

CZU: 341.231.14

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## FREEDOM OF EXPRESSION AS PILLAR OF HUMAN RIGHTS

**Abstract:** The topic addressed systematizes "freedom of expression", a right with a fairly broad applicability and which consists of a conglomerate of rights such as the right to information, the right to receive information, the right to opinion, etc.

The exercise of the right to freedom of expression entails certain duties and responsibilities, which make it possible to impose restrictions and conditions on its exercise, and these interferences must meet three criteria: they must be provided for by law, pursue a legitimate aim, and be necessary in a democratic society, i.e., they must be proportionate to the aim pursued.

Paragraph 2 of Article 10 of the Convention explains the conditions under which interference with the right to freedom of expression is permitted, which may be generated either by the need to protect certain public interests (such as those relating to national security, territorial integrity, public safety, the defense of public safety and the prevention of crime, the protection of public health and morals, and the guarantee of the authority and impartiality of the judiciary), but also to protect certain private interests, such as the reputation and rights of others or the need to prevent the disclosure of confidential information.

This paragraph basically lets countries take steps to protect those interests, which means getting involved in how people exercise their right to free speech.

States enjoy a margin of appreciation in determining the necessity of such measures in a democratic society, but ultimately it is up to the European Court of Human Rights to rule on the compatibility of the interference with the provisions of the Convention, assessing on a case-by-case basis whether the interference arises from a pressing social need and whether it is proportionate to the aim pursued.

The purpose of the research focuses on a presentation of the right to free expression, through jurisprudence, at national and international level, but it is also a reflection on the need to criminalize insult and slander, in relation to the right to free expression in public space. Moreover, the connection of the right to silence with freedom of expression constitutes a contrast that ensures indisputable guarantees in the procedural framework, in which the defendant, through the presumption of innocence, can invoke non-incrimination.

The objectives of the study follow the statutory aspects of the right to freedom of expression in relation to the connection with other fundamental rights adjacent to this right.

**Keywords:** right to free speech, speech as information, speech as human dignity, limits of the right to speech.

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## LIBERTATEA DE EXPRIMARE CA PILON AL DREPTURILOR OMULUI

**Abstract:** Tema abordată sistematizează, "libertatea de exprimare" un drept cu o aplicabilitate destul de vastă și care se constituie dintr-un conglomerat de drepturi cum ar fi dreptul la informație, dreptul la a primi informații, dreptul la opinie, dreptul de a tăcea, dreptul de a nu te incrimina etc.

Exercitarea dreptului la libertatea de exprimare implică anumite îndatoriri și responsabilități, care permit impunerea de restricții și condiții privind exercitarea sa, iar aceste ingerințe trebuie să îndeplinească trei criterii: trebuie să fie prevăzute de lege, să urmărească un scop legitim și să fie necesare într-o societate democratică, adică trebuie să fie proporționale cu scopul urmărit.

Alineatul 2 al articolului 10 din Convenție explică condițiile în care este permisă ingerința în dreptul la libertatea de exprimare, care poate fi generată fie de necesitatea de a proteja anumite interese publice (cum ar fi cele referitoare la securitatea națională, integritatea teritorială, siguranța publică, apărarea siguranței publice și prevenirea criminalității, protecția sănătății și moralei publice și garantarea autorității și imparțialității sistemului judiciar), dar și de a proteja anumite interese private, cum ar fi reputația și drepturile altora sau necesitatea de a preveni divulgarea informațiilor confidențiale.

Acest alineat permite, în esență, țărilor să ia măsuri pentru a proteja aceste interese, ceea ce înseamnă că dreptul la liberă exprimare, dispune de limite care sunt necesare în statul de drept.

Statele se bucură de o marjă de apreciere în stabilirea necesității unor astfel de măsuri într-o societate democratică, dar, în cele din urmă, Curtea Europeană a Drepturilor Omului trebuie să se pronunțe asupra compatibilității ingerinței cu prevederile Convenției, evaluând de la caz la caz dacă ingerința provine dintr-o nevoie socială presantă și dacă este proporțională cu scopul urmărit.

Scopul cercetării se axează pe o prezentare a dreptului la liberă exprimare, prin intermediul jurisprudenței, în plan național și internațional, dar este și o reflecție despre necesitatea incriminării insultei și calomniei, în raport cu dreptul la liberă exprimare în spațiul public. Mai mult conexarea dreptului la tăcere cu libertatea de exprimare constituie un contrast care asigură garanții indiscutabile în cadrul procesual, în care inculpatul prin prezumția de nevinovăție poate invoca neincriminarea.

Obiectivele studiului urmăresc aspectele statutare ale dreptului privind libertatea de exprimare raportată la conexiunea cu alte drepturi fundamentale adiacente acestui drept.

**Cuvinte-cheie:** dreptul la liberă exprimare, exprimarea ca informație, exprimarea ca demnitate umană, limitele dreptului la exprimare.

## 1. INTRODUCTION.

Freedom of expression is both a right in itself and an absolute necessity for the realization of a complex of rights guaranteed by the Convention, such as the right to freedom of association. It is also an individual right, part of the spiritual freedom of each individual, but also a collective right, which allows communication with others.<sup>1</sup>

Consisting of two distinct rights, freedom of opinion and freedom of information, the right to freedom of expression is the exclusive generator of the individual's will to make himself heard in the context of exercising several rights.

