.

#### *The charge*

The formal charge brought by the Vatican justice was of misappropriation of confidential information about the Holy See; piece of information which has been divulged to the two Italian journalists and, therefore, published through two books. The books by Nuzzi and Fittipaldi are entitled respectively *Via Crucis. Da registrazioni e documenti inediti la difficile lotta di Papa Francesco per cambiare la chiesa* and *Avarizia* and expose corruption in the Vatican and the struggles the Pope has faced in cleaning up mismanagement.<sup>7</sup> Italian journalists were accused of having published the books that were based in part on confidential documents. Vatican justice addressed the journalists were guilty of “moral complicity” in the disclosure of the documents and of their presence and willingness in receiving the news (Il Fatto Quotidiano 2016). Monsignor Balda and the other two church officials, Francesca Chaouquin and Nicola Maio, were accused of assembling a criminal association in order to commit crimes of divulcation of documents regarding fundamental interests of the Holy See and the Vatican State (Il Fatto Quotidiano 2015).

#### *The trial of Nuzzi and Fittipaldi*

The trial was started by the Vatican court, on November 24, 2015. The risk for the defendants was a penalty of four up to eight years of imprisonment. Since the two journalists are under Italian State, there is the possibility of a letters rogatory in order to acquire evidentiary materials related to their conduct, but no international letters rogatory was forwarded and Italian journalists have been processed by the Vatican. Nuzzi and Fittipaldi’s

names have been cleared by the declaration released by Monsignor Baldi on March 15, stated that he did not receive any concrete and direct threats by the two journalists and, therefore, that they never pushed him under pressure in order to get information about the scandals (Il Fatto Quotidiano 2016).

### *Final judgment*

According to the final verdict issued by Vatican court, on July 2016, monsignor Lucio Angel Vallejo Balda, Francesca Immacolata Chaouqui and Nicola Maio have been acquitted for criminal conspiracy because they did not commit the crime. For the crime of divulgation of confidential materials; monsignor Balda has been convicted to eighteen years of imprisonment and Francesca Chaouqui has been convicted, as well, to ten years, with a suspension of 5 years. Gianluigi Nuzzi and Emiliano Fittipaldi have been acquitted because of lack of jurisdiction (Il Fatto Quotidiano 2016).

### *Opinions on the case*

Vatileaks 2 scandal has brought into question the effective degree of freedom available to journalists who are involved with truths of this calibre, as well as doubts about the legitimacy of a trial started by the Vatican State. Few hours after the first hearing, in 2015, the accused journalist Gianluigi Nuzzi made a statement during a meeting with foreign press: “I have done my job, when a journalist get a piece of news it is his job to publish it, otherwise he is doing another job”. He continued by claiming that Vatileaks’ trial against journalists represented the expression of an obscurantist Church, which does not reflect

the revolutionary message that Pope Francis expresses every day (Nuzzi G. 2015). Since the start of the trial the two journalists received support and solidarity from different parts. An example is represented by the note endorsed by the general secretary and the president of the Federazione Nazionale Stampa Italiana (Fnsi) – the unitary trade union of Italian journalists – Raffaele Lorusso and Giuseppe Giulietti, together with the secretary of Usigrai – the trade union of the Italian national broadcasting service’s journalists – Vittorio Di Trapani. The note reads as follow: “In no country which defines itself as democratic and civil, journalists can be put on trial with the charge of doing their job and duty. To find, to verify and to unveil to citizens events and information of public interest, such as the ones told by Fittipaldi and Nuzzi, means to exercise the right to report which is a duty to journalists, other than a right”, it adds, “the right to report cannot be processed, as well as, the right to people to be informed cannot be undermined by threatening journalists of being imprisoned”. Other opinions on the events have been expressed with particular regard to the fact that Nuzzi and Fittipaldi have been processed by a foreign state. The trial had been started by the Vatican State, not by the Italian one, and concerned the contents of two books which have been published in Italy. Lots of critics have been raised on this technicality. The same observation has been underlined, by different opinions, as a critic to Reporters Without Borders’ index, which quotes Vatileaks 2 as one of the reasons why Italy has worsened its placement, by saying that it should have considered the fact that it was the Vatican State to put the journalists on trial. The final hearing lead to the acquittal of the two Italian journalists. On July 7, 2016, in a video

interview with the Italian national newspaper *La Repubblica*, Gianluigi Nuzzi gave the following statement: “we have been acquitted because we have accomplished our job in a good way. There is not only a lack of jurisdiction which has been verified by the court, but the court itself has expressed a recognition of our good work. The tension was connected to the fear of not gaining the approval of those rights which are protected by the Italian Constitution and by every consolidated law concerning the job of journalists and are highlighted as the fundamental base of a democracy. This verdict is a sign of the changing that is returning in terms of laws, sentences and jurisprudence within the Church”.

### Conclusions

There are different issues, in Italy, playing the role of hindering the freedom of press and therefore the freedom to inform and to obtain information about events which otherwise would remain unknown as hidden truths. Those who dedicate their life and their skills to work to dig into these truths are forced to be aware of the risk of being exposed to a dangerous threat or a subpoena. Mafia’s rooting, as well as, penal provisions on the crime of defamation actually contribute to make Italian situation on freedom of the press insecure. But what it seems due, as a conclusion, is an observation, although general, about the way a survey is conducted paying attention, in particular, on the methods of collecting data which surely has implications in terms of match with reality. A survey can be defined as a photography of opinions identified

during a certain period of time. In this respect, it can be helpful to make reference to the definition given by Italian pollster and professor of sociology at Università degli studi di Milano – Bicocca Renato Mannheimer who explained a survey as a “method of collecting information about population, through a series of questions which are asked for directly to a group of people, who are selected as the representative of the examined population” (Mannheimer R. 2005). As officially presented by Reporters Without Borders the methodology used to compile the World Press Freedom Index is intended to provide a measurement of the freedom available to journalists in 180 countries which is determined by pooling the responses of experts to questionnaire devised by RSF.<sup>8</sup> Hence, the target of the questionnaire is identified by RSF with journalists who are members of organisations affiliated with the French NGO, as well as, specialists such as researchers, lawyers, human rights activists. The responses of the experts (qualitative information) are combined with quantitative data on abuses and acts of violence against journalists during the period evaluated and take also into consideration the number of murdered or expelled journalists, whether a monopoly of the state on television and radio’s broadcasting exists or not and register possible cases of media censorship. The purpose is to provide an outcome in terms of media independence. If analyze the adopted methodology is useful for a better understanding of what the index aims to create awareness on, raise question on which the best way to contextualise the outcomes in regards to the specific country may appear as necessary.

## Notes

- 1: Full text available at: <https://rsf.org/en/world-press-freedom-index>
- 2: Available at: <http://www.treccani.it/enciclopedia/liberta-di-manifestazione-del-pensiero>
- 3: Full text available at: <http://www.prefettura.it/imperia/contenuti/16489.htm>
- 4: De Vergottini, G. (2008). *Diritto Costituzionale*. Ed. VI°. CEDAM
- 5: The Universal Declaration of Human Rights, Art. 19 – Right to freedom of opinion and expression: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.
- 6: Cumpănă and Mazăre v. Romania - 33348/96 Judgment 17.12.2004. “The Court observed that the sanctions imposed on the applicants had been very severe. It recalled that the imposition of a prison sentence for a press offence was compatible with journalists’ freedom of expression only in exceptional circumstances, notably where other fundamental rights had been seriously impaired, as, for example, in the case of hate speech or incitement to violence. In a classic case of defamation, such as the present case, imposing a prison sentence inevitably had a chilling effect.” Full text of the sentence available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680665a6d>
- 7: *Avarizia* is the book by Emiliano Fittipaldi based on an investigative report that builds on original documents (almost 20 pages of the work are occupied by photographic reproduction of the originals) which intends to unveil the prosperity, scandals and secrets related to the Holy See.  
*Via Crucis. Da registrazioni e documenti inediti la difficile lotta di Papa Francesco per cambiare la chiesa* by Gianluigi Nuzzi is a book conducting an analysis, which starts from recordings and unreleased documents, with the purpose of telling the difficult struggle of Pope Francis to change the Church.
- 8: Full text available at: <https://rsf.org/en/detailed-methodology>

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## INTERVIEW WITH MARCO CUNIBERTI

*The freedom of expression is one of the most ancient liberties and it has been defined as the “cornerstone of the democratic order” by the constitutional jurisprudence. What is the role of the freedom of information within the modern society? What is the reason why these specific liberties must be protected?*

The definition of the freedom of expression as the “cornerstone of the democratic order” is a view shared by both the Italian Constitutional Court and the European Court of Human Rights. The link between freedom of expression, freedom of information, as well as democracy is rooted in the necessity that the citizens’ vote must be expressed consciously. This implies, on one hand, the necessity for the citizens to gain information on topics of general interest from sources which must be accessible for everyone and, on the other hand, the possibility for the media to carry out investigations concerning matters of public interest. These are the conditions which allow the citizens to exercise a democratic control over the public powers and, in this perspective, we can understand another common definition according to which journalists, the press and the means of information in general represent the “watchdog” of the democracy.

*Under Italian law, the freedom of expression is protected by Article 21 of the Constitution of the Italian Republic. The first paragraph reads as follow: “All persons have the right to express freely their ideas by word, in writing and by all other means of communication”. Could you*

*explain the interpretation given to the legislative provision? What is the scope of the provision in terms of fundamental rights?*

Apparently, Article 21 - subparagraph 1- of the Italian Constitution only provides for the freedom of opinion, which is conceptually different from the freedom to communicate information and others’ ideas, as well as from the freedom to receive information. In this regard, from the literality point of view we are in the presence of a guarantee which is more narrow than the one provided for by Article 10 – subparagraph 1- of the CEDU, or by many others modern constitutions, which protect individually the freedom of opinion and freedom to criticise, and the freedom to obtain information and to be informed. Nevertheless, the first subparagraph of Article 10, at least since the early ‘70s of the last century, has always been interpreted by both the doctrine and the constitutional case-law as an inclusive legal guarantee. This means that the above-mentioned subparagraph 1 implicitly includes the freedom to inform, that is to say the freedom to disseminate information and others’ ideas, as much the freedom to access information sources. This statement is related to the obvious observation that in order to be able to express a thought, it is necessary to have the possibility to form an opinion, therefore, the right to be informed becomes a prerequisite. In regard to the reference that the last part of subparagraph 1 makes to the “means of information”; since it cannot imply that every citizen can have full access to mass media (a

condition which would be unobtainable, especially within a system in which those means are organised as enterprise and mostly privately-owned), the aforementioned part of subparagraph 1 must be interpreted in terms of guaranteeing, at least, an adequate level of media pluralism. According to this interpretation, the prohibition of the formation of oligopolies, as well as monopolies form neither in the area of single means of information, nor within the information system in general appears as consequent.

*The press represents the most traditional of mass media. Do you agree that the freedom available to journalists is an expression of the degree of democracy of a country? There can be cases in which the job of reporting collides with other fundamental rights, therefore a balance is needed. What are the legal limits established to the freedom of press?*

For the reasons already stated with the regard to the first question, there is no doubt that the freedom available to journalists gives an important indication of the level of democracy of a country. Referring to the limits to the freedom of the press, according to the Italian Constitutional Court they must comply, at least, with two conditions: a) they must be focused on the safeguard of goods, values or interests protected by the Constitution, which, therefore, require to be balanced with the freedom of expression in order to find a satisfactory equilibrium; b) these limits must be provided for by a legal provision, in such a way that they can be subjected to the democratic control of the representative assemblies as well as to the review of the Constitutional Court. Provided that limits to the freedom of press must be legally required, the balance between

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the limits and freedom of speech is not always implemented by the legislator. For instance, in the case of the protection of honour and reputation (which finds its own constitutional foundation in Articles 2 and 3) the object of the legal provision is limited to the crime of defamation (Article 595 of the Penal Code) and there is no reference to balancing the rights. In this case, as well as in other cases, the operation of balancing may be carried out directly by the judges. Taking the example I gave of the safeguarding of reputation, the judges have identified and highlighted the conditions under which the so-called “right to report” takes precedence over the right to honour and reputation (truth of the matter, social interest, appropriate exposure).

*Does a legal definition of “journalist” exist? In which way the profession of journalism differs from other intellectual professions?*

A legal definition of journalist does not exist in Italy, despite the profession of journalism is regulated in a more severe way than in other countries, even with the creation of a register of journalists and a professional body or association. The definition of journalist has been established by the Court of Cassation and it refers to the activity consisting of collection,

development and dissemination of information to the public, which is conducted continually, regularly and it is remunerated. However, the title of “professional journalist” shall be reserved solely to whom undertake such activity exclusively or, at least, in a prevalent way, which is to say that this activity is the main source of income. The difference with the other regulated professions is represented by the fact that, often, the journalist does not work as a freelancer, but is part of a company structure, therefore he is an employee. In addition to this, unlike other professions, the typical activity of a journalist corresponds to the exercise of a constitutional liberty, which is guaranteed to “everyone” (Article 21). This condition implies that everyone may, occasionally, undertake information and critical activities (for instance, by publishing an article for a newspaper) and that the professional exercise is limited to the case in which this activity is carried out in a continuous and regular way, plus it is remunerated.

*What are the duties of a journalist toward the public opinion in order to guarantee the citizens good information?*

The duties of a journalist are listed, in a general way, in Article 2 of the law regulating the association of the journalistic profession (Law n. 69, 1963) and then they have been specified in innumerable codes of conduct. In short, the first duty is to always respect the truth of the matter and operate in good faith, in order to facilitate a climate of trust between the press and the readers. Secondly, the duty to respect the work of colleagues and to collaborate with them in a loyal and fair way. Thirdly, the duty to protect the confidentiality of journalistic sources. Further duties are identified by the

codes of conduct and, mainly, conform to the respect of human dignity and right to privacy, in particular in regard to the so-called “weak operators”: first of all, minors, but also people affected by diseases, those whose freedom is under restrictions and so on.



*Article 3 of Italian Press Law (Law 47/1948) states that “every newspaper or magazine must have a responsible director”; which are the duties and responsibilities of the director?*

The duty of a responsible director is to review the content of the publication which he is running, in order, above all, to avoid that crimes might be committed through the publication. For this purpose, Article 57 of the Penal Code provides that the director, in case a crime was committed through the publication he is supervising, he would be responsible for negligence for having omit the control over the content, with a reduced sentence compared to the punishment imposed to the author of the publication. It is important to specify that the responsibility of the director does not replace,

but shall be added to the responsibility of the author of the publication. Furthermore, a civil responsibility for covering damages may be added to the above-mentioned criminal liability; the author, the director and, in this case, the editor as well shall be jointly responsible for damages. The extent of liability (only of the civil one) to the editor, in the perspective of protecting third parties who could be damaged, is justified by the fact that the editor is normally a subject provided with greater disposable income than the one of journalists, therefore he may cover compensation more easily.

*The modern society has witnessed the development of new information and communication technologies. What is the impact of the new reality from a legal point of view? Do you think a reinterpretation of the constitutional liberties, in terms of “new rights”, is necessary, as a consequence of the use of these new technologies? Or, on the contrary, do the existing legal instruments have to be adapted to the new requirements for protection?*

I do not believe a reinterpretation of the constitutional discipline is needed: the existing constitutional principles can properly guide the jurist in addressing the issues posed by new technologies. What is currently missing is a legislative discipline which is adequate to adapt those principles to the new realities, so in the absence of such discipline the task has fallen on the judges who, following a very confused phase, have been able to identify a few core points in some cases. It is possible to make an example by mentioning the issue concerning the extension of the concept of “press” to

telematics publications. After a period of great uncertainty and confusion, the jurisprudence (lastly with an important pronouncement of the Court of Cassation in 2015) seems to be finally on its way to a tendential equivalence between written and telematic publications, on condition that there must be a substantial similarity from both the structural point of view (a newsroom organised with professional staff) and the functional one (with the aim of disseminating to the public information and ideas). And, eventually, with the obvious exclusion of those contents and materials which are not produced by the editorial staff, but introduced by the readers (for instance, comments to articles).

