

D-r Klime Babunski

Institute for Sociological, Political and Juridical Research
Skopje, Macedonia
klimeb@isppi.ukim.edu.mk
mkklime@t.home.mk

**FREEDOM OF SPEECH VERSUS CENSORSHIP:
EMPIRICAL LANDSCAPE**

Abstract

It can be said that when “freedom of speech and thought” acquires “the right to citizenship,” then the history of democratic societies begins. Since the second half of the 20th century, freedom of speech and thought has not only become one of the compulsory categories in national legal systems, but it also has taken a central place in international law. The primacy of freedom of speech is inviolable, while censorship - the largest extent of non-freedom - is unconditionally excluded. This right has multiple and multidimensional nature; hence today, in order to be practiced, this right “covers” a whole series of laws, which enable or guarantee the right to free speech and thought. As freedom of speech and thought is not unrestricted freedom the most important is that the limitations are based on laws and are necessary in democratic society. The level of democracy in any society is not depending only from the formal institutional infrastructure, but also how the freedom of speech is assessed from informal institutions, like the public. The paper analyses research data for different elements of freedom of speech. Such approach provide much broader understanding of the potency of democratic practices of the institutions and citizens of the Republic of Macedonia.

Keywords: freedom of speech, censorship, public opinion, media,

INTRODUCTION

The central thesis of the paper is that the freedom of expression is the result of certain principles, which praxis presupposes appropriate institutional infrastructure, but also it depends how those principles are accepted from the informal institutions, like the public.

The first part of the paper identified the multidimensional nature of the freedom of the speech vs. censorship, emphasising the role of the media system. In the second part, is given the comparative presentation of data from several research of public opinion in the Republic of Macedonia, with the aim the previous identified different notions of freedom of speech to be empirically concretised and in that way to map the attitudes in regard to those essential categories for democratic capacity of (any) political culture and political system in the Republic of Macedonia.

In this way the paper wants to broaden and also to navigate the public discourse regarding the freedom of speech and parallel to this to point to the need of further research of this issue.

SHARPENING THE FOCUS

Freedom of speech is one of the fundamental benefits of civilization in global terms. It is about freedom, which today is one of the fundamental human rights.

Historically, struggle for this right can be identified even in ancient Greece and Rome, but in a more contemporary context, commitments to freedom of speech become part of the usual political life only in the 17th century, along with the philosophy of enlightenment, and the struggle against the despotic authority. According to many authors, Milton's speech delivered at the English Parliament against this mandatory prior censorship of the press is taken as a landmark in this context. (Milton, 1644) It can be said that when "freedom of speech and thought" acquires "the right to citizenship", then the history of democratic societies begins. Already in the 18th century, freedom of speech became part of the basic state and legal documents and is mentioned in the Swedish royal Decree on freedom of the press (1766), in the 1776 Declaration of the Rights of the State of Virginia, as well as in the First Amendment to the US Constitution (1791), but also in the European constitutions of parliamentary democracies, such as the Dutch Constitution (1815) and the Belgian Constitution (1831). Freedom of speech is also an integral element of constitutions of more recent dates, and since the middle of last century, this right has been internationally recognized or protected also by the Universal Declaration of Human Rights of the United Nations (Art. 19), as well as by the European Convention on Human Rights (Art. 10).

Obviously, especially since the second half of the 20th century, freedom of speech and thought has not only become one of the compulsory categories in national legal systems, but it also has taken a central place in international law. Hence, it is not unreasonable to conclude that freedom of speech is one of the major civilization pillars, which has an irreplaceable role in development, and likewise in the protection of a range of human rights, and, generally, in democracy.

This right is also embedded in the Constitution of the Republic of Macedonia whose Article 16 reads:

„The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.

The freedom of speech, public address, public information, and the establishment of institutions for public information is guaranteed.

Free access to information and the freedom of reception and transmission of information are guaranteed.

The right of reply via the mass media is guaranteed.

The right to a correction in the mass media is guaranteed.

The right to protect a source of information in the mass media is guaranteed.

Censorship is prohibited.”

As the quoted Article shows, the primacy of freedom of speech is inviolable, while censorship - the largest extent of non-freedom - is unconditionally excluded. The removal of censorship from the legal system has been present since the 19th century, which is evident in the Belgian Constitution (1831); its Article 25 paragraph 1 reads: “The press is free; censorship may never be introduced; no security may be demanded from authors, publishers or printers.” Similarly, in the Constitution of the Federal Republic of Germany, Article 5 paragraph 1 reads as follows: “Every person shall have the right freely to express and disseminate his opinions in speech, writing, and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.”