Regulated both nationally, by Article 30 of the Romanian Constitution, and internationally, by Article 10 of the European Convention on Human Rights, this right is essential for the realization of other guaranteed rights, according to the aforementioned regulatory framework.

The exercise of these freedoms, which entail obligations and responsibilities, may be subject to formalities, conditions, restrictions, or even penalties provided for by law,

<sup>1</sup> Frederic Sudre, (2006), Drept internațional și European al drepturilor omului, Ed. Polirom, 2006, București, p. 351

which are necessary measures in a democratic society.

Freedom of expression, as provided for in Article 10 of the Convention, is one of those fundamental freedoms that plays a special role in a democratic society, being classified as a guarantee, an essential condition for the individual.

The research in question outlines, in its initial phase, the meaning that can be given to the right to freedom of expression, structured in two components: freedom of opinion and freedom of information, but also in a broader sense, such as connections with the right to silence or the GDPR.

Citizens' opinions cannot be censored, but they must remain within the bounds of good morals, as they are a personal action, while the right to information, enshrined in Article 31 of the Constitution, translates into the right of individuals to have access to information of public interest.

The objective of the topic addressed is to identify the limits of the exercise of the right to freedom of expression. In this regard, it is well known that an important and essential limitation is that the exercise of the right to freedom of expression cannot prejudice the dignity, honor, private life of the person, or the right to one's own image.

## 2.METHODS AND MATERIALS USED

In order to achieve the proposed goal, the following scientific research methods were used: **the logical method**, which aimed to quantify the right to free expression in the cumulative context of several rights, **the descriptive method**, which assessed the position of this right and its interferences in the national and international normative spectrum, **the critical analysis method**, which represented the jurisprudential support for the in-depth evaluation of doctrinal contributions. The study is based on: relevant legislation, doctrine, scientific publications.

### Abbreviations

|      |                                      |
|------|--------------------------------------|
| Art. | - Article                            |
| CEDO | - European Court of Human Rights     |
| CCR  | - Constitutional Court of Romania    |
| GDPR | - Personal Data Protection           |
| RGPD | - General Data Protection Regulation |
| ECHR | - European Court of Human Rights     |
| EU   | - European Union                     |
| Ed.  | - The publishing house               |

## 3. DISCUSSIONS AND RESULTS OBSERVED

### 3.1 Freedom of expression structured in two elements

As mentioned above, in order to address the right to freedom of expression enshrined in the Romanian Constitution and then in other international normative acts, we must present the structure of this right.

In this context, we outline the components that make up the right to freedom of expression.

## Freedom of opinion

Linked to the freedom of thought, conscience, and religion set out in Article 9 of the Convention, freedom of opinion guarantees that every individual is free to form their own beliefs about the world in which they live and the way in which social life is organized, and the protection of this opinion is an essential component of the pluralism and tolerance necessary for any democratic state.

Freedom of expression cannot function without first taking into account freedom of opinion, as the former is necessarily an outward manifestation of the latter. However, an opinion that is not made known to others cannot infringe on the rights of other members of society, and therefore freedom of opinion knows no restrictions, unlike its expression, which may in some situations prove harmful in relation to other fundamental values.

Expressing an opinion means expressing a value judgment, which is particularly important from an evidentiary point of view because, as the Court has ruled in its case law<sup>2</sup>, the accuracy of value judgments cannot be proven in the same way that concrete facts can be proven, and to demand such proof would inevitably lead to an impermissible restriction of freedom of opinion.<sup>3</sup>

It is normal for every person to have the opportunity to form and express their own views on life, social and political issues, or other areas of interest to each of us. No one can or should be punished for not sharing a particular opinion or for not wishing to express a particular opinion.

Furthermore, as mentioned above in Article 10 of the Convention, which regulates “*freedom of expression, which includes freedom of opinion, freedom to receive and communicate information or ideas without interference from public authorities and regardless of frontiers*,” , it cannot function individually but only in conjunction with other freedoms and rights

Freedom of opinion is a prerequisite for other freedoms guaranteed by Article 10 and cannot be limited even under the conditions provided for in Article 10(2) for the simple reason that an opinion once formed and remaining in the mind of its author cannot harm other interests.<sup>4</sup>

## Freedom of information

Freedom of information is the right to communicate information without restrictions and also the right to receive information. Of course, the term „information” does not only refer to raw facts and news or general issues, but also to deliberately produced information such as radio or media.

The „*right to receive and communicate information*” is guaranteed by the Convention only to the extent that the holder of the information wishes to communicate it, since Article 10 does not seek to ensure access to information that the holder does not wish to make public. At the same time, we note the extremely comprehensive manner in which

<sup>2</sup> CEDO, cauza 19983/02, De Haes et Gijssels c. Belgiei, decizia din 3 aprilie 2003, § 42, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58015%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58015%22]}), (accesată la data 28.02.2026)

<sup>3</sup> C. Bîrsan, (2010) Convenția Europeană a drepturilor omului. Comentariu pe articole. Ediția a doua, București, Ed. C.H. Beck, p. 778

<sup>4</sup> R.H.Radu,(2018), Convenția Europeană a Drepturilor Omului, Editura Universul Juridic, București, p.172

the constitutional legislator chose to regulate the individual's right to free expression.