*Constitutional Court’s ruling on the right to information stated that it is necessary to “guarantee full external pluralism in order to satisfy the citizen’s right to information, through a plurality of voices”. Is pluralism of the media fully guaranteed in Italy or there are, or have been, restrictive influences on it? Does any sort of monopoly on information exist?*

The Constitutional Court distinguishes between two ways of implementation of the principle of pluralism (in direct connection with Article 21, as explained in the answer to question 2): the so-called “external” pluralism consists in the existence, within the open market of the information sector, of a plurality of publishing initiatives, each of which is free to have its own orientation. Therefore, it is through their variety and multiplicity that all the different points of view (cultural, ideological, religious etc.) which coexist within a complex society are being guaranteed. This is, for example, the case of the press, where the

plurality of private initiatives should be able to guarantee a sufficient degree of pluralism throughout the system. It goes that even external pluralism cannot exclude public intervention in terms of rules which aim to avoid that, in a market such as the one of information sector, the natural tendency towards the concentration of the market leads to the formation of oligopolies or monopolies. Regarding Italy, this objective has been pursued through the legislative rules on concentration limits, first of all relating to the press (since 1981), and then, after the opening up of the broadcasting market to privates, also regarding the television (the lacking of opening up of the market to privates, in Italy, represented the result of a legislative choice. The changing has been determined by pronouncements of the Constitutional Court since the early '70s). Still talking about television, there are technical reasons (ex. restricted available TV frequencies) or economic ones (necessity of significant amounts of capital in order to be able to start a business in the information sector) which do not allow to consider the obtainable level of external pluralism sufficient. The so-called "internal" pluralism shall be added to the external one. Internal pluralism corresponds to the imposition, to one or more subjects (either public or private), of respecting duties of pluralism, within the framework of their own broadcasting, meaning the duty to give voice to a plurality of tendencies and points of view. Particularly, this is the case concerning television broadcasting, where the above-mentioned technical and economic reasons, even with a system of limits, only allow to achieve a limited external pluralism. As a consequence, it is necessary to provide also for a form of internal pluralism in addition to the (limited) external one which is represented by

the coexistence of a certain number of private broadcasters. Looking at the Italian experience a form of internal pluralism has been identified with the existence of a public service broadcasting which is monitored by the Parliament and managed by a company in public hands. And this public broadcasting has the duty to allow room for different opinions and schools of thought which exist in the society. Although, it must be added that the event of Italian television is characterised by a few peculiarities and this is because the opening up of the market has not resulted from a legislative decision, but happened in a chaotic way, causing the creation of a private entity which has adopted a monopoly position. So, for many years, the radio and television system which is defined as "mixed" has seen prevalent presence of only two operators, the State television company (RAI) and the private commercial broadcaster (Mediaset). The various attempts of opening up the market by imposing concentration limits had poor results in this context. In recent years, there has been a limited development in terms of pluralism, both because of the entering in the market of a new large operator (Sky), which operates on the different satellite platform and offers pay channels though, and because of greater availability of channels resulting from the transition towards the digital terrestrial technology. Despite this, also because of the mounting economic difficulties of the sector, which derive from the fact that investments in advertising are, increasingly, moving to the internet, we have not witnessed so far, and probably we will not either in the future, to the rise of new entrepreneurial actors comparable to the existing two (or three if we include also satellite TV) and able to provide for "general" information (meaning a service comprehensive

of both information and entertainment) as done by RAI and Mediaset. There are, actually, new initiatives, but they are represented by theme and niche channels, whose impact on public opinion is, inevitably, limited. Therefore, overall, it is possible to say that pluralism of the broadcasting services is still under many limitations, which are not only legislative but also linked to the economic situation that allow just a few so-called mainstream TV operators to survive. Another critical point is represented by the implementation of internal pluralism in the public service, which is still strongly influenced by the interference by political powers within the management of RAI.

*On May 3, you took part in the World Press Freedom Day. In your speech, you gave a legal viewpoint on the protection of press freedom in Italy, by referring to a strong lack within the legal provisions. Specifically, the main issues highlighted concern the matter of the protection of journalistic sources and the legal framework of the crime of defamation. Could you explain, in brief, the implications of the two issues? Does Italy follow the directives of the European Court of Human Rights?*

In regard to protection of journalistic sources there is a deficit of safeguarding compared to the standards of the European Court and the Council of Europe, in particular with reference to the parties who can avail themselves of it. Council of Europe bodies adopt a considerable open position: even if the protection of the sources remains a privilege of those who are professionals in the information sector, therefore it cannot be invoked by the private citizens who occasionally exercise the freedom of speech (for example, via a blog entry, a

forum, a Facebook page or even a journal article), nevertheless, either the European Court of Human Rights or the Committee of Ministers interpret the concept of professionalism in a wide way. This interpretation includes not only the professional journalist, but also for instance the intern, the editor and the employee of the newsroom as well, who come to know the identity of the journalists' source. Italian legislation, instead, circumscribes the protection of sources only to professional journalists, who are members of the Bar, therefore excluding interns and publicists (which are those ones who write in a continuing and remunerated manner but also exercise another profession) and, at the same way, excluding the editor and the newsroom and editor's employees. In many cases this allows to bypass the guarantee, for example by asking the editor or his employees to reveal the name (or to deliver the material from which it is possible to trace down the name), rather than asking the journalist. Particularly, the situation concerning publicists is critical, especially because in Italy, since there are restrictions imposed to access the Bar as professionals, many of journalists own the qualification of publicists, even though they exercise the activity in an exclusive and permanent way and therefore they are in fact journalists. Nevertheless, those people cannot invoke the protection of sources, since they are not "professionals" from the legal point of view, even if they exercise as professionals from a content point of view. Regarding the sentences for libel, the European Court of Human Rights and the Council of Europe believe that those sentences should not be such as to create a considerable dissuasive effect on other journalists, so that they would be discouraged from acting their role of "watchdog" of

democracy. Prison sentence, for example, should be deleted or, at least, limited to particularly serious cases (the Court recalls the example of “hate speech”), as well as fines should be evaluated with proper attention, since they are also suitable to determine the above-mentioned dissuasive effect. Against this, our legislation still provides for prison sentence for libel cases, as alternative to financial penalties for less serious cases (anyway, in these cases judges tend to apply fines). Instead, in case of defamation via press which consists in a specific fact, the legislation provides for fines and prison sentence cumulatively. There are actual legislative projects aiming to delete prison sentence, but which increase the amount of fines at the same time, they can reach up to ten thousand euros, and this result does not seem to correspond to the dictates of the Court. It must be said that, however, prison sentence is applied to very few cases. But there is another problem which arises from the fact that a journalist can be obliged to respond for compensation for damages at civil level, in alternative to or together with the criminal penalty. Compensation for damages, in these cases, is often exorbitant, since it can amount also to hundreds of thousands or millions of euros. It is true that when it comes to judges they systematically reduce the penalty (the average amount for compensation for damages is of a few tens of thousands of euros), but such high demands for compensation have a strong deterrent effect, even because they create difficulties for editors and those who are economically weaker. It would be, so, necessary to introduce mechanisms which discourage the defamed person not to claim such high compensation, for instance, by establishing that in case the claim is rejected, the person who stated it will be considered responsible for

compensating the journalist or the newspaper unfairly sued.

*Italian NGO, Ossigeno per l'informazione, whose aim is to document all the cases of violent or abusive limitations on freedom of expression in Italy, has recently made a proposal about including in the Penal Code a specific crime which would allow to punish every behaviour that realised an “obstacle to information”. Do you believe a similar reform would be meaningful in terms of protection to the freedom of information?*

One of the reasons why Italy has a critical position within the “indexes” on freedom of information is represented by frequent threats and intimidations towards journalists, deriving especially from criminal organisations. Obviously the penal code already provides for punishment against those kinds of behaviours, in case they realise threats, injuries or other crimes, which may damage the journalist as well as every other citizen. But, a strengthening of this protection might be necessary, for instance, by establishing that these same crimes would be punished by more severe penalties when they are intended to impede the freedom of information. But, especially, it should be important to focus on assisting those journalists who are victims of such intimidations by providing them protection, particularly when it comes to journalists who do not have a great public exposure and therefore risk to remain isolated, unlike more notorious journalists who have the possibility to confer visibility to intimidations and pressures they receive so that they can easily have access to measures of protection.



*After the terrible earthquake which devastated Italian city of Amatrice, on August 24, a satirical cartoon about the event published by Charlie Hebdo has caused a great debate in Italy. Furthermore, it has led to the anti-defamation action started by Amatrice's mayor against the French satirical magazine. How is the right to satire defined? Which is the border between satire and defamation?*

The right to satire differs from the right to report and to criticise because of the possibility to use a corrosive and almost unfair language. But, normally, this is justified when the person subjected to satire is an influential public figure who is scaled down and “desecrate” through the satirical comment. This poses a problem in regard to expressions such as Charlie Hebdo’s satirical cartoon, or satire on religion, which targets not single powerful personalities but entire collectives of “common” citizens. Yet, we may doubt about the efficacy and utility of appealing for criminal-law protection in this field, at least as long as the satirical manifestation does not give rise to incitement to hatred. Did Charlie Hebdo’s satirical cartoon cross the line? Did it realise a form of incitement to hatred? I do not believe so. It was probably a satirical cartoon of poor taste, but it is very dangerous to identify the dividing line between licit and illicit on the basis of artistic “quality”, or by evaluating if the satire’s attempt was successful or not. In many cases, the best sentence is given by the outrage that such a poor taste and particularly vulgar satirical message raises among the readers, and every legal action would be linked to the risk of conferring the author of a questionable message the status of protector of the freedom of expression.

*On April 20, Reporters Without Borders (RSF) published the 2016 World Press Freedom Index. Italy has lost up to 24 positions compared to the last years. Among the reasons given by the NGO the main issues regarding Italy would be represented by numerous cases of journalists put on trial for having done their job, as well as violence and threats toward them. According to you, what are the actual threats that Italian journalists risk to be forced to face?*

In general, my impression is that Italy’s placement on these ranks is quite exaggerated. The freedom to report is recognised and protected in Italy in a way that does not substantially differ from what happens in other countries. The critical points from the legal point of view are the ones listed by the previous answer to question n. 9, and in particular, of course, the relative ease with which a journalist can be held to answer to defamation, or, especially, to exorbitant claims for compensation. It needs to be said that judges often properly apply the principles on the right to report and acquit the journalist where he has acted correctly. And yet, the possibility of having to face such accusations or such claims of compensation creates itself a deterrent effect on the journalist, by affecting his relationship with the editor as well, who can be held liable for damages, as explained in question n. 9. It would be necessary to elaborate mechanisms which would punish those who raise clearly unfounded claims for defamation, or seek excessive compensation where those claims end up in being without merit. Besides the legal issues, there is the factual situation and the problem connected to threats and intimidations toward journalists; on this regard I refer you to the answer to question n. 10.

13 Do you think the binomial ethic-journalism must be considered as indivisible? How would you define the ethical journalism? Could you give us a few examples in the history of Italy?

More than ethic, I would be talking about professional responsibility: the journalist must pay particular attention on the verification of sources, on the verification of the social interest of information he disseminates, as well as on the correct and respectful presentation of human dignity. Particularly, a journalist should exercise his activity, of course in compliance with the editorial orientation of the newspaper he works together, but without letting any kind of pressures affect him. In addition to the above-mentioned threads and intimidations we

are referring, mostly, to those pressures which can be exerted by the political environment and, even more, by those who hold economic powers. Moreover, this would assume a greater stability, as well as security of journalists' job; a condition which is being made even more difficult by the development that is characterising the labour market also in the journalistic field. Therefore, I believe that, actually, the greater thread for an "ethical" or "responsible" journalism, besides from the above-mentioned forms of intimidations, is represented by the everyday and more hidden conditioning of the economic needs and requirements of the market on journalists' activity.



# MEDIA LAWS IN HUNGARY AND POLAND

## Introduction

Freedom of press is categorised as one of the characteristics for a democratic government. When freedom of press is challenged by reforms claimed as “necessary measure to uphold national values”, it also affects democracy within the state itself. It affects the democracy by looking at how the reforms changed the political structures, whether it is giving limitations or not towards the freedom of press. Not just affecting democracy, limitation on freedom of press also affects human rights as people have rights to voice their opinion and get access to substantial and unbiased information.

Media is a political tool which can be used in different ways. It can be used as a bridge connecting the government and the public. The bridge is built based on discussions and sharing of opinions between the government and the public through media outlets. In this case, media is seen as a tool the public can use to share their concerns and the government to respond and vice versa. On the other hand, the case would be different if the relationship between the government and the public is not mutual, by viewing that the former has more power over the latter by controlling the content of the news and media institutions. In this case, media is a tool used by the government to enforce their agendas and for sharing propagandas without giving the rights for public to share their opinions.

The latter case can be seen both in Hungary and Poland. Both countries have passed a new

media law which challenged the freedom of press within the countries. Hungary passed a controversial media law in the end of 2010, while Poland passed a new media law in the end of 2015. The media reforms came right after the right-wing parties came into power after being elected, Fidesz party in Hungary and Law and Justice party in Poland. The government of Hungary and the government of Poland both have implemented the media laws with similar practices which have been criticised by many media organisations and also by the European Union (EU). There is a growing concern over the freedom of press in both countries which questions the democratic practices, or the lack of it, in Hungary and Poland.

This article will explain briefly on the media laws in Hungary and Poland, and also the criticisms towards both governments after they passed the laws. It will also highlight the similarities between the laws in Hungary and Poland.

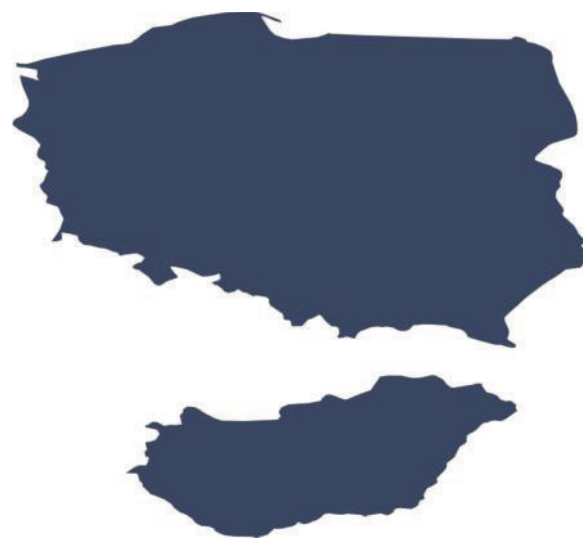
## Media law in Hungary

In December 2010, the Hungarian parliament passed a controversial media law which compromises freedom of press and pluralism in Hungary. It overhauls the state-owned media's control by creating a Media Council and appointing five people from the Fidesz party to manage the council.<sup>1</sup> The law allows the Media Council to oversight the media and to impose heavy fines of up to 700,000 euros for a TV station and 89,000 euros for an online

publication for content that is deemed as “not politically balanced,” “of relevance to the citizens of Hungary”, or “violates human dignity.”<sup>2</sup> The Media Council also has the authority to punish offences against religion and the nation, while journalists can be forced to reveal their sources when national security is involved.<sup>3</sup>

The criticisms came along soon after the law was passed. The law was criticised as jeopardising freedom of media in Hungary. The law allows the media to impart selective news to the public and restrict the information that is against the government. Having the two-thirds majority in the parliament and five appointed members of the five-member-only Media Council, the Fidesz party has its way to do so. Many people have raised their concerns over the mechanism to elect the Media Council members and the “dual appointments” to the positions of Media Authority president and Media Council chairperson.<sup>4</sup> Both the mechanism and the “dual appointments” give the government, especially Fidesz party, de facto control over the Media Council in Hungary. Promptly after the controversial media law was passed, many senior executives and staffers worked at the media institutions were removed as they were believed to be critical towards the Fidesz-led government.<sup>5</sup>

The EU has also condemned the Hungarian government’s decision to pass such law as the law is believed to be in violation against the fundamental values of the union. Hungary is seen as “the bad pupil of Europe” because it has been exploiting the ambiguity which exists within the union itself.<sup>6</sup> Some EU officials also perceive Hungary as a country that deviates from the union’s values and will have the probability to become a bad example for other member states.<sup>7</sup> Hungary has also been



criticised over its political actions towards refugee crisis nationally and regionally. There is a growing concern over the Hungarian government imposing illiberal policies. However, Hungarian officials counter the criticisms over its political actions by accusing them of political partisanship, ignorance or bad faith.<sup>8</sup>

### **Media law in Poland**

The issue of press in Poland has taken a spotlight since December 2015 when the government decided to reform the Polish media to be more of a “national cultural institution”<sup>9</sup> which serves the Polish people’s agenda - in a way the government would allow to. This issue came after the parliamentary election in October 2015 put PiS or known as the Law and Justice party took the position in the government. The public service television (TVP), public service radio (PR), including 17 regional radio programmes, and the national press agency (PAP) will be transformed and be under the control of the Minister of Culture. By doing so, the public service companies will be run by a one-man management board elected by a five-member body in the national media council, which in turn is chosen by the

Sejm (the lower house of the Polish Parliament) and the Senate - or effectively by PiS.<sup>10</sup> By doing so, the government has the control over the content of the news, how the news will be delivered, and who will run the public media institutions. Critical comments targeting the government will be reduced and the critical journalists will be removed from public broadcast.

Based on the report from the European Broadcasting Union (EBU), TVP reaches over 90% of the Polish population weekly and had about 30% of the TV broadcasting market in Poland in 2014, which is higher than in the case of most public TV channels in Central and Eastern Europe.<sup>11</sup> In addition to that, PR and PAP also reach out to a massive number of the population. By taking over the three major media agencies, the government has the full control on how journalism will be run by those agencies.

The media organisations in Poland and the EU have voiced their critiques towards the Polish government's decision on enforcing the law. The critic over the government's decision to give the Minister of Culture the authority over the media agencies will undermine the check and balances of the institutions. The implementation of the new media law will bring a regressive regime to Poland.<sup>12</sup> The fear of massive political changes in Poland is growing since PiS won the election and run the government. People are afraid that the new media law will dismiss the media freedom and pluralism in Poland. The EU Commissioner Günther Oettinger mentioned that Poland is infringing "common European values" by passing the legislation.<sup>13</sup> He also referred to the EU Charter of Fundamental Rights Article 11 which is the guiding principle for media freedom which Poland violates with the new

media law they launched. The Article 11 outlines as followed:

*11.1: Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*

*11.2: The freedom and pluralism of the media shall be respected.*<sup>14</sup>

Despite receiving criticisms for its action to implement the media law, Polish government countered the criticisms by saying that the new media law does not infringe the EU values. They argue that the aim for the implementation of the new media law is deemed as necessary. Through his presidential aide, Polish President Andrzej Duda states that Poland needs an impartial, objective, and reliable public media, which he thinks is not present in the previous structure.<sup>15</sup> For him and his party, Polish media has run biased campaign against the far-right party and not being objective. Therefore, the media reform is deemed as necessary to ensure that political interference will not prevail in Polish media.

The argument from the government counters the criticisms they received from opposition, public, and national and international organisations. The media reform can be seen as a way for the government to restructure the national institutions to better serve the public. However, the irony is, if the aforementioned sentence is true, the reform itself has been raising too many questions on whose needs the institutions are trying to accommodate. As far as the reform has been implemented, the reform accommodates only the government and PiS, while undermining the value of freedom and independence within the media institutions.