Similarly, the quoted Article of the Macedonian Constitution clearly refers to the polyvalence of the right to free speech, to its multiple and multidimensional nature; hence today, in order to be practiced, this right “covers” a whole series of laws, which enable or guarantee the right to free speech and thought. For example, a series of national legislations, and even international documents, provide for the protection of the work of journalists: protection of the confidentiality of sources

or the right of a journalist not to appear as a witness in court proceedings. In this sense, especially in recent decades, the right to free access to public information, documents, and data has become very relevant.⁵⁵ Today, some European countries have a special legal framework relating to judicial proceedings, legislative procedures, or administrative documents to have effective guaranteeing access to and use of official documents.

The rather long history of this right points to the existence of tension, as well as clashes, between guarantees in favor of freedom and their real application, on the one hand, and the practice of interference by public authorities, and even by powerful private interests, into these rights and freedoms, on the other hand. (Price 2015)

Therefore, laws regulating the media system, its infrastructure: the public service and commercial segment, the regulation that determines the concentration in the sphere of the media, also fall under the regulation that should be seen as part of the freedom of speech and thought. (Baker 1989) Economic power and advertising in the media industry can pose a serious threat to freedom of speech and must therefore be taken into consideration when it comes to the protection and implementation of this very right. (Baker 1992; Baker 2006)

Although primary, freedom of speech and thought is not unrestricted freedom. In general, it is restricted by the freedoms and rights of others, and on grounds of national security and/or public order. In some countries, like France and the United Kingdom, freedom is restricted in order to protect the authority and independence of the judiciary. At the same time, there is also a very long list of countries that restrict freedom of speech and thought in order to ensure protection of the privacy and reputation of the individual. Hence, freedom is restricted if it is “used” for insult and defamation, for incitement to racial, religious, gender, ethnic or national intolerance, violence and hatred; and in cases when such freedom psychologically or physically endangers young people (underage) and children, or their development. Freedom is also restricted if it threatens the dignity and private life of the citizen, the right to a fair trial, and the right to presumed innocence.

What is essential for such restrictions is best defined in the second paragraph of Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates that freedom of expression is always related to responsibility, which includes formal restrictions, conditions, and even penalties, which are prescribed by law and are necessary in a democratic society.

⁵⁵ In fact, even the already mentioned Decree, i.e. the Swedish Law on Freedom of the Press – in as much as it is a law on the freedom of the press in the sense of Milton’s *Areopagitica*: there should be no ban or censorship before the newspaper is printed - also promotes (and is the first European law on) free access to public, state information and documents.

Hence, it is clear that any case of such restricted freedom cannot be identified with censorship.

Therefore, freedom of expression is the result of a series of principles, and their implementation and their practice presupposes a certain institutional infrastructure. This institutional infrastructure (which has a political, economic, and even technical aspect) determines the flow of information in every society. On the one hand, through certain mechanisms, the production and dissemination of information is carried out, and on the other hand, such information is received, processed by the citizens, by individual groups, in general by the public. (Price 2015)

However, evaluating freedom of speech versus censorship, and in general the democratic nature of every society, depends not only on formal institutional infrastructure, but also on the evaluation of these notions in informal institutions, that is, by the public. Indeed, very often, public opinion, citizens, their notion of freedom of expression is the roadmap that the institutions strive to follow.

Accepting the above thesis as unavoidable in determining the complex nature of freedom of speech, in the second part of the text, I will analyze certain data from the public opinion polls in the Republic of Macedonia, which represent the evaluation of some of the elements of freedom of speech versus censorship.