Thus, Article 30(1) of the Constitution lists the following, establishing the effects of the right to expression: „thoughts, opinions, beliefs, or freedom of creation through speech or writing or images, through sounds or other means of public communication.” In addition, both legal instruments protect the media through which any type of information is transmitted, thus also protecting the free circulation of the latter. The phrase „other means of public communication” covers any means of transmitting information to the public, whether general or specific.

Freedom of information must be exercised without interference from the state, except as provided for in Article 10(2) of the Convention. Both freedom of opinion and freedom of information give rise to obligations on the part of all state authorities. They have a negative obligation not to impede in any way the free exercise of these rights, but also a positive obligation to ensure their exercise.<sup>5</sup> The freedom to receive information is guaranteed, regardless of its form of presentation, whether audio-visual, written, media, etc. The right to receive information should not be interpreted as an obligation for the state.<sup>6</sup>

This freedom includes the action of seeking and gathering information from all possible and lawful sources.<sup>7</sup>

Access to information held by a public authority does not impose an obligation on that authority to disclose it unless the information concerns a segment of the public. However, this obligation may arise only if there is a court order requiring the authority to disclose the information or if access to the information is necessary to promote the right to information.

Of course, Article 10 does not protect ideas or opinions contrary to the values mentioned in the Convention (*Lehideux and Isorni v. France*, para. 53)<sup>8</sup>

In this regard, the Constitution is in line with the text of the Convention and with regard to the limits of this freedom, which is not absolute.

In this case, the Convention states that freedom of expression cannot exceed the limits imposed by situations such as the prevention of crimes, the protection of national security, the protection of health, morals, or the rights of others. At the same time, the Romanian legislator has chosen to detail a set of values that cannot be infringed upon to the detriment of the free expression of opinions.

Freedom of expression cannot prejudice the dignity, honor, private life of a person, nor the right to one's own image.

In order to resolve any dispute involving these values, the ECHR standard must be applied as a matter of priority, as stated in Articles 11 and 20 of the Constitution. Thus, Article 11 of the Constitution, entitled „International law and domestic law,” provides: „(1) The Romanian state undertakes to fulfill in good faith the obligations incumbent upon it under the treaties to which it is a party. (2) Treaties ratified by Parliament, in accordance with the law, are part of domestic law. (3) If a treaty to which Romania is to become a

<sup>5</sup> C. Bîrsan, (2010) *Convenția Europeană a drepturilor omului. Comentariu pe articole*. Ediția a doua, București, Ed. C.H. Beck, p. 780.

<sup>6</sup> *Cauza Magyar Helsinki* *Biyottsag c. Ungaria* par.156, [https://hudoc.echr.coe.int/fre#%22itemid%22:\[%22001-177363%22\]](https://hudoc.echr.coe.int/fre#%22itemid%22:[%22001-177363%22]), (accesat 28.02.2026).

<sup>7</sup> M. Macovei, (2003), *La liberte d' expression. Un guide sur la mise en oeuvre de l' article 10 de la Convention europeenne des Droits de l' Homme*, Conseil de L' Europe, p.163

<sup>8</sup> *Cauza Lehideux și Isorni c. Franței*, [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-58245%22\]](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-58245%22]) (cazul nr. 55/1997/839/1045, cererea nr. 24662/94, publicată în iulie 1998), (accesat 1.03.2026).



party contains provisions contrary to the Constitution, its ratification may take place only after the Constitution has been revised,” while Article 20 states that: „ (1) Constitutional provisions concerning the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants, and other treaties to which Romania is a party. (2) If there are inconsistencies between the covenants and treaties relating to fundamental human rights to which Romania is a party and domestic laws, international regulations shall take precedence, unless the Constitution or domestic laws contain more favorable provisions,” is justified.

Consequently, the interpretation refers to the provisions of the Convention, which are implemented in the Constitution.

Freedom of opinion and freedom of information, which are components of the right to expression, are enshrined together, and the interdependence between the two is based on the fact that the expression of one’s beliefs comes from access to information.

In my opinion, the connection between the two elements that define the right to free expression boils down to the freedom of citizens in a democratic society.

### 3.2. Legitimacy of freedom of expression: the state’s obligation

The state has a number of positive obligations, but also negative ones. Where there is a positive obligation, consideration must be given to the fair balance that must be struck between the social interest of the community and the interests of individuals.<sup>9</sup>

The scope of obligations varies, depending on the diversity of situations in each state and the choices that must be made regarding priorities on the one hand, and resources on the other. In this respect, this obligation should not be interpreted as imposing an excessive or disproportionate burden on the authorities. It may involve the obligation to legislate or to intervene in relations between private individuals in order to protect the right.

The negative obligation of the state cannot infringe or limit the right to freedom of expression to such an extent that it exists only in theory. Thus, there are situations that result in a series of interferences with freedom of expression. In order for the interference to remain at this stage and not become a violation, there are a number of regulations in this regard. Thus, a first step would be to verify whether it is an interference, whether it is provided for by law, whether it pursues a legitimate aim, and whether it is necessary in a democratic state. An interference with the right to freedom of expression does not contravene the Convention if it is provided for by law, pursues one or more of the legitimate aims mentioned in paragraph 2, and is necessary in a democratic society to achieve those aims. (Axel Springer Ag. c. Germaniei, pct. 76).