## What are the similarities between Hungary and Poland?

The similarities between the media laws in Hungary and Poland are pretty obvious. One may argue that Poland took examples from Hungary's media law before passing their own. Therefore, similarities are very likely to occur within both media laws.

The media reform started with the institutional changes in both countries. In Hungary, the Media Council was established to have the control over the information imparted in media outlets. While Polish government gave an authority to the Minister of Culture to elect members of the National Media Council which will have the same power as the Hungarian Media Council. By establishing such institutions in Hungary and Poland, it gives the government to be selective on what kind of news they want to deliver to the public. In both countries, the Media Councils will have the authority to provide the public with such information that is claimed to be "politically balanced" and conforms with the national values. Sanctions are applicable for those who violate the media law. In Hungary, fines are applied to the media institutions who do not comply with the law while in Poland, since the media law is just recently passed, the removal of journalists and media staffers from their positions is assumed to be implemented.

The effects of the implementation of such laws can be seen from the criticisms both countries have received after passing the new media laws. International and national media organisations are questioning the media independence in Hungary and Poland, which then they are also questioning the implementation of democracy and human rights in the countries. Freedom of expression and the press are fundamental rights

that are codified in the legal frameworks of both domestic and European law, yet there appears to be no uniform model of media regulation for protecting these rights at the domestic level.<sup>16</sup> Therefore Hungary and Poland are able to reform the media laws. The criticisms towards both countries are mainly focused on how the new media laws compromise the fundamental values of democracy and how they challenge the freedom of expression and human rights at the same time. These are contained in the Article 11 of Charter of Fundamental Rights of the European Union, Article 10 of European Convention on Human Rights (ECHR), and Article 19 of the UN Declaration of Human Rights. Those conventions guarantee that all individuals have the right to *"freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*<sup>17</sup>

Such repressive measures on freedom of press, democracy and human rights are, one may argue, responses towards other political issues which have occurred and grew these past few decades. For example, many governments are implementing new and essentially unrelated repressive measures and justifying those measures as responses towards the escalation of terrorism.<sup>18</sup> Freedom House argues, in their report, that the exploitation of terrorism issues is just one aspect of a general trend in which repressive regimes are returning to blunt, retrograde tactics in their ongoing effort to preserve political control.<sup>19</sup>

Democracy and human rights values are being challenged in Hungary and Poland with the new media laws. Despite both governments' arguments that the reform was needed to create a "politically balanced" and "supporting

national values”, by the end of the day their actions are seen as their ways to gain more political control over the media. Democracy faces many problems of their own. However in the case of Hungary and Poland, democracy is being challenged by political parties who have the power to stir the political situation in those

countries to be in favour of one issue while against on another. Media is a tool for the Hungarian and Polish governments to influence the political mindset of the public by institutional reforms and using nationalist claims.

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## IMPACTS OF WAR ON THE FREEDOM OF PRESS: THE UKRAINE CASE

War time is often considered to be a time where governments adopt an 'anything goes' attitude to press freedom in order to ensure the successful protection of the state and the people residing within it. The impacts which war time can have upon the freedom of press are of utmost importance. Of course the notion of freedom of press itself must be wholly understood in order to analyse the consequences war incurs upon it. Censorship, propaganda and limited access to information are among the most prevalent obstacles which are faced by the media during times of war. The protection and safety of journalists themselves are issues of extreme importance and are often, unfortunately, inadequately ensured. In any liberal democracy, the press should be free to inform, investigate and criticise the governing powers whilst also being able to express a diverse range of opinion. However, many governments have argued that during times of war human life and security are of greater importance than freedom of information. Thus, press freedom is ultimately viewed somewhat as a privilege, a privilege which must be sacrificed for the greater good. A united front is, of course, more difficult to maintain if the government's official rhetoric is contradicted by information provided by the media. This article will begin by discussing the classic arguments surrounding freedom of press during times of war. Through brief analyses of some select historical cases it is possible to understand the complex debates surrounding issues of press freedom which have continued to plague the minds of politicians, journalists and the public.

Arguably, thus far in much of the literature surrounding the issue, the public is not viewed as an active agent which seeks truth but rather as a passive consumer. Through the understanding of the wider debates and historical experiences, it is then possible to apply this knowledge to the current Ukraine crisis.

The 2014 Freedom House report officially declared Ukraine as "partly free" arguably largely due to the severe limitation of press freedom (Freedom House 2014). Reports of harassment, violence and severe state control over media outlets have all contributed to the worsening position of Ukraine's press freedom. However, with regard to the Ukraine case, the complex multifaceted nature of the conflict must also be acknowledged. This article will later address the notion that the conflict resembles a "propaganda war" as a result of the impact which Russia Today has had on the decisions of the Ukrainian government to limit the press.

Robin Brown (87: 2003) argues that within the current context of the 21st century, politics is conducted through the realm of mass media. Media coverage has the ability to mould the way the public perceives current affairs. Brown rightly argues that not only do the media harbour the power to influence the audience's perception but also those actively and potentially involved in conflict. The power to frame a conflict can have a remarkable impact on both perception and the conflict itself. Imagery, word choice and selectivity in use of facts and figures can give truthful information

whilst simultaneously preventing the public from being able to view events within a wider context. During times of war, history has proven that the freedom of press becomes somewhat tighter and much more limited. Censorship, narrowly defined, is state imposed restriction of expression or information. In times of war, censorship is often used and justified with reference to “national security”. However, censorship can also be viewed as a more complex matter. Arguably, self-censorship is one of the biggest threats to freedom of press. The self begins to censor one’s own work as a result of fear. This fear could emanate from feeling threatened by the state or other members of the public, or this fear could form due to concern over potential reactions of the public. The decision not to publish an article or an image is in itself an act of self-censorship. This is particularly difficult when it comes to sensitive subjects such as deaths during war time. Graber (2003: 544) argues that censorship is often justified during times of war through use of the following excuses; national security concerns, the demands of the public and protection of public values. Graber continues to argue that censorship, be it either state or self-imposed, is often viewed as necessary to “protect” the public during such times of crises.

By briefly examining both historical and more recent cases of press limitations during times of war, it is possible to witness similar events and rhetoric echoed in Ukraine today. The coverage of the Falklands War was arguably one of the most heavily controlled operations in modern British history. The press coverage was forced to be largely image free which led to “radiovision” of the conflict. The coverage was widely understood to be sporadic and fragmented, there was no continuous flow of



information. London would control and release information as it pleased- often with such information getting lost in the stilted process. In 1982, Phillip Knightley (cited in Rid and Hecker: 2009: 83) an expert on war reporting, argued that “the (British) Ministry of Defence was brilliant – censoring, suppressing, and delaying dangerous news, releasing bad news in dribs and drabs so as to nullify its impact, and projecting its own image as the only real source of accurate information about what was happening”. Such action meant that public support continued; the government witnessed neither substantial opposition nor any large scale public outcry over the vast number of British casualties. The Falklands War is a prime example of how censorship can benefit governments during times of war. Despite such events having occurred over thirty years ago, similar tactics have been deployed by governments- many of whom claim to be wholly committed to press freedom- across the globe.

More recently, perhaps the most famous modern case of media censorship was witnessed during George Bush’s “War on Terror”. The Bush administration withheld crucial information from the press justifying such actions with vague “national security” rhetoric. Additionally, Bush urged officials, both those in the government and in private media entities, to withhold information which may be sensitive. Of course, Bush has since been subject to a great deal of criticism for his behaviour during his time in office. Kirtley

(2006: 495) argues that in the aftermath of the 9/11 attacks, the Bush administration continued to exploit legitimate concerns regarding the disclosure of sensitive information to terrorists as “a justification for greater secrecy”. Kirtley continues to argue that requests for access to records, be it photographic or written documentation, which addressed the wars in Afghanistan and Iraq were rejected. The underlying objective of the Bush administration’s stringent press freedom restrictions remains subject to debate. Arguably, the Bush administration wanted to hold a unified front with as little objection from the public as possible. Perhaps a more critical argument would infer that Bush manipulated the aftermath of the 9/11 attacks by using the fear of terror to justify unnecessary restrictions to the media.

Therefore, from these modern day example of press freedom during times of war, it is possible to view similar governmental mechanisms of both the UK and the USA mirrored in Ukraine’s policy today with regard to censorship and the desire for a unified front. The Ukraine case is of course unique and must be understood within its own historical and political context. Russia is arguably well known for her somewhat ruthless pursuit of her own geopolitical interests. Of course, this stance may be viewed as entrenched in Western bias however it is partly through this understanding that Ukraine media restriction can be explained.

Press freedom in Ukraine was a somewhat sensitive topic before war broke out in Crimea in 2014. Freedom House states that between 2002–2013 Ukraine jumped between “Free” and “Partly Free” status, largely due to problems surrounding Press Freedom (Freedom House). Crimea, measured since 2015, has

remained “not free” (Freedom House). Contention over media ownership has been rife throughout the past two decades. Ukraine has a history of media outlets residing in the hands of politically strong oligarchs. Allegations of corruption and lack of transparency have plagued broadcasters for decades. Of course, it must be understood that as a post-Soviet country, Ukraine understandably experienced teething problems as a result of its transition from a communist, authoritarian leadership to a state which sought to become a free, liberal democracy. Nevertheless, the war has exacerbated the underlying problems which already hindered the freedom of press in Ukraine.

In order to fully analyse the extent of press freedom in Ukraine it is necessary to briefly summarise events which led to such heightened restrictions. However, it must be noted that the conflict is extremely complex and this article aims to focus on press freedom, not the historical and political events which lead to the violence in Ukraine and Crimea.

In November 2013, protests were sparked in Maidan square in response to the government’s decision to delay the signing of the European Union Association Agreement (The Guardian). Discontent over decisions made by Yanukovych fuelled allegations of corruption and abuse of power. Such protests eventually erupted in the 2014 revolution and the ousting of President Yanukovych (BBC News). Once Yanukovych fled, unmarked Russian forces claiming to be protecting the Russian diaspora took control of Crimea. After a controversial, and illegal, referendum Russia annexed the territory of Crimea subjecting it to Russian law (United Nations: 2014). In 2015, Russian Prime Minister Medvedev declared that Crimea was now a fully integrated part of Russia.



Meanwhile, armed conflict has been persisting in Crimea and other Eastern territories of Ukraine. As of April this year, armed clashes remain in areas of Donetsk, Dokuchaevsk and Horlivka (liveuamap: 2016). Heavy shelling has been particularly prominent in the area of Donetsk and ceasefire breaches are certainly not uncommon. War in Ukraine is rampant and arguably has shown little sign of progress during recent months. Physical wellbeing, access without obstruction, censorship and tightened control over media outlets remain major obstacles for journalists currently working in Ukraine during this time of war.

First and foremost, the Ukrainian state has failed to adequately protect the safety and well-being of hundreds of journalists since 2014. Harassment, assault and even the murdering of journalists have become all too regular occurrences in Ukraine for the past two years. It must be noted that the physical integrity of both pro-Ukrainian and pro-Russian journalists have been put in jeopardy during the conflict. On the 29th April 2015, pro-Russian journalist Oles Buznya was shot down in Kiev, close to his place of residence. Buznya was a controversial journalist and TV presenter, well known for his pro-Russian views and his job as former editor-in-chief of Segodnia, a Russian language Kiev based newspaper (Council of Europe: 2015). Such traumatic incidences are not uncommon. Vyacheslav Veremiy, reported

for Kiev based newspaper Vesti, died after he was shot and brutally assaulted by a group of masked men. Beatings carried out by such groups have aroused an environment of intimidation and fear amongst journalists. The Institute of Mass Information, found that throughout the first half of 2014, “six journalists were killed in connection with their work; 249 were injured or attacked; and at least 55 were taken hostage or detained” (IMI: 2016). Currently, on the IMI press freedom barometer the figures state that there have been no murders of journalists but unfortunately 7 assaults have occurred so far in 2016. IMI’s director, Oksana Romanyuk, said: “Physical attacks against journalists and other media workers currently pose one of the main challenges for the media profession... Ending impunity and defending the public’s right to information should be one of the main items on the new president’s agenda” (Reporters Without Borders: 2016). Of course, press safety during war time will inevitably always be somewhat endangered especially if reporting at the front lines. However, perhaps unique to the Ukraine case is that much of the assault and murders occurred outwith the war ridden Eastern areas of Ukraine. Thus it is important to note that not only are journalists in danger when reporting on the front line, but also when such rife discontent is mounting across the whole country. Such violence and threatening behaviour inevitable leads to severe press limitations, be it due to real threats to their physical well-being or their fear of such which leads to heightened self-censorship.

Since 2014, there have been a vast number of complaints surrounding the fact that many journalists have been prevented from doing their jobs. Physical obstruction, be it in the form of journalists being physically prevented

from entering certain conflict ridden areas or deportations have been very common throughout the past two years in Ukraine. In separatist controlled regions of the state, no foreign or oppositional journalists are allowed to enter the territory. Furthermore, many media outlets, particularly during 2014, were subject to unexplained raids. The OSCE Press Freedom report of 2014 stated that media groups across Ukraine had been attacked and raided, including that of the Writers Association of Ukraine. July 2014 was a particularly violent time in Kiev as many broadcasters, particularly if they were deemed “pro-Russian” came under fire. In one particularly extreme case, 50 masked men attacked the Kiev headquarters of the Russian-language newspaper Vesti using stones and tear gas as weaponry. Consequently, during such times journalists residing in these stations were physically unable to report. Moreover, media outlets have witnessed widespread personnel and management changes since the war began. The Freedom House report of 2014 further details that TVi, one of the few remaining critical television broadcasters, witnessed over 30 resignations due to a vague management “takeover”. Such dubious takeovers and raids have become characteristic of many experiences of Ukrainian media outlets. As previously mentioned, Ukraine has historically struggled with media ownership issues, much like many other European countries. However, this problem has continued to worsen during this time of war.

The “blacklisting” phenomena paired with significantly high rates of deportations have continued to hinder the ability of journalists to report freely. Once again it must be noted that the majority of such incidences did occur during the year of 2014. Reporters Without

Borders (2016) have taken measures to document each incidence where journalists freedoms have been violated, among them feature several examples of deportations. It was reported that “the Security Service of Ukraine (SBU) arrested Alexandra Cherepnina, the Russian TV station Pervyi Kanal’s Kiev correspondent, on 1st July 2014 and deported her the same day”. Deportation of those deemed “Kremlin-aligned” have been rampant with a significant number of journalists having been ordered to leave the country. As of 2016, the Ukrainian government expelled Russian journalist Maria Stolyarova from the country and banned her from re-entering the country for three years (Ukraine Today: 2016). These examples help to illustrate the extent of the government’s role in limiting press freedoms. By deporting such journalists the Ukrainian government has actively prevented journalists from being able to report on events.



Finally, perhaps the most controversial measures taken to limit the freedom of press have stemmed from the creation of governmental bodies which aimed to protect public morale and combat Russian propaganda. In 2014 the (now dismantled) Body to Protect Public Morale was created. In addition, the Ministry of Information Policy was formed in order to counter Russian media strength. Media

bodies were forced to re-register their facilities, perhaps unsurprisingly such a policy resulted in a great deal of discontent as many stations were unable to successfully re-register. Alongside such policy, various supervisory and editorial councils were created in order to “block” potential influence of Russian propaganda. Consequently, such action led to wide scale flight of successful journalists from the top ranks of many media companies. Regardless of whether such people were forcefully pushed out or whether they decided to resign, such departures indicate the troublesome, insecure nature of the Ukrainian press.

As previously mentioned, the notion of a “united front during war time” is one which Ukraine has arguably been pursuing. Russia First has consistently undermined Ukrainian mainstream government rhetoric and thus has seemed to have pushed Ukraine into reacting in an equally biased and censored manner with regards to her own domestic media coverage of the war. Of course, when reporting on a region which offers limited access to journalists it is extremely difficult for citizens, and the international community, to gauge what exactly

is going on.

To conclude, Ukraine has faced tremendous challenges to its press freedom for decades. Perhaps recent media limitations are not entirely new, however the war has undeniably restricted the capabilities of Ukraine’s “partly free” press. Physical obstructions, misinformation and the lack of transparency surrounding the management of leading news companies all paint the picture of an increasingly problematic media climate. In this age of globalisation, often, the media acts as an extension of war. The propaganda war, despite perhaps seeming to be somewhat pantomime-like, is of great significance to the war in Ukraine. The situation remains difficult in Ukraine, journalists are not sufficiently protected by the state or police and remain at heightened risk of harm. In order to monitor the state’s monopoly over the use of force, the press and citizens themselves should have access to accurate information. Censorship and propaganda is dangerous and can be easily exploited. Ukraine must do more to ensure that journalists, and freedom of press, are protected.

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# FREEDOM OF PRESS IN TURKEY

## Introduction

The world to the East is remarkably interesting with its intangible, special atmosphere. This document aims to do two things. To explore Turkey's present and future human rights issue on Freedom of Press within Turkey, and to highlight the methods used by the European Union (EU) in finding common ground and diplomatic solutions to any human rights violation. Presently, Turkey has a strong and stable economic and military system. It could be of great advantage to the European Union if Turkey was allowed to join, however the EU raises that one of the biggest objection for Turkey's membership is its human rights problems. In this paper, we shall try to investigate these violations based on the Copenhagen criteria. Freedom of press is one of the core principles of a democratic society. The right of individuals to express opinions and thoughts without any restrictions are necessary means to have a free flow of information. In a democratic society, people should be engaged and play an active role in government. This is possible only if they are given an opportunity to express themselves, which may sometime involve healthy criticism of the government. Such an expression gives rulers the opportunity to understand the needs of the people and address their concerns using reforms or corrective measures. A free media can report on issues and topics, which may otherwise remain neglected and makes the rulers accountable as any of their illegal actions can be exposed. As part of this paper, we look into the freedom of

press in Turkey, which has been under attack for quite some time. These attacks have intensified in recent years as a result of growing rift between the Gülen movement and the AKP (Justice and Development Party) party. Their relations deteriorated immediately after the 2013 elections. The impact of this fallout has been pretty evident. The government carried out closure of media groups related with the Gülen movement or involved in any critical journalism. The Government has also seized some media houses and taken control of them. As a result, there has been a decline in free voices and the media has become limited in its broadcasts. Recently following the Syrian crisis, Islamic state crisis, unrest in Kurdish regions, some media houses have tried to be defiant towards the government and published critical views, which the government has not taken lightly. Recently many journalists have been arrested and the leading media houses have faced action. These government actions have been condemned by the international media and human right organizations. Some organizations have gone ahead and asked Turkey's partners like US and EU to use their influence over Turkish President Erdogan and his government to prevent further deterioration of the situation and instead facilitate restoration of freedom of press. We attempt to investigate the constitutional provisions for the freedom of press in Turkey, current situation with regards to media restrictions and EU's thoughts on the issue among others.