EMPIRICAL LANDSCAPE ⁵⁶

Freedom or censorship

The first contextualization of freedom of speech and thought was done abstractly by emphasizing its inviolability, no matter what social practice and limitation of this right are. This approach was formulated in the viewpoint: “Freedom of speech and thought is the most important one,” and the data show that this viewpoint is acceptable to the absolute majority of respondents - nine out of ten respondents agree with the stated statement. (see: Table 1)

⁵⁶ Comparatively, data from four public opinion surveys involving citizens of the Republic of Macedonia were used, all made according to the “door-to-door” principle on a representative sample of the adult population. The first research dates from 1999, while use was made of data published in: “The political culture of the citizens in the Republic of Macedonia”, published by: ISPPI, 2001 Skopje; the second research was conducted in 2010, while use was made of the data published in: “Political culture and identities”, published by: FOSM and ISPPI, 2012, Skopje; the third survey was conducted in 2011, while use was made of the data published in: “Democratic awareness among the citizens of the Republic of Macedonia”, published by: Kultura, 2012, Skopje; the fourth survey: “Political culture, identities and civil society” was conducted in 2017 by the Institute for Sociological Analysis, while the research project was funded by FOSM, and in this case data from an unpublished research report was used.

Table 1: *F freedom of speech and thought is the most important one*

| | 2017 - % | 2010 - % | 1999 - % |
|-----|----------|----------|----------|
| YES | 91 | 94 | 95 |
| NO | 9 | 6 | 5 |

As the data show, the public for almost 20 years, highly values this right and shows undisputed agreement with the primary importance of this freedom. At the same time, the increase in the proportion of respondents who disagree with the inviolability of such freedom, although small and although not questioning the prevalence of those who agree with the primacy of freedom of speech, should not be ignored. It is imperative to determine the reasons for this negative trend, i.e., in the future to monitor its dynamics as well.

As we pointed out in the first part of the text, as opposed to freedom of speech, the “black side of the medal” as a total negation of freedom is censorship. Having in mind the constitutional prohibition of censorship, but also its undeniable negativity, present in the informality of everyday life, the formulation by which censorship is concretized tries to find a “justification” for it. Namely, the viewpoint which the respondents should approve or disapprove reads: “Censorship in science, culture and the media is useful because people are not capable of distinguishing good from bad.” (see: Table 2)

Table 2: *Censorship in science, culture and the media is useful because people are not capable of distinguishing good from bad*

| | 2017 - % | 2011 - % | 2010 - % | 1999 - % |
|-----|----------|----------|----------|----------|
| YES | 26 | 36 | 39 | 42 |
| NO | 74 | 64 | 61 | 58 |

The presented data point to two important conclusions as such. One is encouraging and stems from the continuing decrease in the number of respondents who accept such “useful” censorship, and it should be noted that the decline has been greatest in the last few years. On the other hand, the other conclusion can be said to be concerning. Namely, despite the decrease in the number of those who agree with the “noble” censorship, although the ratio between those who agree and those who disagree with such censorship is 1: 3, the fact remains that every fourth respondent would allow such an “enlightened” or “enlightenment” censorship because behind censorship there is an appropriate “authority”, that is, such censorship is based on “high” interests.

At the same time, an additional source of concern is the fact that the number of those who accept such censorship is almost three times higher (26%) than the number (9%) of those who think that freedom of speech is not the most important one. This clearly points to the reduction of firmness in viewpoints when the primacy of freedom is to be assessed, that is, the danger that a “well-packed” censorship can receive serious support.⁵⁷

Freedom of speech as criticism of laws

The next concretization of freedom of speech is formulated through the viewpoint “Criticizing laws should be prohibited.” (see: Table 3)

Table 3: *Criticizing laws should be prohibited*

| | 2017 - % | 1999 - % |
|-----|----------|----------|
| YES | 9 | 15 |
| NO | 91 | 85 |

According to the data, there is a clear positive tendency (which can still be said to be minimal given the large period between the two surveys) of decrease in the number of those who agree to a ban on criticizing the laws. The dynamics of this dimension of freedom of speech point to the conclusion that public opinion expects a democratic political process, while this public opinion also expects that, through a critical public debate, the public interest be defined and protected (which is, of course, the primary function of laws).

FREEDOM OF SPEECH AS A MEDIA PRACTICE AND A REQUIREMENT FOR PROFESSIONALISM

In the first part of the text, when speaking about the polyvalent content of freedom of speech and media, I emphasized the media system as a necessary element within this freedom. The essential, but also complex connection between the right to free speech as a principle and the daily practice of the media, that is, the journalists, is

⁵⁷ It is necessary to emphasize that this is not an abstract, potential, or perceived danger, but a real danger. Namely, in 2015, at the very beginning of the publication of the “political bombs” by the then opposition, the Public Prosecutor of the Republic of Macedonia, Mr. Zvrlevski, sent a letter to the media outlets asking them not to publish the wiretapped phone conversations. Fortunately, such “expert” and “professional” call for censorship was not accepted by all media outlets.

precisely that, on the one hand, this freedom is a prerequisite for their work, and on the other hand, the media and journalists daily, in context of their professional tasks, redefine freedom of speech and/or censorship.