There may be preventive interference, in the form of acts by the authorities that do not allow the expression of certain ideas and information, punitive interference, such as the sanctioning of journalists by national courts following the publication of an article in a local newspaper, resulting in their conviction and disqualification from the profession of journalism (Cumpănă and Mazăre v. Romania, paras. 84, 115, and 118) or sanctions in the form of damages and bans on the publication of certain materials (e.g., Axel Springer Ag. v. Germany, para. 75) or interference in the dissemination of information, such as the confiscation of books already on the market, where the aim is both to punish the circulation

<sup>9</sup> Cauza Frășilă și Ciocîrlan c. României, par. 55, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-123568%22%5D%7D> (accesat la data 2.03.2026)

of the material and to prevent its dissemination (Alinak v. Turkey, para. 24)<sup>10</sup>

The interference must be provided for by law, i.e. it must be found in a domestic law.

The law must offer sufficient guarantees against arbitrariness. An accessible law is one whose text is public and known to any interested person. Another essential condition is that the interference must be necessary and proportionate in a free society with democratic values. Necessity refers to the correspondence between the incriminated interference and the „pressing social need” (Cumpănă and Mazăre v. Romania, para. 88)<sup>11</sup>, and the „relevance and sufficiency” of the arguments put forward by the national authorities to justify the interference must be verified. States have a certain margin of discretion when determining whether such a need exists, but this is compatible with European control, both in terms of legislation and the decisions that apply it. A distinction must also be made between facts, the materiality of which can be proven, and value judgments, the accuracy of which cannot be proven. If it is devoid of any factual basis, a value judgment will be excessive (Cumpănă and Mazăre v. Romania, paras. 98 and 99). The condition of proportionality is met if the interference with freedom of expression is reasonable in relation to the legitimate aims pursued. In these circumstances, the State, through the courts, will determine the extent of proportionality.

Proportionality is determined by: the extent to which the subject matter of the disputed expression is of public interest, the seriousness and context of the statements, and the nature and severity of the penalty imposed. In this context, the fair balance between the right to freedom of expression (Article 10 of the Convention) and the right to respect for private life (Article 8 of the Convention) is analyzed. The legitimate aim, in accordance with the second paragraph of Article 10 of the ECHR, is to protect national security, territorial integrity, public safety, public order and the prevention of crime, the protection of health, morals, reputation, or the rights of others, the prevention of the disclosure of confidential information, and the guarantee of the authority and impartiality of the judiciary.

### 3.3. Conditions for interference with the right to freedom of expression

Paragraph 2 of Article 10 of the Convention sets out the conditions under which interference with freedom of expression is permitted, which may be generated either by the need to protect certain public interests or to protect certain private interests, such as the reputation and rights of others, or the need to prevent the disclosure of confidential information. This paragraph basically lets countries take steps to protect those interests, which means messing with the right to free speech.

Exercising the right to free speech entails certain duties and responsibilities, which make restrictions and the imposition of conditions possible, and these interferences must meet three criteria: they must be provided for by law, they must pursue a legal and moral purpose, and they must be imperative for a democratic society, i.e. they must be in line with the intended purpose.

#### a. Interference must be prescribed by law

In accordance with Article 10(2) of the Convention, freedom of expression may be

<sup>10</sup> Hotărârea din 2 septembrie 2003, cauza Alinak C. Turciei, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%5B%5B%22001-68652%22%5D%5D%7D> (accesat la data 2.03.2026)

<sup>11</sup> Hotărârea în cauza Cumpănă și Mazăre c. României (cererea nr. 33.348/96) din 17 decembrie 2004, <https://hudoc.echr.coe.int/tur#%7B%22itemid%22%3A%5B%5B%22001-67816%22%5D%5D%7D>, (accesat la data 2.03.2026)

subject to „formalities,” „conditions,” „restrictions,” and „penalties,” provided that these are „prescribed by law.” In this case, a rule for fulfilling the conditions of legality must be accessible and predictable.

Accessibility is an imperative obligation of the state, and predictability is generated by three factors: the content of the rule in question, the area it is intended to cover, and the number and status of the recipients of the rule.<sup>12</sup>

Under these circumstances, the predictability of the rule cannot be absolute. The law must adapt to frequent changes in social life that contain formulations that can be interpreted judicially. The normality of interference is established precisely by the legality of the rule.

b. The interference must pursue a legitimate aim

The legitimate aim that must be highlighted concerns the protection of general or individual interests. The Court of Justice may identify several legitimate aims in a case, which are analyzed cumulatively. The Court's case law has identified several legitimate aims, such as: the protection of national security<sup>13</sup> protecting territorial integrity,<sup>14</sup> protecting public order,<sup>15</sup> protecting morality,<sup>16</sup> guaranteeing the authority and impartiality of the judiciary,<sup>17</sup> defending public order and preventing crime<sup>18</sup>. The legitimate purpose highlights the positive aspect of the law.

c. The interference must be necessary in a democratic society

The condition of necessity is particularly important as it may be decisive in determining whether or not there has been a violation of the Convention. However, the Court does not replace the national authorities but verifies whether domestic judgments respect the rights and freedoms guaranteed by the Convention. The State must prove the legitimacy and necessity of the interference, and the reasons given must be relevant.

d. Proportionality of interference

This legitimate condition is developed by the Court exclusively through judicial review. The proportionality analysis is carried out by taking into account all the circumstances of the case, weighing up the interests and objectives. The Court's review under Article 10 is variable, depending on the content of the protected information, the manner in which freedom of expression is exercised, and the legitimate value invoked to justify

<sup>12</sup> Cauza Piroglu și Karakya c. Turcia, par. 51. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-75539%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-75539%22]}) (accesat la data 2.03.2026).