## Turkish Constitution about the freedom of press



Understanding constitution is important as in recent years it has been misused by government to suppress freedom of expression in the name of protection of nation's sovereignty, unity, law and order or even national security. The Preamble of the constitution focuses on the sovereignty of the nation and its unity. The state attempts to achieve an everlasting existence with prosperity, spiritual and material well being of the nation and be an honorable member of world nations and enjoy equal rights. The Preamble gives utmost importance to the will of the nation. Though the sovereignty is unconditional and a core requirement of the nation. But anyone trying to preserve sovereignty shall not deviate from the liberal democracy which is provisioned in the constitution.

The constitution very clearly mentions that any activity which is against the Turkish national interests, its existence, unity, values shall not enjoy any protection. In addition, constitution is strict about preserving secular principles and mentions that politics should not be mixed with any religious feelings. Constitution grants each and every citizen rights to live an honorable life and improve his or her economic and spiritual well being while following the rule of law and exercising various freedoms and rights granted to the citizen. All citizens share responsibility towards the nation and enjoy right to demand a peaceful life and live with mutual respect and understanding. Regarding the freedom of expression, article 26 in the constitution gives every individual the right to express and share his/her opinions through various communication mediums. Though these freedoms can be restricted if they

endanger national security, law and order, nation's unity. Regulatory provisions do not form a part of these restrictions. In addition, for freedom of press and publications, article 28 in the constitution gives press all the freedom and mentions that the same shall not be censored. Limitations maybe imposed only based on conditions cited in article 26, 27. These include any news or articles which can compromise the national security and its boundaries, instigate riots or reveal state secrets. Distribution of media maybe limited or delayed if deemed necessary based on above conditions and requires orders from the judge. Though in cases of ongoing criminal investigations, the periodical or non-periodical publications maybe seized. The article has provisions which allow temporarily suspension of periodicals in case of violations with respect to the content but if the violations persist over a period of time, the same shall be seized by decision of a judge. With regards to protection of printing facilities, article 30 in the constitution safeguards the printing house and its equipment against seizure or restriction from operation on the basis of having been used in a crime. In recent years, the freedom of press has deteriorated in Turkey. As part of this section, we look into the state of media and attempt to analyze the reason behind this worsening of the state. In August 2015, following the breakdown of the Kurdish peace process, the media came under attack. One such instance was the three journalists of Vice News, who were taken into detention in response to their reports from the south east Turkey which is known for Kurdish presence. Months later in October 2015, as to

the run up to the elections, the Turkish government carried out investigations to identify ties of the journalists and media houses with the US based Islamic cleric, Fethullah Gülen, who is accused by the government for attempting to destabilize the state. Based on the reports and various government suspicions, the media was severely attacked by the government. Turkish daily *Hürriyet* columnist, Ahmet Hakan, was physically attacked. While Media house, Koza-Ipek, was seized and based on the court orders it was to be placed under the management of the trustees. The situation was seen as crackdown on media. Following these events, editors from world leading media groups including The New York Times, Agence France-Presse, and Germany's ARD among others collectively as part of World Association of Newspapers and News Publishers expressed concern over the worsening freedom of press in Turkey. They requested then Turkish President, Recep Tayyip Erdoğan, to look into the situation and ensure freedom of speech for both citizens and the journalists and they be allowed to work without any obstacles. (Butler, D., 2015) In addition, European Commission raised concerns that the situation is crucial and it is in-fact critical for Turkish membership to the European Union. Turkey must ensure human rights including right to speech. Human Rights Watch (HRW) group in its recent world report mentioned that post the November's elections, President, Recep Tayyip Erdoğan, has indulged in policies which violate human rights, the rule of law and undermine democracy. Researcher at HRW raised concerns that Turkey is moving towards authoritarianism and is dismantling institutions which had the potential to keep a check on the leaders and their policies. A part of the process has been to defame the opposition. In the last few months,

there have been growing tensions between Russia and Turkey as a result of the Syrian war and accusations have been made that Turkey is providing arms to the Islamic State. Any effort by the journalists to uncover the truth has been seen as a violation and an action against the national state itself. Journalists Can Dündar and Erdem Gül were arrested in November for a news report, which exposed trucks laden with arms on their way to Syria. (P24, 2016) The HRW report also highlighted that critical reporting be it by journalists through media houses or by ordinary citizens using social media has faced actions like defamation charges and convictions and even job loss. The legislation of the Internet bill, which allows government to block websites without any court order, is considered a big blow to the exchange of information. The government is widely criticized for blocking Twitter accounts and YouTube, the ban which lasted more than 2 years. In Dec 2015, the European Court of Human Rights in its ruling mentioned that the ban on YouTube had violated freedom of expression and transmission of information. (Phys.org, 2015) The Government bodies continue to restrict assembly and peaceful protests by the people. Government even updated a decree which allows the governors/district governors to ban any assembly or demonstration, if deemed risky for the public order. The decree gave special powers to the security forces. They could now detain without warning in case of suspicion of crime. And disperse group by force if required like using pressurised water, colour water etc. (*Hürriyet*, 2016a) Following this, Istanbul governor's office banned the annual Istanbul Gay Pride march. The decree has been extensively used to restrict the protests made against government for seizure of media houses

and to disperse the protestors using water cannons etc.



Recently, court ordered that the Feza Media Group, which includes opposition newspaper Zaman, Today's Zaman daily and the Cihan news be placed under the management of government trustees. Zaman newspaper is linked to the Gülen movement, movement by the US based religious cleric Fethullah Gülen, who is accused of running parallel state and trying to overthrow the government. After the seizure, access to their online news, servers and print media was stopped. This action of takeover of media group faced serious backlash and many protested on the streets but the Turkish police used tear gas and water cannons to disperse them. The Government is critical about anyone who opposes it. Instead of a healthy argument, the government has chosen to suppress these voices all together. Frederike Geerdink, Dutch freelance journalist was charged as a terrorist supporter and later deported from Turkey. While sharing thoughts about the recent takeover of Zaman newspaper by the government, she mentioned that Zaman journalists and its readers are being considered as coup supporters. She added that this takeover of Zaman newspaper has been expected for quite some time now as other media houses linked to the Gülen movement have been taken over using the same procedure of management by the trustees. In addition, Geerdink shared that these restrictions on press are not new.

They have existed in the past as well but that time army was censoring the press. Example: There were restrictions on reporting from south east. She accused Turkish President Erdogan for using similar tactics. While commenting on the extent of impact on media houses and their content, Geerdink mentioned that it is not just the government restrictions which are limiting content of press but now the media houses are concerned about any content which may not go well with the government and trigger action against them. They are taking precautionary measures and are themselves going ahead and removing some shows. Example: CNN Turk cancelled two popular talk shows fearing backlash from the government. (RT, 2016) On reviewing the current situation of groups which were earlier seized by the government and put under the management of the trustees, it is seen that the groups under government control are facing decline in readership and are facing closure. Example: İpek Media group involving Turkish dailies Bugün and Millet, TV stations Bugün TV and Kanaltürk, has been facing declining readership. It was recently decided to shutdown the media group. The extent of decline can be imagined from the fact that Bugün which was earlier selling 104,000 copies a day before the takeover saw a decline in readership and is now selling just 5,600 copies on average in recent months. Post takeover of the group, 100 journalists were fired. The group claims itself to be free and democratic and considers the government control as a leash around its neck. The seizure of media houses is seen as a follow-up to investigations carried out over the involvement of the AKP party in the Dec 2013 corruption scandal. These investigations were not appreciated by the government which in turn formulated a new policy. This policy gave greater control to the

government over the judiciary and has been eventually used to create pressure on the media. Media houses critical of the government were banned from attending government functions, NATO meetings among others. The media houses seized for criticizing the government are actually protected by the article 30 of the constitution which bans any seizure of media houses. However, the same was justified by court reasoning that media house was financing so called terror organization. (Today's Zaman, 2016)

### **Islamic law in Turkey**

If we would like to understand the main problems in connection with human rights in Turkey, we must first look into the Islamic law, which determines the rule of law in Turkey. Islamic Law is a very unique legal system and is difficult to understand. In Islam, the old traditions determine many aspects of the life. The Islamic jurisprudence has a great contribution to legal culture. Many outstanding Islamic lawyers had assent to the world legal thought. Law is a major part of any culture in the world. The fundamental principles of Islam and the Islamic law have values such as justice, equality and human rights, freedom of religion and belief, thought and expression, right to own property, to marry and have children, to communicate and to travel, right for education. These rights are the main principles of Islamic jurisprudence. (Hunt and Aslandogan, 2007) The sources of Islamic law are basically different from any other system of law. Gülen the famous Turkish scholar stresses that the spiritual approach of existence should have priority. If we all accept this, we will be happier and jurists will find solutions for many problems. Without law and order there is

simply chaos. He considers freedom of individuals to express their concerns, ideas and interest of officials to improve the country, an important part of governance. He shares that his views are based on Islam which promotes activism for the well being and betterment of the society. Regarding jihad, Islam considers human life as honorable and makes rules to preserve peace and happiness but at the same time allows Muslims to fight in exceptional circumstances like in case of rebellion, anarchy among others. The Qur'an explains this issue in Surah Baqara (2:191) by stating "tumult and oppression are worse than slaughter". Islamic law does allow Muslims to protect religion, honor, and sacred values while maintaining justice. In addition, Islam does not justify war to convert people to Islam or force Islamic rule. Islam does not allow individuals to start war in the name of Muslims but it is the duty of the state. Some Islamic scholars dismiss the idea of democracy completely arguing that the power of people is not in sync with Islam and instead believe in supremacy of Islamic Law. Regarding contributions made by Islamic jurisprudence to culture of law, Islamic civilization has made many contributions to the world in field of science, economy and technology including in matters of law. Law is very important in a society and can play a crucial role in shaping the culture of the society. Islamic law belongs to such a category. The role played is to such a large extent that many consider that Islamic tradition having shaped the fundamental concepts of sociopolitical matters. It has been noted that sometimes the Islamic traditions are misinterpreted and misused to sway the uneducated Muslims thoughts and beliefs towards undemocratic ideas and extremism. Despite that, Islamic thoughts have been well recognized to have various values like

compromise, dialogue, honor and dignity of human being among others. With regards to government rule and head of state, Gülen raises that election of head of state are in sync with the Islamic principles and should be done with due consultation of the people. The government bodies should be elected directly or indirectly and the legislatures may be given authority in different matters as long as they do not violate any of the Islamic principles. (Albayrak, 2015)

### **How freedom of judiciary is important to retain freedom of press?**

Turkish government has been getting court orders to seize media houses or to take action against journalists, who have been found guilty of critical articles against the government. It is important for us to note that getting court orders at the whim of the government requires influence in judiciary. As part of this section, we look briefly into freedom of judiciary and try to analyze the extent of government influence over the legal system.

In the last few years, the differences between the government and the Gülen movement have escalated. The government's actions against media and journalists to restrict criticism are widely known. However, the situation has deteriorated with government interference in judiciary. Judges have been accused of acting against the government and organizing a coup. Judges have been put under pre-trial detentions for any judgments passed against the government or their activities which were identified as unlawful. The Government has made use of its influence over the judges who support it, and put the judges in question behind bars.

All of this has been a result of the fallout

between AKP party and its former ally the Gülen movement. The movement had many followers within the government bodies including police force, judiciary and even non-government bodies like media houses. In December 2013, corruption scandal came to light and Gülen affiliated police and prosecutors arrested various government officials and relatives which included even Erdogan's own family. The Government took this very seriously and charged the Gülen movement as a parallel structure with attempts to plot a coup. The government removed various police, government officials, judges who had any association with Gülen and carried out mass rotation of judges. Eventually, the government brought in judges, who favored it. Example: judge Mustafa Baser of Istanbul's Criminal Court of First Instance No.32 was put behind bars after he granted bail to 62 imprisoned police officials and journalist suspected of Gülen connection. This was done with help of judges who supported the government. Baser was accused of exceeding his authority and working under orders of Gülen. The Turkish Government wishes to suppress any media houses from broadcasting issues criticizing the government. It neither wishes the release of police officers put behind bars during the corruption scandal nor any interview in media regarding the scandal. The Government also wishes to limit any discussions or media reports about possible weapons transfers to Syria. Any such report would expose Turkey's support to the rebel groups in Syria, which has not been authorized by the parliament. In addition, the government has made attempts to block media coverage of its operations in the Kurdish region. And continues to punish anyone found guilty of any association with Gülen, however remote it might be.

The Government is using all its influence to punish individuals who choose to defy or speak against it and charging the violators with arbitrary crimes, using prolonged pre-trial detentions among others. In such an environment where a judge or prosecutor can find himself behind bars for his decisions, it is a critical time for judiciary and the entire legal system. And it is no surprise that the government is able to influence the court and act against media with so much success. To ensure freedom of press, it is in fact necessary to restore freedom of judiciary and the security forces, all of which are compromised to very high extent.

### Turkey and the European Union

Turkey is a founding member of the United Nations (1945), a member of NATO (1952), the Council of Europe (1949), the OECD (1960) and the OSCE (1973) and was an associate member of the Western European Union (1992). On 31 July 1959, Turkey made its first application to join the newly-established organization. The Ankara Agreement signed on 12 September 1963 started relation between Turkey and the EU. The aim of the Ankara Agreement, as stated in Article 2, was to promote the continuous and balanced strengthening of trade and economic relations between the parties. After that with the Customs Union decision, Turkey-EU relations entered a totally new dimension as it was one of the most important steps for Turkey's EU integration objective. Having completed the Customs Union, membership became one of the priority issues about Turkey. In 1989 the European Union refused the full membership objective, partly because Turkey had trouble



fulfilling the Copenhagen political criteria. The Helsinki European Council Summit held on 10-11th December 1999 was a breakthrough in Turkey-EU relations, because the EU already accepted Turkey as an official candidate of the European Union on equal terms to the others. Unfortunately, the EU highlighted many contra reasons of the connection, like human rights problems, immigration problems and also the Kurdish problem in Turkey. However, Turkey's geographical position, historical connections to the Balkans, the Black Sea, Russia and Central Asia and also its army seem a great asset for the EU and should be taken advantage of. The dispute over human rights is not a new one. Turkey has been monitored under the lens due to its historical past and recent crackdown on opposition parties, press and the judicial system. The EU has locked the concerned chapters which form critical part of the 35 chapters which a country must fulfill for the membership. Although there are issues in the process, we must look at the bigger picture, the economic future for the EU and Turkey and the other alternatives. With annexation of Crimea by Russia, followed by sanctions imposed by the US and Europe on Russia, the economic picture has changed. One of the key areas which have changed is the energy sector. EU is looking towards diversification of gas

sources and has formulated energy policies which require separation of pipeline and gas-delivery ownership. This has given a new direction to Turkey's economic influence in the Eurasian region. Turkey has now various options. It is already involved in other gas pipeline projects i.e. Trans-Anatolian Natural Gas Pipeline (TANAP). At the same time, this raises an important question: would being independent give Turkey more economic control and growth potential? Or should Turkey consider joining hands with the Eurasian Economic Union? As the EU's parliament dominance over its member countries policy making increases, Turkey might want to wait and see how the EU member states behave. Greece is teetering on the edge of financial crisis, while Switzerland has officially withdrawn EU membership bid and UK is all set to hold a referendum over the EU membership. These are concerning issues for Turkey's bid. But at the same time Turkey can gain from the membership as EU is Turkey's number one import and export partner. Turkey's businessmen would get an opportunity to expand in the various member states and Turkey's prominent logistics sector could reach greater heights. Despite the various potential economic gains, Turkey is a tricky country to combine with. Turkey's enormous size and the population base compared to other European countries would give Turkey good number of seats in the European Parliament and this could easily dent the influence of other nations in making laws or policies. Turkey is a growing economy but at the same time it has a lot of inequality. EU policies are focused on free movement of people. The weaker communities migrating to other western nations could be detrimental to other nations' interests. It could also revitalize the demands by

various nations for a need of country-wise migration policy, thereby compromising the free movement principle. (MFA, n.d.)

### **European Union views on the freedom of press in Turkey and The Copenhagen criteria**

In November 2015, EU in its annual report reviewing Turkey's EU membership bid had raised concerns regarding the worsening freedom of press in the country. It had asked the newly elected government, formed after November 1st to look into the matter. The report focused on the crackdown over journalists, their detention and cases filed against them, seizure of media houses and change in internet law which gives government the power to block internet sites without court order. In addition, the report mentioned about need of independence of judiciary and separation of powers.