In this context, the first viewpoint is: “Journalists should be prosecuted or punished when criticizing the government or politicians.” (see: Table 4)

Table 4: *Journalists should be prosecuted or punished when criticizing the government or politicians*

| | 2017 - % | 2010 - % | 1999 - % |
|-----|----------|----------|----------|
| YES | 7 | 12 | 10 |
| NO | 93 | 88 | 90 |

The comparison of research data shows minimal dynamics, while in recent years the dynamics are still positive: there is increase in the number of those who are aware of the necessity of professional freedom of journalists, aware of a kind of “professional untouchability” as a prerequisite, that government and politicians be criticized and controlled.

At the same time, precisely because of the minimal changes in the designated period, it can be concluded that citizens continuously expect journalists and the media to report critically on the government and politicians; but at the same time citizens also demonstrate consistency in their expectations of the government and politicians: to let journalists enjoy professional freedom, to be able to do their work without pressures and threats.

The following viewpoint in the context: freedom of speech - profession of a journalist is the statement: “Journalists have the right to disclose even a state secret, if that is of interest to the citizens.” (Table 5)

Table 5: *Journalists have the right to disclose even state secrets if it is of interest to citizens*

| | 2017 - % | 2010 - % | 1999 - % |
|-----|----------|----------|----------|
| YES | 72 | 74 | 87 |
| NO | 28 | 26 | 13 |

The changes show a worrying double increase for citizens who disagree with this viewpoint. The gravity of the concerns arises not only from the indicated increase in the number of those who accept censorship, but also from the stable approval

in the last seven years with this kind of censorship. Finally, the third reason for concern is the context in which increased compliance with censorship is noted. The increase in “state patriotism,” the increase in the number of those who accept the myth of “state” and “state secret” is a direct indicator of increased authoritarianism and a culture of submissiveness among the citizens of the Republic of Macedonia. “Patriotism,” where the state is untouchable above the interests of the citizens, is a direct indicator of the backsliding of the libertarian and, certainly, the democratic capacity of the political culture of the Macedonian public.

CONCLUSION

This is undoubtedly a small part of the multifaceted freedom of speech. However, even such realistically conditioned choice, thanks to the research data, offers an in-depth picture of the (non)acceptance of the principles in the public, while at the same time it also provides a much clearer insight into the potentials of the democratic practices of politics, institutions, and citizens in the Republic of Macedonia.

At the same time, this also raises the question of the extent to which formal institutions and individual social subsystems (especially the education and media system) have managed to “embed” the complex nature of freedom of speech in the public and raise awareness of the dangers that lurk this right, as well as the need for its permanent protection.

At the same time, especially given the public consent to the censorship when it is “sold” as a high state interest, this points to the need for a continuous and comprehensive study of freedom of speech. Such “self-perception” is a prerequisite for promoting and protecting the right to free speech and is, in fact, the best way to revive the guarantee in Art. 16. From the Constitution of the Republic of Macedonia.

BIBLIOGRAPHY

Baker C E (1989) *Human Liberty And Freedom Of Speech*, Oxford University Press

Baker C E (1992) “Advertising and a Democratic Press.” *University of Pennsylvania Law Review*, vol. 140,

Baker C E (2006) *Media Concentration and Democracy Why Ownership Matters*, C. Edwin Baker, Cambridge University Press

Milton J “Areopagitica: A speech for the Liberty Of Unlicensed Printing To The Parliament Of England”, 21.01.2006, (ebook 608), www.gutenberg.org

Price E M (2015) Free Expression, Globalism and the New Strategic Communication, Cambridge University Press

Constitution of the Republic of Macedonia, available at: <http://www.sobranie.mk/ustav-narm.nsp>

Constitution of the Kingdom of Belgium from 1831 with Amendments through 2014, Available at: <https://www.constituteproject.org> (*accessed 13.04.2018*)

Constitution of the Federative Republic of Germany from 1949 with Amendments through 2014, Available at: <https://www.constituteproject.org> (*accessed 13.04.2018*)