<sup>13</sup> Cauza Adams și Benn c. Marea Britanie, dec. Comisiei [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-139284%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-139284%22]}) (accesat la data 3.03.2026).

<sup>14</sup> Cauza Karatas c. Turciei, par.44, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-58274%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58274%22]}), (accesat la data 2.03.2026).

<sup>15</sup> Cauza Chorherr c. Austria, par.26-28. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-45543%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-45543%22]}) (accesat la data 3.03.2026).

<sup>16</sup> CEDO, cauza 5493/72 Handyside c. Marii Britanii, hotărârea din 7 decembrie 1976, parag. 49. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57499%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57499%22]}), (accesat la data 3.03.2026).

<sup>17</sup> Cauza Sunday Times c. Marii Britanii, nr.1, par.54-57, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57584%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57584%22]}), (accesat la data 3.03.2026).

<sup>18</sup> Cauza Asociația Ekin c. Franța, par. 47-48. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-59603%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59603%22]}) (accesat la data 3.03.2026).



the interference.<sup>19</sup>

The Court has expressed its opinion in the context of this condition by analyzing aspects such as the status of the author (journalist, politician, opposition representative, military officer, lawyer, civil servant, private individual), the type of speech (political, commercial, artistic, religious), the person harmed (politician, magistrate, civil servant), the possibility of using other forms of expression, the means of dissemination and the impact of the message (print media, mass media, exhibitions), the location where the speech was held, the target group, and the audience.

### **3.4. On the necessity of criminalizing insult and defamation in relation to the right to freedom of expression in public spaces**

Articles 205, 206, and 207 of the Criminal Code were expressly repealed by Law No. 278/2006, a decision by the legislature that led to the decriminalization of insult and defamation, crimes that are common in the media. The need for the state to intervene in the protection of human dignity through criminal law has generated controversy, which has grown since Constitutional Court Decision No. 62 of January 18, 2007, which found the provisions of Article 1(56) of Law No. 278/2006 amending and supplementing the Criminal Code to be unconstitutional, and which repealed Articles 205, 206, and 207 of that code. The Constitutional Court considered that this repeal led to a legislative gap with regard to the protection of human dignity, in violation of Article 1(3) of the Constitution (which establishes the supreme values protected by the Romanian state at the constitutional level) and Article 30(8) of the fundamental law, for acts in which the crimes of insult and defamation are committed through the press (the article provides that press offences are established by law).

Although the CCR decision was issued, the Romanian legislature failed to fulfill its legal obligation to bring the legal provisions into line with the decisions of the constitutional court, so that the provisions of Article 147(1) of the Constitution have become applicable, stipulating that rules found to be unconstitutional cease to have effect 45 days after the publication of the CCR decision in the Official Gazette, if Parliament does not intervene to bring them into line with the Court's decision.

In court practice, this has led to conflicting opinions: on the one hand, some consider that these crimes are still in force as a result of the CCR's decision, while others consider that these offences are no longer in force because the CCR decision would violate the principle of legality of criminalisation enshrined in the Constitution, consequently ruling acquittals based on Article 10(1)(b) of the Code of Criminal Procedure.

In order to stop the inconsistent application of the rules on the criminalization of defamation and insult, the High Court of Cassation and Justice, in Decision No. 8/2010, states that „The rules on the criminalization of insult and defamation contained in Articles 205 and 206 of the Criminal Code, as well as the provisions of Article 207 of the Criminal Code concerning proof of truth, repealed by the provisions of Article I point 56 of Law No. 278/2006, provisions declared unconstitutional by Decision No. 62/2007 of the Constitutional Court, are not in force. It was argued by affirming the principle that exclusively confers on Parliament the possibility to criminalize offenses, and by repealing a previous repeal act, the initial legal norm could not be reinstated.

The issue recently returned to public attention following the Constitutional Court's

<sup>19</sup> Frederic Sudre, (2006), Drept internațional și European al drepturilor omului, Ed. Polirom, București, p. 351

decision of April 29, 2013, which unanimously upheld the exception of unconstitutionality concerning the provisions of Article 414(5)(4) of the Code of Criminal Procedure and found that „the ruling on the legal issues adjudicated by Decision No. 8/2010 of the United Chambers of the High Court of Cassation and Justice is unconstitutional, contravening the Constitution and Decision No. 62/2007 of the Constitutional Court.” The aforementioned provisions stipulate that „the resolution of the legal issues adjudicated is binding on the courts from the date of publication of the decision in the Official Gazette of Romania, Part I.”