EPP rapporteur on Turkey, Dr Renate Sommer MEP shared that the country is not in sync and is instead diverging from the Copenhagen Criteria. The report expressed concerns regarding new laws like the security law which gives additional powers to the police in terms of arrests, search warrants and use of weapons. Commission also criticized the government for its activities in fight against the so called "parallel state", which includes actions against the judiciary, prosecutors, police officers, journalists, media houses, who shared any association with the concerned structure. Despite all this, the European commission has opened new chapters for Turkey membership. While commenting on this, rapporteur mentioned that this approach was not clear and seems to have stemmed from the growing

concerns over the migrant crisis and EU-Turkey co-operation to resolve the same. However, rapporteur stressed that EU values are not negotiable and the same is valid of Turkey's EU membership bid. (AFP and EurActiv.com, 2015) The EU has recently come under pressure to speak out against the deteriorating press freedom in Turkey. Semih Idiz columnist of Cumhuriyet and independent Daily Hurriyet newspapers, accused the EU of being focused on the migration crisis and ignoring the crackdown on press. Zaman newspaper seizure has drawn concerns from the international rights group. The crackdown is seen as government attempt to silence the voice of opposition. (Fraser, 2016) Eventually, noting the deteriorating media freedom and seizures of media houses by the government, the European Council's president Donald Tusk raised that the European Union cannot stay indifferent to these violations and emphasized that it is this freedom of speech which is a fundamental right and essential for healthy development of society and culture. (Sputnik, 2016)



However Turkish Prime Minister Ahmet Davutoglu has not been receptive of the criticism and instead defended that the country did not harm freedom of press. In addition, Monitoring Committee of the Parliamentary Assembly of the Council of Europe [PACE] which has been monitoring the situation in Turkey, expressed concerns against restrictions limiting free media and the challenges posed to the decisions issued by Turkey's constitutional court. Committee referred to seizure of media groups linked with the US based Islamic Scholar Fethullah Gülen. Previously, Turkey's constitutional court had released journalists Can Dundar, Erdem Gul on grounds that they were unfairly jailed. The two were accused of sharing nation secrets after they published claims about Turkey delivering weapons to Islamic rebels in Syria. However, Turkish's President Erdogan had rejected the decision and mentioned that the decision is not limiting in nature as they still face trial and can be imprisoned for life. On questions regarding the lack of press freedom, Turkish's President Erdogan had stressed that media should not have unlimited freedom and mentioned that it is the same everywhere. He rejected the charges of lack of media freedom and mentioned that in this case it was a case of espionage. It is not the first time Erdogan has shared differences with the constitutional court. Even earlier in 2014, much to Erdogan's dissatisfaction the court had lifted ban from Twitter and Youtube. (Pitel, 2016) The monitoring committee raised concerns that these recent developments and continuously deteriorating freedom of media are detrimental to Turkey's efforts to draft a civil constitution. They also prevent Turkey from fulfilling its obligations towards the Council of Europe and from moving towards a democratic society. (Hürriyet, 2016a) With the

ongoing migrant crisis and need of the hour EU-Turkey co-operation, has left EU leaders under pressure while commenting on freedom of media. While some leaders, have chosen to stay silent. Belgian Prime Minister, Charles Michel, has described freedom of media as untouchable. Prime minister of Luxembourg was clear that just because of migrant crisis, they cannot ignore the values like freedom of media. (Barker, 2016) The EU has not been able to build pressure on Turkey, as the former has chosen to ignore it while it focuses on the migrant crisis. While Turkey continues to violate human rights with arbitrary arrests, detentions of judges, prosecutors, journalists, seizure of media houses among others, the ongoing migrant crisis has overshadowed the violations and instead given Turkey a strong hand in its deal with the EU. Fearing a wave of unchecked migrants which Turkey could potentially unleash on the EU, EU for now has compromised and in exchange of Turkey stemming flow and taking back the migrants, has doubled financial assistance to 6 billion euros to Turkey and promised early visa free travel into EU's Schengen zone to the Turkish citizens and access to European markets. (Srivastava, 2016) Having shared the above, we note that the current EU priorities are to resolve issue of migrant crisis. However at the same time, EU leaders and various bodies acknowledge the declining freedom of press in Turkey and recognize it as an uncompromisable criterion in Turkey's EU membership bid. As we look into the freedom of press in Turkey, it is important to look into what this means for Turkey's EU membership bid. In 1993, Copenhagen European council listed out a criterion which the Central and Eastern European countries must fulfill in order to join European Union. The criterion has three

points. Firstly, political criteria i.e. ensuring rule of law, human rights, democracy and respect for minorities. Secondly, economic criteria i.e. functioning market economy. And thirdly, incorporation of the EU acquis i.e. adherence to various economic, monetary and political aims of the European Union. The accession criteria also stressed that the applicant countries must work towards harmonious integration. (Avrupa.info, n.d.) There is a recent report by the EU about Turkey's status and fulfillment of the criteria in terms of freedom of expression and rule of law. The report mentions about the slow pace of reforms and raises that any progress towards fulfillment of the political criteria was derailed due the legislations impacting the rule of law, freedom of expression and assembly. In addition, the report acknowledges the improving democratic conditions, reasoning it on the 84% turnout in the June 2015 election. Regarding the public administration reforms, the report recognizes the existence of strong public service which is committed to user oriented administration. However, raises concerns regarding the recent dismissals and crackdown on officials based on suspicion of their association with so called parallel structure. These attacks have not only been limited to administration but have been extended to judiciary. Judges and prosecutors have faced political pressure and detentions among others. Turkey has shown some efforts towards fighting against corruption but they continue to be inadequate. Any efforts including investigations by media or by prosecutors, judges, police forces have been undermined. The Report raises the need of serious efforts to restore independence of judiciary and various public offices. While Turkey's constitution guarantees protection of human rights and freedom, the same are

compromised now and then. The country is yet to enforce the rights in areas of freedom of expression and assembly which are formulated as part of European Convention on Human Rights (ECHR). (Turkey 2015 Report, 2015) In addition, report stresses about the government crackdown on media, journalists and laws like internal law which give government power to block content without court order are violations of right of expression. From above, we note that a lot of work is pending for Turkey to meet the criterion. The government must carry out reforms to ensure freedom of judiciary, media and thereby the rule of law.



## Conclusion

From the European perspective, there are plenty of rules in the Islamic law which we cannot understand. The Syrian crisis is a main problem nowadays because it determines the economic position of Turkey. Besides the human rights issues, there are many other significant problems in Turkey right now, which makes it even more difficult for the country to make good decisions and change the negative parts of media. In this difficult situation, media issues are intensifying. In such an atmosphere, the media and press cannot be organized well enough, because there are many

sides of the difficulties in the country presently. If we want to understand the situation we really need to focus also on the economic and political situation in Turkey right now, because all of these are the source of the human rights issues in the country. The EU foreign ministers are also engaging with Balkan states to reduce the inflow of migrants. In a similar effort, the EU has asked Greece to implement full border control with Turkey to safeguard the Schengen zone. For Greece, the inflow has been overwhelming, around 850,000 people last year while the country has capacity to provide shelter for just 10,000 people. Greece ability to control the influx seems limited and as a result EU is seeking help from Macedonia and may need to reach out to Bulgaria. As a backup plan, EU may have to allow member states to extend border controls for up to 2 years. Member states like Hungary have taken strict actions against the refugee crisis which involved closing main land routes of arrivals. It is making similar calls to Greece for building a fence along latter's northern border. Some like Austria have shown disappointment at the EU's handling of situation and stressed that any failure to handle situation themselves would require support and co-operation with Slovenia, Croatia, Serbia and Macedonia. Macedonia is already working towards that and has deployed the army to its borders to decrease illegal crossings. In short, the current need of the hour is to not only to help the refugees in need with medical assistance, shelter and food but also to look forward to resolve the issue and make efforts to reduce the displacement by limiting violence and its impact on civilians in addition to providing aid within Syria itself. In addition Turkey's government faces serious questions as it goes ahead with its current approach of attacks against the media houses. The more the

attacks and seizures, the more the government moves away from free press and eventually away from the democratic society. As part of this section, we look into the future which holds for the Turkish media. Post seizure of Zaman newspaper, government takeover of other media houses is expected. Twitter accounts known to be operated by Erdogan's palace have hinted government takeover of papers such as Cumhuriyet, Sozcu, Hurriyet. For now, Turkey seems to be moving away from democracy and the government takeover of Cihan News Agency may complicate any reform process further. Cihan was the only organization apart from state run Anadolu Agency which was monitoring exit polls during the Turkish elections. The takeover poses challenges in holding free and fair elections in the country. Without any democratically elected government, restoration of independence of legal system and media may be a distant dream. In recent months, observing the crackdown on media by the government, media houses have not only abided to government restrictions but in addition, have reviewed their content and removed any having potential to invoke backlash. Example: CNN Turk cancelled two popular talk shows fearing backlash from the government. (RT, 2016) Ongoing seizure of the media houses including the recent one of Zaman has created fear among the few media groups which are still surviving. These media houses are afraid of any government action. Their extent of anxiety can easily be understood from the fact that none of them covered the seizure of Zaman newspaper in their news broadcasts. CNN Turk in an attempt to distance itself from the critical voices went ahead and fired 3 of its top journalists. (Vidinli, 2016) Turkey's freedom of press has been deteriorating. With recent seizures of media

houses, the pressure on Turkey is mounting not only from within but also from global media, human right activists like Human Rights Watch, Amnesty International and Turkey's partners like US, European Union. While both the Turkish Prime Minister Ahmet Davutoglu and President Erdogan have rejected criticism and instead defended that the country did not harm freedom of press. Erdogan has even gone ahead and mentioned that media should not have unlimited freedom and mentioned that it is the same everywhere. Though the country may be able to ignore these voices for now and even that of EU, which is busy resolving the migrant crisis. However, sooner or later Turkey must listen to voices especially from EU if it has to go ahead with the membership bid. Country's media, judiciary, public administration must undergo reforms in accordance with the Copenhagen criteria and move towards a democratic society with independent judiciary, free media. An EU, which includes Turkey would be more efficient in tackling global political and economic issues, ranging from the threat of terrorism to illegal immigration and drug trafficking. Turkey's accession should also enhance the EU's position in regions close to its immediate neighborhood. Finding the "truth" in this topic is very difficult and may not be possible at all. We do hope the country can improve and find a solution to all the problems, because Turkey has many great ability, many advantages. We do believe that Turkey can face and solve the problems in the country and a great future is waiting for Turkey. Finally we would like to quote David Cameron during his stay in Turkey: "a European Union without Turkey at its heart is, not stronger but weaker... not more secure but less... not richer but poorer".

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# CHINA, CENSORSHIP, AND THE INTERNET

## **A review of China's freedom of press, censorship, and its battles with the Internet**

Reporters without borders ranked China as 175 out of 180 countries for Freedom of press in 2014. Freedom House scored China received a score at 83 for press freedom in 2015, on a scale where 0 is the best, and 100 is the worst. A score of 83 means China has very little press freedom (Freedom House- China). That is an abysmal ranking, showing just how controlling the censorship laws are becoming. China is a country often scrutinized for repressing Freedom of the Press due to its history of restrictive practices towards the media. Long famous for its propaganda machines and censorship laws, this essay will delve into the history of China's media control, analyse new trends and laws, and finally discuss the issue of Chinese propaganda. The first censorship law every recorded in China harkens back to 300 AD, and there are many historical records of book burning, and Imperial desires to control information (Newth). Today, Chinese citizens are technically guaranteed freedom of speech and freedom of the press by the Chinese constitution, yet these rights are in conflict with Chinese laws on censorship and propaganda (Xu).

Even though there is the constitutional guarantee of freedom of speech and freedom of the press in China, the legal system does not enforce those rights. In the Western world (and even many non-western countries) you can argue in a court of law that an individual's constitutional rights were infringed upon. In

China, although the constitutional right exists, it cannot be used to assert individual rights in a court of law in most cases. This is partially due to the fact that the rights are subjected to the discretion of the state, and partially because the judges are appointed by the Chinese Communist Party (CCP) and stick closely to the party line. Journalists are also not protected under the law. On the contrary, the government often uses the law to imprison journalists or citizens for spreading information deemed to be harmful to the party.

## **China-literature, print media, and television**

In prior decades, different governments of China have been very strict on print media. For example, during Mao's Cultural Revolution all print media became banned except for Mao's instructional readings or propaganda books and comic strips (Eiss, 2009, p.103–104). In the 1960's and 70's the Chinese government banned all foreign literature. However, in the last decades under the current government the censorship rules have relaxed and foreign literature is growing more popular, although it is still subjected to certain kinds of censorship. If a foreign author wants to publish in China, they submit their manuscript to a Chinese publisher, who then will provide them with a list of people, terms, and historical events that have been deemed dangerous or unflattering, which must be changed or removed before the book can be published. Similar standards are applied to TV and radio; broadcasts are heavily

edited to ensure unflattering material is censored.

The Agency that controls media censorship is The Central Propaganda Department. What makes it even more difficult to understand Chinese censorship laws, is that the department does not publish lists of clear rules, does not report on its activities, and operates in secrecy. Its headquarters are even unmarked, there is no sign or official address (Osnos, 2014).

Chinese freedom of the press has gotten worse since President Xi Jinping came into power in 2012. His regime has increased media censorship and internet censorship laws, and has been responsible for the imprisonment of many journalists. Controlling the flow of information is made easier for the government as the only legal national televised news program is China Central Television (CCTV). The government requires that all local channels run CCTV's broadcasts during prime-time, allowing the government to control much of what is seen and heard. All Chinese media outlets are also required to be majority owned by the Chinese government, although some have opened up to private investors, it is required that the government must maintain the majority of shares. This has allowed the CCP to enforce its tight grip over the media. Many journalists have quit in protest in recent years due to the continued tightening of censorship. Others have been forced to resign or have had their licenses pulled for publishing, or trying to publish, information deemed unsavoury.

Corruption in Chinese media outlets and among journalists is also reported to be high due to economic and political pressures. Journalists can often be paid to attend events and then write favourable articles about the event. It is not uncommon for PR firms to pay

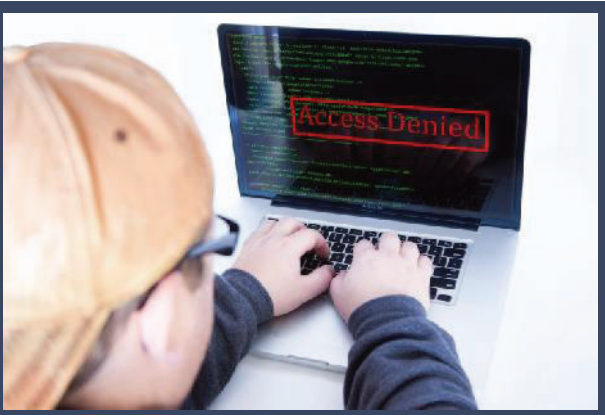


journalists to attend their press conferences and write articles reflecting the company in a good light. Media outlets can also be bribed to remove any articles that paint a person or company in an unfavourable way. The corruption is another reason press freedom in China is suffering. The honest journalists quit or are removed due to censorship, and the ones left allow themselves to be bought by the party, or by companies searching to improve their images.

According to Freedom House, "For the first time in several years, professional journalists from established news outlets were subjected to long-term detention, sentencing, and imprisonment alongside freelancers, online activists, and ethnic minority reporters." By December of 2014 China had placed 44 print journalists behind bars for various offences. This was shocking because it seemed in the few years leading up to 2014 that the government use of those kinds of arrests and imprisonments had significantly declined. The 44 journalists made up the largest number of journalists imprisoned worldwide in 2014, and, what is more shocking, the number does not account for the everyday citizens or online journalists, bloggers, etc., who simply expressed their opinions online. Many of the journalists were imprisoned for bribery, sharing of state secrets, or spreading false rumours, although many of the cases have been deemed questionable (Freedom House, China).

## China and the Internet – a new type of censorship

Since the dawn of the internet, the Chinese government has been working vigorously to control the information accessible on the internet. The Chinese “Golden Shield Project”, which began in 1998 (Wilkins), is a project of the Ministry of Public Security (Atlai) to block all content labelled “subversive” through a massive firewall system called the “Great Firewall”, and snoop through social media and email to ensure that potentially “dangerous” information is not being passed or accessed. The Chinese government also employs 30,000 “internet police” who investigate people who post any kind of content against the government (Wilkins). The laws governing the types of content that are acceptable are often vague and unclear. Content must not challenge the communist party, it should be healthy and in the public interest (James). By keeping policies vague and unspecific the Chinese government gives themselves the ability to challenge any kind of content that they could have a problem with.



Beyond these measures the Chinese government goes through enormous trouble to track online activity. Every key stroke is measured to ensure that no conversation is truly private. It also employs a number of tracking services to record the sites you visit, your

emails, and your id numbers, so that it can track down “criminals” who use internet cafes or other non-private computers. In 2008 during the Olympics in Beijing, many of the internet restrictions were temporarily taken down, and lots of content was open for the first time. During the Olympics and online petition “Charter 08” calling for democracy and criticizing the government spread like wildfire in China. The Chinese government was very angry, and as a result cracked down on internet security after the end of the Olympics (James). You could wonder why China has not completely shut down the internet, due to their fear of the spread of Western ideologies and anti-communist sentiment. Part of the reason is that the internet helps to drive the Chinese economy. The internet was adopted in China in 1994, after President Jiang Zemin determined it would be useful for continuing to develop the country. After it became clear that the spread of information on the internet could pose a serious threat to the Chinese way of life, the Great Firewall was developed. However, the CCP has gotten serious about controlling the internet, and in the last few years there have been many new laws passed to better control the internet.

The crackdown by the government shows how desperate they are to continue to control the dissemination of information in their country as internet use grows. China now houses the most internet users on the planet, and it is getting much more difficult to control information, and in the past decade the internet has been used by citizens to leak information about government slip ups. In 2001 an explosion at a rural school in Jiangxi killed 44, and the government claimed the incident was the work of a lone madman. Internet users in China were able to force the government to

apologize when they uncovered that the explosion was caused by the school. In order to support itself financially, the school used the children as labourers in a fireworks factory. The explosion was a result of an accident from kids aged 9-11 years old assembling fireworks (Smith).

The growth of the internet in China makes it harder to control, and creates greater potential that incidents like these, and like the 2008 pact to become more and more common. The Communist leaders fear the internet's ability to spread information, and the ability of the Chinese citizens to get around the blocks and access forbidden content. The Internet has also allowed local Chinese issues to get national media coverage online. Previously, there were very few national media outlets allowed by the Chinese government, and so only approved local news stories would be spread to national channels. Now, internet news sources licence both national and local stories, and due to their accessibility, allow the spread of information of local events at a much faster rate (Tai, 2004, p.244). The spread of local disasters such as the Jiangxi incident, used to be easier for the government to control, but the internet has led to several embarrassing situations for the Communist party. From a system that gains its legitimacy through propaganda about its good works, a free and unfettered media and internet is highly threatening. The CCP prefers to allow one or two news outlets to report on any matter that is deemed dangerous or threatening in a precise way following a script written by the party, which allows the party to appear like they are sharing information, but they also get to control exactly how the story is told (FreedomHouse, China).

In 2015 China cracked down on Virtual Private Networks (VPNS) which allow users to

circumvent many of the Chinese restrictions by making it appear that they are accessing the internet from a different country. VPNs were commonly used to get around Chinese blocks and visit censored information of American run cites such as Facebook, YouTube, Wikipedia, and others. However, the new crackdown has discouraged many citizens from using the VPNs that are still accessible. Besides just a crackdown on VPNS, quite a stir was caused in the Western world in 2015 after it was announced that the Chinese government had created some new laws dealing with foreign online media censorship under the guise of antiterrorism. The new regulations required foreign companies publishing on Chinese internet to submit source code, agree to inspections, and use Chinese encryptions (Xu). All content dealing with Chinese users would have to be stored on Chinese servers and providers were required to create ways to monitor use for terror threats and to provide the encryption keys to local Chinese authorities. February of 2016 lead to even tougher restrictions on foreign media. The new laws forbid foreign owned media companies from publishing online in China without first getting approval from the government. They must also agree to host all of their content on Chinese servers (Cendrowski), making it easier for the government to search and censor the content. If foreign companies wish to publish content on Chinese internet, they must first partner with a Chinese company and get approval for the project.

What is unclear about these laws is whether or not foreign owned companies with their servers located abroad will still be able to deliver their content in China. The ambiguity is due to previous laws that require foreign services to host their content in servers within China, it is

unclear whether or not China will soon block all foreign owned content published on servers that are not located in China. As the laws were set to go into operation in March, however, and no such blockage has occurred, it seems that, at least for now, the changes primarily applied to companies that had already switched to hosting their content on Chinese servers (Livingston). Things have been getting tougher also for individual internet users. Bloggers, journalists, and even cartoonists are facing consequences for posting anything threatening to the government. The punishments range from the forcible closing of their accounts, to searches of their property, to interrogations, capture, and prison time. The Chinese government has even expanded the programs that they monitor. In April of 2014 the first Wechat account, held by an American blogger, was closed due to censorship laws. The government got Wechat's parent company, Ten Cents, to work to verify the identities of more than six thousand users in an attempt to further control the social media network. However, Wechat is still heavily used by activists to organize protests and other events. Journalists and activists have been able to cleverly get around censors by using homonyms and homophones to trick censoring programs, and they often use personal microblogging accounts to report news stories that would otherwise be censored. While the government has caught on and is cracking down on these new forms of disobedience, it has not discouraged people from continuing to find ways to trick censors (Freedom House, China).

### **Internet crimes and minorities in China**

Those imprisoned for internet crimes are often imprisoned for trying to send information

abroad, or for spreading information deemed dangerous. A number of prisoners are from Tibet, the region fighting for freedom from Chinese occupation. Religious minorities face harsh sanctions for writing against the government, or expressing their minority religious views online. Internet users can face up to 3 years in prison for spreading information deemed dangerous as a result of a 2013 law. Prosecutors can pursue criminal defamation charges if a person posts anything deemed harmful to the public order or to state interest, and that had been viewed at least 5,000 times, or reposted more than 500 times. Often, those on the receiving end of these sentences are Tibetans and Uighurs (Freedom House, China).



Violence has been increasing in Tibet and Xinjiang (the home of the Uighurs), for several years as a result of discriminatory Chinese practices. The region of Tibet has protested for an end to Chinese occupation and religious freedom for years, but the Chinese government retains a firm grip on the region and has stifled religious freedoms of the Buddhists there. The story is similar in the Xinjiang province, which became officially part of China in 1949. Beforehand it was a region that had held autonomy for much of its history and, before recent years, contained a majority of ethnic Uighurs, Muslims who identify more closely with central Asians. In recent years the CCP

has increased urbanization in the region, leading to the growth of the cities, yet there is a clear racial bias towards Han Chinese. The government has also cracked down on religious and cultural practices, and the tensions have led to outbreaks of violence in the region. The CCP has kept foreign journalists for the most part out of the Xinjiang region and Tibet, in order to control what information leaks on the violence. Human rights in these areas are a global concern and the government wants the true information concerning violence in the region under the official story (BBC, 2014).

## Conclusion

The actions of the CCP show a renewed push towards censorship of information and a restriction of freedom of the press in ways that China hasn't seen for a few years. The decisions are disheartening for journalists, rights activists, and citizens in China, who for a brief time believed the tide was turning towards a more open flow of information. The actions of the CCP show how reluctant it is to feel out of control, and the new internet policies reflect a renewed desire on their part to control the flow of information in China.

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## FREEDOM OF PRESS IN MEXICO: ORGANISED CRIME OPERATES WITH IMPUNITY

### Introduction

The freedom of information/press in Mexico is under threat because of the organised crime, the impunity of their actions, the corruption of the officials and the lack of measures to protect journalists.

Ten journalists were murdered in Mexico between the beginning of 2016 until mid-September of the same year becoming the deadliest country for journalists during that period, according to Article 19, an organisation that defends the freedom of expression and information. This is just the peak of a tendency that positions Mexico as the deadliest country in the western hemisphere, says Reporters Without Borders (RWB) which is an organisation that defends freedom of press in the world.

Mexico is ranked 149 among 180 countries in the freedom of press ranking of 2016 made by RWB. The country has been in the last places of this ranking since 2005, especially after the federal offensive against drug cartels in 2006.

The present paper shows the difficulties and the context that the journalists have to face to develop their work freely in Mexico.

The first part of the article gives an overall view of the rights and liberties, the political system, the violence and the organised crime activity in Mexico. Then, the paper focuses on the different sort of violence against journalists like aggressions, detentions, disappearances or murders. This point drives to the political and judicial measures undertaken to guarantee freedom of information and expression. The

conclusions in the last part of the article draw series of recommendations.

### Freedom in Mexico

The United Mexican States is a federal republic with a presidential system and three levels of government: municipal, states and the federal Union. It has 22.800 square kilometres and a population of more than 110 millions of people in its thirty one states. Since 2012, the president of Mexico is Enrique Peña Nieto from the Institutional Revolutionary Party (PRI).

Mexico is a Partly Free country, says Freedom House (FH) in the Freedom in the World 2016 report. FH is an organisation that promotes democracy, politic freedom and human rights. In the ranking made in 2016, there were three possibilities: free, partly free, not free.

One of the reasons that make Mexico Partly Free is the crisis of the human rights, as denounced the Inter American Commission on Human Rights (IACHR) in March 2016. From its visit to the country, the IACHR listed: disappearances, extrajudicial executions, torture, citizen insecurity, access to justice and impunity. It also identified vulnerable groups like human rights defenders, women, indigenous people, LGBT and journalists.

The report stresses that there were 94,000 killings in Mexico from the beginning of the administration of Peña Nieto in 2012 to September 2015. However, from all these murders only the 2% have ended in conviction. The UN High Commissioner for Human

Rights even registered a lower percentage of a violence “made possible by systematic and endemic impunity”, said in 2013.

According to the National Institute of Statistics, between 2007 and 2014 more than 164,000 civilians were killed in Mexico, more than in Iraq and Afghanistan together.

The organised crime is one of the main origins of this violence. According to Inside Crime, a foundation devoted to study organised crime in Latin America and the Caribbean, “Mexico is home to the hemisphere’s largest, most sophisticated and violent organised criminal groups. These organisations have drawn from Mexico’s long history of smuggling and its close proximity to the United States, the world’s largest economy, go grow into a regional threat.”

The cartels especially traffic drugs, firearms and humans. The history of the smuggling is connected with the 3,141 km of border with the United States and the 9,330 km of coastline. When one of these groups settles down in one area it brings violence: threats, extortions, aggressions, disappearances and murders.

The historical big cartels have been: Gulf Cartel, Los Zetas, the Beltran Leyva, Familia Michoacana, Juarez Cartel, Tijuana Cartel and the Knights Templar.

However, internal disputes and the Mexican Drug War that began in 2006 changed the structure of the organised crime. The administration of Felipe Calderon (2006–2012) made the combat against cartels and the end of organised-crime-related violence a priority. For this purpose it increased the resources such as more army and police, better equipment or new laws. During that six years there were over 47,000 organised-crime related deaths, informs Insight Crime.



The Mexican Drug War is still active with the administration of Peña Nieto, but the government has a more preventive position.

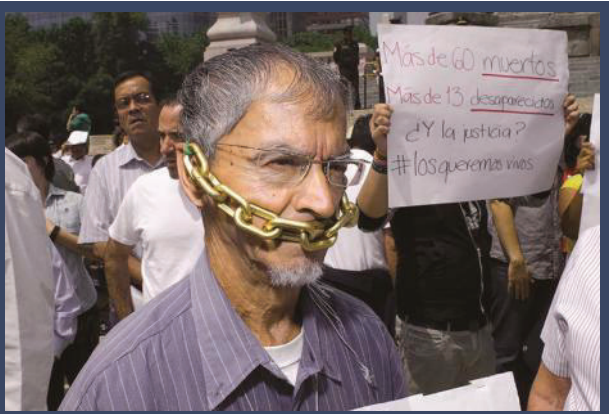
During the War all the major cartels mentioned before had some important integrant caught by the police. The new situation fragmented the big cartels into a number of small gangs which operate more locally. The only exception is the Cartel of Sinaloa which is “the most prolific drug trafficking organisation in the Western Hemisphere”, according to Insight Crime.

While big cartels were collapsing smaller gangs were growing, for instance, the Jalisco Cartel – New Generation. Insight Crime explained that these smaller groups “operate with the complicity of, and often in conjunction with, government officials and members of the security forces”.

Even some times the officials are directly related with the violence. The IACHR condemns cases of violence that the State participated in or tolerated: tortures, extrajudicial executions (Tlatlaya in 2014; Apatzingán and Tanhuato in 2015, also condemned by Humans Rights Watch) and forced disappearances.

In Mexico there are more than 25,000 people “not located” according to the National Registry of Disappeared or Missing Persons. The government created a system to register disappearances and to coordinate the response. Even though the IACHR welcomes the law advances and consultations of the state, it stresses that they are not enough to finish with

violence and impunity. In the same line, FH celebrates the judicial processes against alleged corrupted officials and gang members, but criticises that few of these processes end with convictions.



The violence and corruption are especially high in the states where organised crime is more active and where the multiparty system is weaker. In some states, gangs have introduced into governments to reach impunity, sometimes with pressure, extortion or killings, as FH says: “Politicians and municipal governments have been subject to significant pressure from criminal groups in recent years, with more than 300 attempted or successful assassinations of local officials registered between 2008 and 2013. There were at least 19 killings linked to the 2015 electoral process”. However many attempts to unveil the connections between governments and organised crime have failed because of inconsistency.

These connections are especially high in local governments. There have been several cases of discoordination between federal, state and local law enforcement entities. Even the government replaced local police for federal troops in the most dangerous areas.

About the judicial system, FH depicts it as “plagued by delays, unpredictability, and corruption, leading to pervasive impunity”. It also stresses bribes and limited capacity. This

situation leads people to do not trust their system and to do not report crimes because of the discredit of institutions. The government, it says, is “unable or unwilling” to address the problem.

FH and IACHR also reports about press. If Mexico is a partly-free country for FH, it is not-free in press freedom status. “Mexico is one of the world’s most dangerous places for journalists and media workers, and press freedom faces persistent threats. Journalists and media outlets frequently face harassment, intimidation, and physical attacks, and self-censorship remains widespread in areas heavily affected by drug-related violence”. The IACHR states in the report that “Mexico is one of the most dangerous countries in the world to practice journalism”.

### Freedom of press in Mexico

“The frequency with which journalists are killed in Mexico is dramatic. The federal government must demonstrate its determination to contain this spiral of violence, provide media personnel with protection, and end the reign of impunity throughout almost the entire country”, said Emmanuel Colombié, the head of RSF in Latin America.

The violence that Mexican journalists face is represented by many ways: murder, physical and material harm, disappearance, harassment, threat, intimidation, censorship and self-censorship, privation of freedom and funds, firing or attack to office, among others.

The Committee to Protect Journalist (CPJ), an organisation dedicated to the global defence of press, introduces Mexico in 2016 as the country “where journalists are killed with impunity”, and ranks it as the eight in its Impunity Index of 2015.

From January 2016 to 16 September 2016 there were in Mexico 10 journalists murdered according to Article19. This led Mexico to the most lethal country for journalists in the world during that period.

Article 19 have registered more than 1900 aggressions against journalists in eight years (until July 2016), 379 in 2015. The organisation points that the 46,9% of the aggressions were done by civil servants. It adds that from 2012 to 2015 the attacks increased 50%. The majority of this violence is perpetuated in Ciudad de México and Veracruz followed by Guerrero, Oaxaca, Chiapas and Puebla.

Article19 has counted that 99 journalists were murdered since 2000 until 16 September 2016 in Mexico (92 men and 7 women). In Veracruz were 21 of these murders, becoming the more dreadful state of the country. There was impunity in all the 21 cases. The National Commission on Human Rights raised the figure to 107 journalists killed during that period. From all these murders the 89% have gone unpunished, says the Commission. Article19 also registered 23 journalists disappeared from 2003 to January 2015.

The cruellest violence is a direct consequence of the investigative journalism. Article19 concludes that 96% of the murders and disappearances of journalists comes after reporting on corruption, security and organised crime. Despite this fact local and international organisations as well as journalists have to criticise that the government ignore the connection of the murders and disappearances with their media coverage. According to FH the reasons are “low levels of funding and political will, bureaucratic rivalries, and lack of training”.

The government answer to this situation and

the security are very weak. There is a lack of state protection and this ends with murders like the ones of the journalists Rubén Espinosa in 2015 and Pedro Tamayo Rosas in 2016.

Rubén Espinosa was a journalist based in Veracruz covering cases of politics and violence. Because of his work, he was soon harassed by government officials and threatened by the raise of violence done by the gangs. He made public his danger and went to Ciudad de México for security. He did not trust the public organisations. These organisations did not protect him properly. He was killed in Ciudad de México. According to the authorities, Ciudad de México was one of the few zones free from drug trafficking.

Pedro Tamayo Rosas was killed in Veracruz even he was under the protection of the Commission for the Attention and Protection of Journalist of Veracruz after being threatened in January 2016. The police car for security that was driving near his house was not an obstacle for the gunmen.

Article19 also accuses the municipal police of extrajudicial executions in 2016. Salvador Olmos García died after being hit by a police car in Huajapan de León (Oaxaca). The official version says that he was escaping from police and the car hit him because of the lack of visibility. However, this version has several gaps, especially related with periods of time, and other witnesses talk about a deliberated hit. The reconstruction of the facts is still uncompleted. The other case is the one of Marcos Hernández y Salvador in San Andrés Hauxpaltepec (Oaxaca).

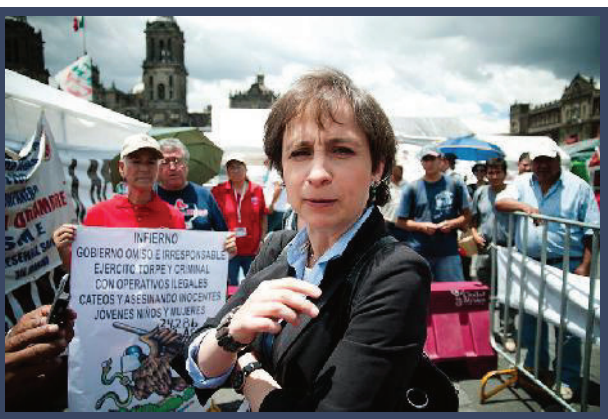
Among the 218 aggressions against the press from January to June 2016, 101 were done by civil servants and just seven by the organised crime, states Article19. The same organisation showed that from December 2012 to February

2014 there were 19 cases of detentions of journalists accused of attacking the public peace. The most famous case is the nine months of imprisonment of the journalist Pedro Canché. He was accused of sabotage. In the end the court released him after declaring the absence of evidence and calling his imprisonment a violation of rights.

In these previous cases, institutional violence was conveyed in the judicialisation, criminalisation, impunity, harassment and even extrajudicial executions of journalists. There is also an important decision for local media: the denial of governmental funds. Many local media depend on the financial aid of the government funds to be profitable so they avoid any news that could go against the interests of the politicians.

From 2009 to July 2016 Article 19 counted 31 accusations against journalists for moral damage. Defamation was decriminalised in the country in 2011, but there are still states that punish it up to five years in prison.

Besides, when journalists publish political scandals the firm can be vulnerable to political pressure. This is what denounced the journalist Carmen Aristegui who was fired from MVS Radio after releasing a story about Peña's Nieto wife's luxurious mansion bought from a government contractor.