In its reasoning, the Constitutional Court reiterates the arguments presented in Decision No. 62/2007, reiterating that „The abandonment of one of the means that ensured effective protection of this value, as highlighted in the grounds for the Constitutional Court’s decision, with the consequence of a lower standard of protection of dignity than that previously enshrined in infra-constitutional legislation, constitutes a violation of the aforementioned constitutional principle.

Consequently, the protection of human dignity is necessary both from a personal point of view, by protecting this fundamental value of each individual, but also from a collective, social perspective, in order to protect and encourage the development of civilized interpersonal relationships based on mutual respect.

Untrue and harmful opinions expressed by journalists regarding a person’s morality, professionalism, or private life cause them significant suffering by damaging their social prestige and unjustly tarnishing a reputation that has been earned through hard work.

When the act is committed through the media, it takes on dimensions with a huge impact on the public, given that public opinion is overwhelmingly influenced by what is presented in the media.<sup>20</sup>

### 3.5. Freedom of expression and the media

The freedom of expression of every citizen and of the media plays a fundamental role in society, being considered one of the pillars of a democratic society and an essential prerequisite for ensuring the protection of other fundamental rights of every individual. In concrete terms, the freedom of every citizen to freely express their ideas supports a dialogue that ultimately serves not only the individual but the entire community.

In many European countries, freedom of expression is the foundation of democratic order, which means that it is not possible to talk about democracy in the absence of an effective flow of ideas and a comparison between them.<sup>21</sup> The close connection between freedom of expression and democracy has been frequently affirmed by national courts: in Italy, the Constitutional Court has repeatedly emphasized that a democratic society is based on effective freedom of expression<sup>22</sup> In Germany, the Federal Constitutional Court has declared that freedom of expression and the right to be informed are fundamental

<sup>20</sup> Didia Popa,(1999), Calomnie prin presă, în RDP nr. 4/1999, p.23

<sup>21</sup> Verpeaux, M. (2010), Freedom of expression: in constitutional and international case law (Strasbourg: Council of Europe Publishing). Pe lângă hotărârile instanțelor constituționale germane și spaniole menționate în acest paragraf, a se vedea și hotărârea Curții Constituționale belgiene din data de 7.06.2006, în Cauza nr. 91/2006, [https://www.google.ro/books/edition/Freedom\\_of\\_Expression/vJptypOd6eUC?hl=ro&gbpv=1&dq=inauthor:%22Michel+Verpeaux%22&printsec=frontcover](https://www.google.ro/books/edition/Freedom_of_Expression/vJptypOd6eUC?hl=ro&gbpv=1&dq=inauthor:%22Michel+Verpeaux%22&printsec=frontcover),

<sup>22</sup> Decizia 105/1972 a Curții Constituționale italiene, urmată de deciziile 826/1988, 348/1994 și 466/2002, Curtea a afirmat că libertatea de exprimare și dreptul la informare sunt fațete ale aceluiași drept, ambele având scopul de a defini și de a contribui la dezvoltarea unui mediu pluralist.

rights enshrined in the Constitution, the exercise of which requires constitutional protection.<sup>23</sup>

In Spain, the Constitutional Court has emphasized that freedom of expression and the right to be informed are the foundation of the freedom and independence of the media, alongside pluralism and other constitutional values.

Doctrine and case law have identified the following aspects that fall within the scope of freedom of expression, as guaranteed by the ECHR, the EU Charter, and national constitutions:

- the right to express oneself freely;
- the right to use any means available to express one's ideas;
- the right to be informed;
- the right to remain silent.

Each of these can give rise to sub-rights and obligations that have an impact on the choice of regulatory instruments in several areas, particularly in the field of media. For example, the right to use any available means to express one's thoughts includes messages conveyed verbally or in writing, on paper, but also artistic expression, including music, videos, paintings, sculptures, comics, and the like. All of these can obviously be transmitted via the internet, which is now a common means of communication. In all these cases, national regulations may differ, but the essence of the fundamental right to freedom of expression remains unchanged, applying equally to all media. The right to be informed is not a singular right; it functions in conjunction with other rights. However, the right to be informed is a fundamental right, guaranteed by the Constitution (Art. 31), which ensures citizens' access to information of public interest, public affairs, and personal matters. It obliges authorities and the media to provide accurate information, implying transparency in data protection (GDPR), commercial relations, and criminal proceedings.

As mentioned above, the right to information is quite broad, establishing very wide limits in terms of its usefulness. Here are some key aspects of the right to information:

The Romanian Constitution (Art. 31): Guarantees unrestricted access to information of public interest and obliges authorities to inform citizens accurately.

Personal data protection (GDPR): Implies the right to know what data is collected, by whom, why, and how it is used.

Consumer rights: The obligation of suppliers to provide clear information about products/services (price, features, warranty).

Procedural rights (criminal): The right of persons suspected/accused to be informed of the charges and their rights.

Children's rights: The right to be informed about significant people in their lives, legal representatives, guardians, and the exercise of their rights, when the situation requires it.

Public officials: The right to be informed about decisions that directly affect them.

Free and unrestricted access for any person in Romania to information of public interest is defined by Law 544/2001<sup>24</sup>, which constitutes one of the fundamental principles of relations between individuals and public authorities. Information of public interest means any information concerning the activities or resulting from the activities of a public authority or public institution, regardless of the medium or form or manner of

<sup>23</sup> Hotărârea din 16 iunie 1981, nr. 1 BvL 89/78, în BVerfGE 57, 295 (accesat la 02.03.2026).