There is also the problem of “halconeo” which is the actions that a journalist do to get

information from the institutions of public security. This is considered a delict that a journalists investigating the public administration confronts and in some states is punished up to 20 years in prison.

In Internet journalists face cyberattacks, threats and discredit social media campaigns.

This violence transmitted in different ways halt journalists to do their investigations. This risk turns into self-censorship.

The threats, the fear and the impunity make many newspapers and journalists from the most violent areas like Veracruz or Oaxaca to avoid any story involving organised crime and corruption. FH talked about the censorship along the same lines: “Drug-trafficking organisations, frequently in cooperation with authorities in their areas, have created what the Washington Post called an ‘institutionalised system of cartel censorship’ imposed on media organisations, particularly along the US-Mexico border. For media editors in regions of high cartel influence, survival can require accepting explicit criminal demands regarding content and practicing self-censorship”.

The citizens of these states are aware about this situation and 80% of them know that media would not report on crime in their zone. People do not trust their media.

To solve this problem the state is passing laws and creating organisms to protect journalists, but the effects of these measures are not effective.

## Laws

Freedom of information and expression are rights guaranteed by the Mexican Constitution in the Articles 6 and 7. It ensures the inviolability of freedom of information, the access, the dissemination and the manifestation

of ideas and it forbids censure, especially the one that comes from the authorities

In the past few years, Mexico has taken steps forward passing laws and creating organisms like the Special Prosecutor's Office for Crimes Against Freedom of Expression in 2006 or the federal Protection Mechanism for Human Rights Defenders and Journalists (Mecanismo) in 2012.

The Mecanismo has protected 486 people in 288 cases until the end of 2015. There are four main measures of protection: 1) panic buttons that connect the user with the Mecanismo and shows his/her location, 2) telephones, 3) closed circuit camera system and 4) alarms. The Third Unit that will analyse aggressions and identify patterns in order to improve the system is not implemented yet.

However, there are journalists who do not trust these organisations and mechanisms. Rubén Espinosa, mentioned before, did not trust the State's Commission for the Attention and Protection of Journalists created in 2012 because it was a governmental measure.

To solidify the investigation of the murders and to coordinate forces the administration of Peña Nieto has federalised the crimes against journalists and wants to unify the state and the municipal police.

The states of the country have also created particular measures and commissions to solve the situation. The Mecanismo signed an agreement with the authorities of Veracruz to decrease violence. Mexico City passed a new law in 2015 to protect journalists and human rights activists that increased the personnel and the resources and made easier to change the law if needed.

A constitutional reform in 2014 led to the General Law of Transparency, the Public Archive Law and the General Law of Protection

of Personal Data. However, the first one has not been properly implemented in ten states and the other two are not even completed nor implemented. The country also passed in 2007 an amendment on the Article 6 of the Constitution for the government to make public its information, but is still difficult to get it.

In 2015 the justice system approved Protocols for Investigation of Forced Disappearances and Torture and created the Specialised Prosecutor's Office for the Search of Disappeared Persons, the Crime Prevention and Community Services of the Attorney General's Office and the Specialised Unit regarding the Crime of Torture.

Insight Crime depicted the judicial system of Mexico as "marked by corruption, high rates of impunity, and a significant backlog of cases". To protect auditors and prosecutors, Mexico also created the National Anticorruption System in 2015, but it is not reaching the objectives.



In 2016, the country passed the Law of Administrative Responsibilities of the National Anti-Corruption System. Again, Mexico did not fill some important gaps for journalists like the protection of the confidentiality of the whistle-blowers.

The country created an office specifically for investigating crimes against freedom of

expression, this is the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) of the Attorney's General Office. Despite the purpose of its creation and the mission to guarantee the proper investigation of these crimes, the Office does not anything until having the approval of officials, says Article19, but, according to FH, federal officials "have proven unwilling or unable to halt or punish the growing tally of murders". Even the majority of the cases investigated by the FEADLE are not related with freedom of information and expression. "The FEADLE has been completely passive in all of them, disobeying its mandate to prevent, chase and punish the delicts made against journalists", concludes Article19 about its task in the murders of journalists in 2016. The organisation called the FEADLE "ineffective" as well as the Mecanismo and the National Commission of Human Rights (CNDH).



The CNDH investigates few cases (143 between 2014 and 2015) and it can only publish recommendations that are not compulsory for the authorities to implement. However, the Commission does not deal with sensitive material for the government. The well known as Ley Telecom, the Federal Telecommunications and Broadcasting Act,

passed in 2014, forces to increase the competition among television stations and telecommunications providers because at that time Televisa and TV Azteca controlled the 95% of the free-to-air market. However, it included several threats for the freedom of press and expression. With this law the government is allowed to get data from the internet and mobile providers and it also had the right to suspend the telecommunications service in order to stop criminality. Local organisations brought Ley Telecom to court arguing it was unconstitutional, but the federal court denied it.

## Conclusion

The freedom of press in Mexico, as well as the freedom of expression, is not free because of the violence and the impunity created by the organised crime and the corruption of the officials. This situation situates investigative journalists at stake.

In order to do not put their life in danger, to avoid being the target of violence, many journalists and means of communication choose self-censorship and avoid problematic investigations.

This situation supposes a weakening of journalism that carries a weakening of democracy. Investigative journalism is an important watchdog of democracy denouncing its traps and threats, such as corruption, impunity, violence or radicalism. Without its task, democracy is open to an unchecked public administration.

The government has activated several measures and passed many laws to solve this problem related with organised crime. It is even in war against the cartels and has imprisoned drug lords. Many of the ideas were good, but the

implementation failed almost completely and the results have not been the ones expected nor desired. The main reasons are the impunity, corruption and also, as is stressed by many local and international organisations, the unwilling of the officials.

The Mexican Drug War showed that even if you dismantle important cartels, violence will grow with other different groups as though it is structural violence. For these reason, government and officials should have a real intention to finish with organised crime as well as with corruption instead of playing to the gallery. This means attacking the problem from the roots. The political system must be clean from top to bottom or there will not be any kind of trust between the three levels of government, journalists, citizens, police, judicial system or human rights activists, nor

effective implementation of the measures. The process of cleaning all the system is hard, but it is a matter of political will. Without it, it seems very difficult to solve the problems of corruption and organised crime.

One step further to guarantee freedom of information and expression is that government should listen more and work together with journalists and local organisations.

The three levels of governance, federal, state and local, should also harmonise more their law systems in order to implement effectively the measures to protect freedom of press and to tackle corruption.

Mexico has a lot of hard work to do to solve not free freedom of press status, but the first step is to have the willing to make this freedom a reality.

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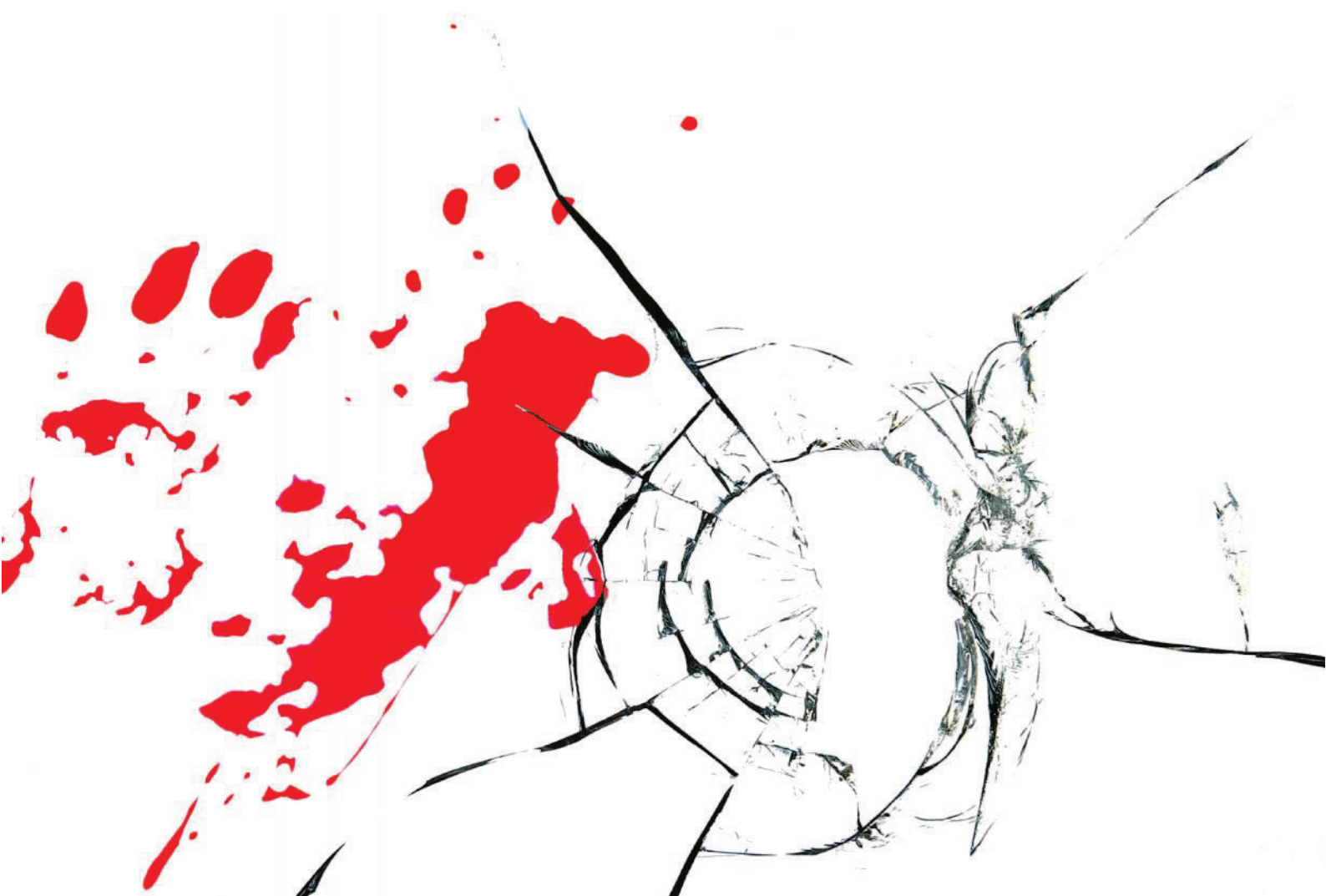
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## RESTRICTING, CONTROLLING AND OWNING THE MEDIA

### CONSTITUTIONAL VIOLATIONS IN VENEZUELA

#### Introduction

Despite that it should be the South American subcontinent's most prosperous state, the Bolivarian Republic of Venezuela has been one of the hot topics of international news lately due to its dysfunctional political, economic and societal system. Even though Venezuelan President Nicolás Maduro has inherited a ruinous state when officially taking over the presidency on 19 April, 2013, the current crisis of the oil-rich country cannot be blamed only on his predecessor, Hugo Chávez: President Maduro has added a fair share of his flawed policies which have led the country into an even bigger chaos. Venezuela is currently “suffering the worst economic crisis in history” (Borger, 2016) facing a continuous struggle of shortages in basic goods, which was one of the main factors, – along with the skyrocketing corruption, crime and inflation rates – that caused the unfolding of several mass protests in the country.

The Corruption Perception Index published by Transparency International (2015) ranked Venezuela 158 out of 168 countries in 2015, while the statistics of the Venezuelan Crime Observatory (SVO) highlighted that in 2015 the homicide rate reached 90 per 100 thousand inhabitants. Due to official censorship this devastating figure was kept under wraps for about twelve years, but in the past year the researchers of SVO have taken courage to stand

up against those in power and inform the general public about the correct data (Observatorio Venezuelano de Violencia, 2016). The Venezuelan government was not only unwilling to provide exact information about corruption, crime, poverty, and other rates, in addition, it failed to ensure the basic human rights to the Venezuelan citizens, but has violated those on several occasions.

According to Freedom House's annual report on “Freedom of the World”, 2016 marked the 10th consecutive year in global freedom decline. Due to its antidemocratic measures, Venezuela has joined those states which have moved backward on the scale (Freedom House, 2016, p.3). This did not come as a surprise though, since in 2015 the annual Freedom House report has emphasised that Venezuela was one of those “large, economically powerful, (and) regionally influential countries” (Freedom House, 2015, p.3) who has been showing decline. One area of human rights that has been specially standing out in Venezuela for more than a decade is freedom of the press. The 2016 World Press Freedom Index – just like the report on Freedom of the World – has shown decline, Venezuela ranking 139 out of 180 (Reporters Without Borders, 2016), making the country's press freedom in the world status “not free”, with a score of 80 out of 100 (Freedom of the Press, 2016).

Considering the broad palette of human rights violations and restrictions performed by the government, this paper examines the situation of the freedom of press in Venezuela from the perspective of past, present and future events.

The author does so by highlighting the measures taken by both Hugo Chávez (*past*) and Nicolás Maduro (*present*) to control and silence the media. The discussion and analysis of the two aforementioned Venezuelan presidents' actions give opportunity to leave space for forethought and for the prediction of the *future* of Venezuela's freedom of press status.

### Freedom of press under President Hugo Chávez (1999–2013)

Hugo Rafael Chávez Frías has served as Venezuela's president between 1999 and 2013. During his presidency, Chávez went from being highly supported by the media to taking major steps towards restricting, controlling and using it as one of the greatest tools of the Venezuelan government.

During the first year of his presidency, Chávez not only “enjoyed the support of the private media” (Committee to Protect Journalists, 2012, p.2), but also took positive steps towards ensuring the basic human rights to its citizens by adopting a new constitution. Article 57<sup>1</sup> and Article 58<sup>2</sup> of the new Venezuelan Constitution are supposed to guarantee the right of access to information without any restrictions or censorship, (Constitute, 2016, p.18) but despite of the Articles' content the Chávez administration had done everything except providing Venezuela's citizens the listed rights, which in fact, can be perfectly demonstrated on a timeline of numerous events.

Not long after taking office in 1999 Chávez created his own talk show with the title “Áló Presidente”, in which he talked about a wide range of topics. He reportedly used the show “to unveil new policies, rebuff criticism and receive questions from viewers” while he also



took the time to make fun of not only Venezuela's opposition, but of foreign leaders as well (Grant, 2009). The launch of the several-hour show, which can be considered as one of the first measures taken by Hugo Chávez in gaining control over the media, was followed by a similar phenomenon. In 2001 the Venezuelan president took charge over airwaves by creating a radio program called “Radio Chávez”, which consisted of long monologues about Chávez's personal life in detail (Committee to Protect Journalists, 2012, p.3). The creation of both the talk show and the radio program clearly shows that Chávez obliquely took initiatives to gain control over the media. These measures can also be considered as successful initial steps in highly influencing and manipulating the media in the long term.

A year after the launch of “Radio Chávez” a coup attempt aiming to topple Chávez's government resulted in the president's paranoia, which led to the birth of several conspiracy theories. For instance he believed that key media owners, such as Venezuela's most critical television broadcaster, Globovisión (Reporters Without Borders, 2016) were those plotting against him, helping to carry out the 2002 coup d'état (Committee to Protect Journalists, 2012, p.13). Due to such theories, the failed coup resulted in a high number of

human rights violations, especially concerning journalists and media publishers: their abilities were undercut and they reportedly were victims of numerous attacks, which may or may not have been due to orders given out by Chávez (Human Rights Watch, 2013).

Reaching the second term of his presidency, Chávez achieved to take control over more areas of the media, managing to silence those who had been criticising or acting against the government. As a result, Chávez expanded the government's ability to control the content of the country's broadcast and news media, by passing new laws. These laws have described the potential consequences of criticising or "offending" government officials and prohibited the broadcast of messages that were "potentially fomenting anxiety in the public" (Human Rights Watch, 2013). In 2004 a new broadcast law called the "Law on Social Responsibility in Radio and Television" banned different types of contents before 11 PM, such as TV shows or radio programs that are considered as either too violent or too sexual for children, or could "incite or promote hatred or violence" or showed "disobedience to current order" (Committee to Protect Journalists, 2012, p.6). The law was extended to the internet in December 2010, creating the "Law on Social Responsibility in Radio, Television and Electronic Media", also known as the "Resorte Law". Due to this piece of legislation, government officials had the right to order internet service providers to restrict websites that violate any of the aforementioned banned information. The law was highly criticised by journalists since its restrictions could include a wide range of important information that were imperative to be provided to the Venezuelan citizens, starting from sexually transmitted diseases to the country's abruptly rising crime

rate (Committee to Protect Journalists, 2012, p.6). Also due to the aforementioned piece of legislation the president of TV Globovisión had fled the country in the same year as the law was adopted to escape a number of government accusations, which would have led to a set of severe sanctions (Reporters Without Borders, 2016).

The oversight of the broadcasting laws, such as the "Resorte Law" is under the jurisdiction of the Venezuelan National Telecommunications Commission, also known as CONATEL. Besides overseeing the broadcasting laws, the Commission has the authority of regulations and the ability to impose and enforce sanctions when necessary (Woods, 2015). The members of the telecommunications regulator – who are freely appointed and removed by the President of Venezuela – practiced their aforementioned rights on several occasions in the year of 2009: they seized the equipment of more than 30 radio stations, which was later explained by stating that there were "administrative technicalities" and also because broadcasters supposedly "scattered news illegally about housing shortages" (Committee to Protect Journalists, 2012, p.7). Chávez stressed the need for taking these actions by declaring that the government's effort was to "democratise airwaves", adding that they had not closed any radio stations – even though they clearly did when seizing their equipment –, but were proceeding by law. The closure of a great amount of broadcasters marked the starting point of the so-called "media war" – the term mostly used by Chávez's followers – against private companies (The Telegraph, 2009). One of the most popular cases of the "media war" was when the government denied the renewal of Radio Caracas Television's (RCTV) license. When TV channels and radio stations, such as

RCTV refused to broadcast presidential speeches and openly opposed to Chávez, the government took action in the form of shutting those down. When asked about the measures taken against the TV stations, spokesmen explained the situation by referring to the law, emphasising that it states that TV channels are obliged “to cover any government materials and presidential addresses”, therefore when they refused to do so they have instantly disobeyed the law (BBC, 2010). RCTV was one of the most critical broadcasters in the country, therefore its closure had not only deepened the critical crackdown (Committee to Protect Journalists, 2012, p.3), but also provoked self-censorship among the majority of journalists and media editors, while causing the unfolding of a number of protests carried out by the dissatisfied Venezuelans in the country’s capital city, Caracas (Pidd, 2010).