<sup>24</sup> Legea nr. 544/2001, publicată în Monitorul Oficial nr. 663 din 23 octombrie 2001.

expression of the information.

According to the legal framework, any person may request information of public interest from public authorities (Article 20 of the Rules). The applicant does not have to justify their request; information of public interest may be requested out of „mere curiosity,” as access to such information is free, which means that it is available to all citizens. However, free access is limited in certain situations, such as classified information, namely only that relating to national defense, public safety and order, or concerning the deliberations of the authorities, as well as that concerning the economic and political interests of Romania. (Classified information is regulated by a separate law, Law No. 182 of April 12, 2002, on the protection of classified information, published in the Official Gazette, Part I, No. 248 of April 12, 2002).

The restriction does not apply to information that promotes or conceals violations of the law by a public authority/institution; such information cannot be considered classified but constitutes information of public interest, and access to this information is free (Article 13 of Law No. 544/2001).

Furthermore, Article 24(5) of Law No. 182/2002 on classified information prohibits the classification of information, data, or documents for the purpose of concealing violations of the law, administrative errors, limiting access to information of public interest, illegally restricting the exercise of any person's rights, or harming other legitimate interests. Consequently, public information can be accessed to a certain extent.

Access to personal data protection ensures that citizens are aware of how their personal data is used and the purpose for which the public authority collects and manages personal data. The General Data Protection Regulation (GDPR) is an EU law, in force since 2018, which protects the personal data of individuals processed by public and private entities. It provides greater control over data, simplifies rules for businesses, and imposes independent supervisory authorities for compliance. In Romania, implementation is regulated by Law No. 190/2018 and Law No. 102/2005 for the functioning of the national authority.

The right to personal data protection and freedom of expression are two fundamental rights, equally important in a democratic society.

The right to silence, or the right of a witness to remain silent and not incriminate themselves, as regulated by Article 118 of the Criminal Procedure Code, has a fairly early appearance, dating back to the 17th century, when it was enshrined in English law as a reaction to the excesses of the royal inquisitions in these courts, being imposed by Sir Edward Coke on ecclesiastical courts and their oath of office and later adopted in the US as a right that is an essential part of the Miranda warning, this right also falls within the complex category of the right to expression, as an accessory form of this right.

The right to express or not to express your opinions on a situation vis-à-vis the action of the investigating authorities is a fundamental freedom. The right to silence is the legal principle that gives you the possibility, when accused of a criminal offense, not to answer questions asked by the police, prosecutor, or judge. In other words, the law protects you from having to say anything that could incriminate you—no one can force you to say things that could be used against you. It is very important to know that exercising your right to remain silent cannot be interpreted as a sign of guilt. Your refusal to speak will not be used against you or as the sole basis for convicting you. In this case, investigators will continue to investigate and search for evidence, but they cannot use your lack of response as evidence. The authorities are required to inform you of this right at the first hearing.



The defendant's right to remain silent is enshrined as a fundamental principle of criminal justice, regardless of how it is applied in relation to different legal systems. Thus, in the Roman-Germanic legal system, the right to silence is expressly provided for by law as a concrete expression of the right to a fair trial and the right to defense, on the one hand, the defendant not being obliged to incriminate himself, and on the other hand, his silence not being interpreted as an admission of guilt. The protection of the right to remain silent is also found in the Anglo-Saxon legal system, as well as in the European system.

The right to silence as a fundamental right is recognized constitutionally and in international conventions (Article 6 of the ECHR, Article 14 of the International Covenant on Civil and Political Rights), and as an element of the principle of presumption of innocence, the silence of the accused cannot be interpreted as a form of guilt or punished. Furthermore, we can summarize that the Latin principle *Nemo tenetur se ipsum accusare*<sup>25</sup> is a genuine protection against self-incrimination, stipulating that no one can be forced to confess their guilt or provide evidence that could lead to their conviction. We can only affirm that the defendant's right to silence is intrinsically linked to the right captured by the aforementioned Latin principle, namely the right not to incriminate oneself, which once again emphasizes that the defendant's right to silence must be viewed from the perspective of a fundamental right, rather than as part of the sphere of legal privileges.

The defendant's right to remain silent is not a privilege, but is of particular importance as it supports the principle of presumption of innocence, complemented by the right to defense in a fair trial. Considering the right to silence as a privilege could lead to its limitation or conditioning depending on various circumstances, which would result in a violation of fundamental rights, undermining the equality of arms between the prosecution and the defense by exerting illegitimate pressure on the defendant.

In conclusion, the defendant's right to silence must be seen as a fundamental right and not as a privilege. Reducing it to the status of a privilege would mean a serious restriction of procedural guarantees in favor of the prosecution.

The absence of this right would give rise to arbitrary pressure exerted by the competent authorities to obtain a confession, which could negatively influence the accused person.

Because of this pressure, the person being questioned might say something against themselves, admitting to something they didn't do, just to get away from the „barrage of pressure,” which would also mess with another key part of criminal proceedings, which is finding out the truth.