All of the factors discussed above have caused the difficulty to access public information in Venezuela. The application of self-censorship has been rapidly increasing, mainly caused by the fear of the government’s possible reactions and actions. But there are other reasons as well: when government officials considered a question asked by a reporter uncomfortable, instead of politely refusing to answer they embarrassed the interviewer (Committee to Protect Journalists, 2012, p.7). Due to this phenomenon and the aforementioned laws adopted by the Chávez government, reporters

tend to show defensive behaviour by turning to – as mentioned before – self-censorship, which they explain by stating that it is the only possible way to survive in such circumstances. Another case that leads to the lack of access to public information in the country is the fact that a high number of reporters were not invited to the official press conferences. Because of this, they were not able to receive and later pass on information about the crucial issues of everyday life. In 2012, for instance, only a limited number of journalists were allowed to sit in and listen to the parliament debates and most of them had to stay outside of the conference room and follow the debate from monitors (Committee to Protect Journalists, 2012, p.8). Since violence and crime had become extremely sensitive topics in Venezuela the government did everything to avoid the publication of exact statistics. Due to the government’s unwillingness to provide accurate data on crime and other rates, journalists and reporters have to lean on less reliable indicators which are either published by the police or non-governmental organisations, such as the aforementioned SVO. Besides keeping exact rates from the public, the government also banned the use of photos capturing violence (Committee to Protect Journalists, 2012, p.8). Hugo Chávez not only took measures to gain control over the media, but also realised it can be used as a governmental tool. In 2010, after banning the use of Twitter, Chávez has joined the social media platform, which has later become one of the greatest instruments of the government. When tweets showing concerns about violation, crime and other rates along with the dissatisfaction with governmental services appeared on the president’s profile, Chávez reportedly replied by stating that he would contact the responsible ministers to look

into and deal with the concerned situations. According to Chávez, by joining Twitter he made greater connection and commitment to the Venezuelan citizens by both taking the time to consider and to respond – even if only with empty words – to their fears (Carroll, 2010).

As we can see Venezuelan President Hugo Chávez performed a great number of measures against the media: he gained control by creating new laws that banned particular information, he closed down television and radio stations, restricted and violated the human rights of journalists and media editors by not allowing them to do their work properly. As it is immensely visible, during the Chávez years the media was defined by self-censorship and was used as the greatest tool of the Venezuelan government to influence and manipulate its citizens. The implementation of such measures clearly present that President Hugo Chávez violated Articles 57 and 58 of the Venezuelan Constitution on several occasions.

### **Freedom of press under President Nicolás Maduro (2013–2016)**

Nicolás Maduro Moros, the current president of the Bolivarian Republic of Venezuela has officially sworn in office on 19 April, 2013. President Maduro was greatly endorsed by his predecessor, Hugo Chávez. After finding out his cancer has reappeared, Chávez has announced that if there was need for holding presidential elections before time, the Venezuelan citizens should vote for Maduro (Shoichet, 2016). The fact that Chávez was able to highly influence the Venezuelan public to choose his successor and he was a great supporter of Maduro from the very beginning, can be considered as a significant reflection to the current president's actions: concerning

freedom of the press in Venezuela, President Maduro not only followed his greatest supporter and predecessor in his footsteps, but added a fair share of his restricting measures. According to Freedom House's Freedom of the Press Index, 2015 marked the year when Venezuela has received the worst press freedom score in a decade: the country went from 78 to 81 out of 100 (Freedom House, 2015). The received score does not come as a surprise when the measures taken by President Maduro in restricting, controlling and owning the media are being discussed.

One of the greatest turning points in human rights violations in recent Venezuelan history can be put to the year of 2014. This year was defined by a great number of protests that swept through the country, mostly affecting the capital city, Caracas. The main causes of the protests were hiding in Venezuela's dysfunctional political, economic and societal system. The Maduro administration did not only fail to ensure security to its citizens, but also threatened their well-being by not providing the basic necessities of everyday life. The constantly increasing crime, corruption, inflation and poverty rates were the last draw that forced the unsatisfied Venezuelan citizens to break out in protest. Even before the demonstrations of 2014 President Maduro was known for imprisoning political figures of the opposition because he believed they were terrorists (Freedom House, 2015, p.6). But the recent protests were not left without governmental response either: the president ordered multiple mass arrests, which were usually carried out by the use of force, increasing the country's already skyrocketing crime rate. The opposition leaders were just one of the main groups who were affected by the government's violent actions: according to

Freedom House's 2015 report on Freedom of the Press, journalists have become the main victims of the attacks in 2014. As a consequence to Maduro's willingness to use force and in parallel spread violence, Venezuela received a downward arrow in the 2015 Freedom in the World Index (Freedom House, 2015, p.20). According to a number of sources, including Gustavo Hernandez, – a writer for a Venezuelan blog called Caracas Chronicles – the Venezuelan media has only covered the protests at late night in small fragments or not at all. For example, when the most prominent opposition leader and runner up of the presidential election, Henrique Capriles Radonski has delivered a major speech, networks failed to cover it. Hernandez also stated that the government carried out a “media blackout” to believably “minimise the coverage of the protests” (Fossett, 2014). Not only the national, but the regional and the international media faced the government's restricting measures in showing any footage of the protests. Even an announcement made by William Castillo – the director of CONATEL – in February 2014 highlights the severity and riskiness of showing violent footage of the demonstrations. Director Castillo stated that whoever decides to report about any news banned due to the Resorte Law would have to face the following consequences. After delivering the announcement only a day had to pass, when the Commission has pulled NTN24, a Colombian TV station off of the air (Lansberg-Rodríguez, 2014) because it was showing footage and pictures of violence, such as student protesters being shot (Neuman, 2014). But the Colombian case was not the only foreign incident: Maduro has threatened to expel CNN, the United States-based television network, due to its coverage of the

protests, stating it was carrying out “war propaganda”, (Freedom of the Press, 2015) which is, according to Article 57 of the Venezuelan Constitution is clearly prohibited (see footnote 1). According to Freedom House's 2015 report on Freedom of the Press, in the year of 2014 President Maduro used the Resorte Law 103 times to “interrupt regular programming on the nation's television and radio stations and deliver live official broadcasts (known as *cadena*s), including announcements of new presidential decrees and attacks on the president's political opponents” (Freedom of the Press, 2015). Evidently, individuals were not the only ones who suffered the consequences of the non-existent freedom of the press in Venezuela. Just like Chávez, Maduro took many actions to silence a number of media outlets. Globovisión – the television broadcaster accused for backing the 2002 coup – was also fined for covering the protests (Reporters Without Borders, 2016). Maduro not only managed to restrict, but has gained significant state ownership over a number of media outlets, which are reportedly being purchased by government supporters (Reporters Without Borders, 2016). Due to this phenomenon, the so-called private media sector is slowly transforming to a state owned one. But even those who manage to operate in the dissolving private sector have to face some severe restrictions and demands from the government. The private networks are obliged to give ten minutes of advertisement time, without getting any compensation (Freedom of the Press, 2015). Some of the most popular examples in owner changes are the already mentioned TV Globovisión, which was sold to new owners in 2013, the case of El Universal newspaper, sold in July 2014 and the example of the Venezuelan newspaper company, Cadena

Capriles (Woods, 2015). In all of the aforementioned situations respected reporters have left or were suspended (Freedom House, 2015), but it is not uncommon that journalists turn to resignation as a solution to escape the government's further demands, restrictions and manipulation (Reporters Without Borders, 2016). As it is clearly visible, Chávez's initiative against the private media was carried on by his successor. As well as in the Chávez era, the Maduro administration continues to take measures against the Venezuelan newspapers and television and radio broadcasters, whom still only have one option to survive: they have to turn towards self-censorship (Fossett, 2014). Just like Chávez, Maduro has also restricted journalists to attend important events, cutting their ability to cover news. Since Venezuela's judicial system is highly politicised, when journalists turn to the Supreme Court they often face rejection. An example occurred in May 2014, when a journalist claimed that her rights were violated by the government when, along with a number of journalists and reporters, was not allowed to cover the hearings of the National Assembly (Freedom of the Press, 2015). By prohibiting the reporters to enter the hearings, the government has clearly violated Article 57 of the Constitution, which states that "censorship restricting the ability of public officials to report on matters for which they are responsible is prohibited" (Constitute, 2016, p.18). After her rights were obviously violated according to the Constitution of the Bolivarian Republic of Venezuela, the aforementioned journalist handed in a lawsuit, which was, indeed, rejected by the Supreme Court (Freedom of the Press, 2015). National newspapers are also facing great obstacles under the power of Nicolás Maduro, partly due to the consequences of the economic

crisis, partly due to the president's restrictions: Venezuela has been facing paper shortages since the year of 2013 and Maduro tends to withhold foreign currency which is imperative to newspapers to buy newsprint (Freedom of the Press, 2015). The country has to import its newsprint from Canada and the United States, but Maduro's currency controls make it almost impossible for newspaper companies "to secure the dollars required to buy newsprint" (Committee to Protect Journalists, 2016). For example El Carabobeno, an independent Venezuelan daily was refused any foreign currency in 2016 because it ran several stories criticising the regional and national governments. Since its ability to buy newsprint was cut, it had to shut down after printing its final edition on 17 March, 2016 (Committee to Protect Journalists, 2016). Other cases of struggle because of newsprint shortages can be seen in previous years' events as well. In the early spring of 2014 El Impulso, a regional paper, announced it had to reduce its output due to the difficulties in acquiring newsprint and El Nacional, a leader daily had to end its print circulation altogether due to similar reasons (Fossett, 2014).

The constant struggle of paper shortages was followed by electrical shortages, which can be also considered as a form of censorship. Due to newsprint shortages and the restrictions of television and radio broadcasts the internet and smart phones are becoming more and more popular sources of receiving accurate national, regional and international news daily. Since Maduro is limiting access to the conventional media and puts restrictions on foreign mediums as well, the Venezuelan citizens have to turn to other, not so reliable information sources, such as Twitter, which usually only show one's perspective of the ongoing incidents (Lansberg-

Rodríguez, 2014). Some newspaper companies that were enforced to close their doors are also turning towards to operating on different levels. Since El Impulso was forced to stop its printing due to the lack of newsprint, it created its own application called “SOSVenezuela”, which was born as a platform for activists “to stay up-to-date on protesters’ plans in different cities around the country.” (Fossett, 2014) But due to the recent electricity crisis the flow of information on the internet is bumping into hurdles as well: there have been a number of power cuts – scheduled for three to four hours a day – throughout the whole country, which have not only affected the connectivity in the long term, but had other consequences, such as damaging devices and causing mobile phone network failures as well (Advox, 2016).

Just like his predecessor, Venezuelan President Nicolás Maduro performed numerous measures which have negatively affected the media sector and those working in it. During the protests of 2014 a great number of journalists were victimised, and a number of national, regional and international television and radio broadcasters were legally restricted – due to the Resorte Law adopted by Hugo Chávez in 2010 – to show any coverage of the ongoing situation. The changes in ownership at several mediums, such as Globovisión, El Universal and Cadena Capriles not only led to the dissolution of the private media sector but have also resulted in the dismissal, suspension and resignation of many broadcasters and journalists. Due to the fear from those in power, self-censorship has become one of the defining factors of the conventional media. Newsprint shortages and foreign currency controls have led to the closure of multiple newspapers and the deliberate media blackouts, which are carried out as a way for dealing with

electricity shortages are also the Venezuelan citizens to access information through online media platforms. By taking such measures Nicolás Maduro, just like Hugo Chávez, has violated Articles 57 and 58 of the Constitution of Venezuela on many occasions.

### **Recommendations: dealing with the constitutional violations in the long term**

The Articles violated by both presidents are supposed to guarantee the right of freedom of press and freedom of expression to the Venezuelan citizens. As the analysis of the two presidents’ media policies make it clear, both Chávez and Maduro have failed to respect the referred Articles of the Constitution when taking measures in restricting, controlling and owning the media.

To achieve significant and long-term changes in reconstructing the media sector and to accomplish a free press status while putting an end to the constitutional violations, the country is in need of a new leader. Since Nicolás Maduro was greatly supported by his predecessor, Hugo Chávez, their policies were very similar in many areas, as well as in the ways Maduro has been dealing with the media, which has led to several constitutional violations regarding human rights.



The future of the freedom of the press therefore is primarily in the hands of Venezuela's citizens. They have to take a stand and in the next presidential election, scheduled for 2018, they must vote for a candidate who is ready to turn the country's freedom of the press situation around and who promises that the aforementioned constitutional violations will be stopped. After the next Venezuelan president is elected it will be up to them and their government to make significant steps towards making the past right while dealing with the current situation.

Until the 2018 elections the international community has to take responsibility and aim for initiating change in Venezuela's freedom of the press situation. Dealing with Venezuela implies the great need for regional unity. Even though there have been some initiatives by regional organisations in restraining the Venezuelan government to act against the constitution, dealing with the country's current situation calls for further actions. The Organisation of American States (OAS) has reportedly invoked the Inter-American Democratic Charter on Venezuela, with Luis Almagro, the Secretary-General of OAS stating that Nicolás Maduro and his government have "violated basic democratic principles, which had altered the constitutional order of the country" (Reuters, 2016). According to the member states of OAS, Venezuela's ongoing humanitarian crisis is believed to be the result of the measures of those in power. For this reason the regional organisation openly backed a recall referendum on President Maduro and the nationwide protests aimed against the government and its unconstitutional actions (Zerpa, 2016). The regional organisation's assistance in dealing with the economic and humanitarian crisis, which partly resulted in

severe human rights violations in the media sector, is imperative, therefore OAS must keep pushing for change in Venezuela.

International assistance is also critical for dealing with the country's current situation. Despite the fact that both the United States and Canada are member states of OAS the two countries must take even more responsibility in supporting (part of) the country's media sector. Being the two most crucial paper exporters for Venezuela the support can be provided, for instance, in the form of newsprint for the Venezuelan newspaper companies, which could happen in many ways.<sup>3</sup>

Supporting different kind of media outlets, either regionally or internationally could mean a great step towards taking a stand against the government and stopping its actions regarding restricting, controlling and owning the media.

If these recommendations are taken into consideration and some of the most important players in regional and international politics are willing to act according to those, it could mean significant initial steps in both dealing with the current Venezuelan situation and in putting an end to (some of) the constitutional violations.

## Conclusion

The purpose of this essay was to examine the freedom of press situation in Venezuela from the perspective of past, present and future events. After discussing the measures taken by both Hugo Chávez (past) and Nicolás Maduro (present) in restricting, controlling and owning the media it becomes clear that both Venezuelan presidents have violated Articles 57 and 58 of the Constitution of the Bolivarian Republic of Venezuela

(1) when restricting reporters to provide information on a wide range of topics, such

as violence;

- (2) when attacking those working in the media sector on the national, regional and international level;
- (3) and most importantly, especially in the case of President Maduro, when letting things so out of hand that instead of aiming to fix the situation realising that an economic crisis can be used as the greatest tool of censorship.

The thorough discussion and analysis of the *past* and the *present* dimensions of Venezuela's freedom of the press situation provides an idea of what the *future* holds for the country's media sector. It is feared that the South American country's freedom of the press status, as well as the constitutional violations will worsen in the upcoming years, making Venezuela's for now (partly) private media sector a completely state owned one.

To prevent the worsening freedom of the press status and the continuous constitutional

violations in Venezuela, as well as to stop the increasing of state ownership in the media sector, the author of the essay lists a set of recommendations. The listed recommendations can be seen as a guide to three groups to deal with the situation: (1) to the country's citizens; (2) to regional actors; (3) and to some of the most important players of current international politics.

If the recommendations are considered and implemented the right way, they can mean a significant initial step in dealing with the discussed situation. But even if the first actions taken are successful, the actors cannot forget that to have long term development in resetting Venezuela's freedom of the press status and in putting an end to the constitutional violations, as well as maintaining the private media sector they must continue dealing with the issues, since achieving long term success is a lengthy process.

## Notes

- 1: Article 57 of the Constitution of the Bolivarian Republic of Venezuela: *"Everyone has the right to express freely his or her thoughts, ideas or opinions orally, in writing or by any other form of expression, and to use for such purpose any means of communication and diffusion, and no censorship shall be established. Anyone making use of this right assumes full responsibility for everything expressed. Anonymity, war propaganda, discriminatory messages or those promoting religious intolerance are not permitted. Censorship restricting the ability of public officials to report on matters for which they are responsible is prohibited."* (Constitute, 2016, p.18).
- 2: Article 58 of the Constitution of the Bolivarian Republic of Venezuela: *"Communications are free and plural, and involve the duties and responsibilities indicated by law. Everyone has the right to timely, truthful and impartial information without censorship, in accordance with the principles of this Constitution, as well as the right to reply and corrections when they are directly affected by inaccurate or offensive information. Children and adolescents have the right to receive adequate information for purposes of their overall development."* (Constitute, 2016, p.18).
- 3: For example a contract can be drawn up between the given country and the given newspaper company, stating information such as the reasons for providing aid; the amount of aid that will be provided; identifying whether it will be provided in form of aid or loan; if it is the latter then defining the amount and the time limit for repayment; (etc).

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