At the same time, the US Supreme Court ruled that the existence of the right to silence inherent to the accused is inextricably linked to the right to freedom of thought and privacy, which prevents judicial authorities from intruding into these intimate areas in order to protect this internal space of the human being, a space that can only be accessed by the „owner” through his or her own will, and not through coercion exerted on the person's psyche that is likely to „open the door” without the host's consent.<sup>26</sup>

Even though the two concepts, namely the right to silence and the right not to incriminate oneself, are identical, these fundamental rights have some differences.<sup>27</sup>

<sup>25</sup> Chiesa, Luis E., (2009), Beyond Torture, The Nemo Tenetur Principle in Borderline Cases, Elisabeth Haub School of Law Faculty Publications. p. 642.

<sup>26</sup> Voicu Pușcașu, (2010), Prezumția de nevinovăție, Editura Universul Juridic, București, p. 198.

<sup>27</sup> Mihail Udroi, (2018), Procedură penală, Partea generală, Ediția a V-a, Editura C.H. Beck, București, p. 344.



Thus, the right to silence is more limited, as it refers only to oral communication, namely the right not to speak; it acquires a broader scope when it refers to the term „statements” in light of the fact that the person in question is not limited only to those statements that could incriminate them, but to any kind of statement.

The right not to incriminate oneself extends, thus becoming the „owner” of a broader sphere, since the existence of this right does not only concern aspects of communication, but also reflects on the obligation to hand over certain documents.

Consequently, the two function in perfect symbiosis, establishing a broad sphere of expression for the defendant, being conceived as guarantees, concrete assurances in the criminal process.

This right is closely linked to the right to free speech because it allows citizens to defend themselves directly by simply refusing to speak, and to incriminate themselves out of ignorance or due to certain errors.

#### 4. CONCLUSIONS.

The findings of the exhaustive research demonstrate that this right, from a legal perspective, entails special duties and responsibilities and that it may be subject to certain restrictions that must be expressly provided for by law, in accordance with the rights of others.

Abusive exercise of freedom of expression can cause harm. For this scenario, the Constitution provides that civil liability for information, opinions, or creations brought to the attention of citizens lies with the author.

It has been demonstrated that freedom of expression may in this case be subject to common law regulation or may be subject to special regulation, which may be liberal or authoritarian, designed by a repressive or preventive system.

The theoretical study presents freedom of expression as a fundamental right, protected by Article 10 of the European Convention on Human Rights, but also by the Romanian Constitution, but its exercise also requires compliance with certain conditions.

Departing from the classic phrase „freedom of expression,” the theme urges us to reformulate the concept under the name „freedom of speech.”

Freedom of speech not only guarantees an individual’s sphere of freedom, protected against state interference, but also ensures the climate necessary for the normal functioning of parliamentary democracy.

Freedom of expression is an individual right that, at first glance, encompasses freedom of opinion and freedom of information, but, as stated above, it is a right that functions in conjunction with a multitude of other rights and freedoms, such as the rights to personal data protection, the right to silence, and the right to one’s image, all of which outline a clear map of an anatomy that pertains to dignity and humanitarian democracy.

Freedom of expression is a fundamental right, but it functions in balance with other rights and legal principles. There are several related rights that either support or limit it in order to protect values.

Freedom of expression is essential because: it protects democracy—citizens can criticize authorities and participate in debates; it allows the circulation of ideas and information; it encourages pluralism of opinion; it contributes to the protection of other rights and freedoms. Without freedom of expression, many other rights would be difficult

to exercise because people would not be able to report abuses or injustices.

Although it is a fundamental right, freedom of expression is not absolute; it must not violate the dignity and reputation of others, the right to privacy, public order or national security, or the prohibition of hate speech or incitement to violence.

Freedom of expression is a pillar of human rights because it guarantees the possibility for every person to express themselves freely and participate in democratic life, thus contributing to the protection and development of a free and open society.

Through free expression, people can report abuses or violations of human rights, participate in the political life of the state, which helps to maintain the responsibilities of state institutions, and assimilate rights such as freedom of conscience or the right to protest, collective rights that allow participation through civic actions in the development and activity of the state.

It is remarkable that, starting from freedom of expression, we can see that this right brings together a complex set of rights and freedoms that ensure its solid position and importance.

We conclude by stating that a society is just when there is an effective balance between rights and obligations, and in order to meet this requirement, it is imperative to respect the supremacy of the law, namely the Constitution<sup>28</sup>, which in Article 15(1) expressly states that „Citizens enjoy the rights and freedoms enshrined in the Constitution and other laws and have the obligations provided for therein.” These legislative privileges are inherent in the rights and freedoms of citizens, as they are the result of the recognition of the rights and freedoms of the people, which are the basis of the state. These legislative privileges are inherent to human beings, regardless of their position or status, and the principle of *ubi lex non distinguit, nec nos distinguere debemus* also applies.

It should be noted that freedom of expression outlines a conglomerate of rights and freedoms that form the guarantee and status of citizenship, which the state cannot abuse, being stopped by the related aspect under which these rights and freedoms operate. In this sense, the legislator took into account not only the individualization of freedom of expression and its exercise, but also its evolutionary complexity in relation to the other rights and freedoms set out in the Constitution.

Although freedom of expression is considered a fundamental right, we must also remember that there are instances where this right may be restricted by state authorities when the situation requires it.

Freedom of expression is a fundamental right, but it is not absolute. Interference is only acceptable in well-justified situations, in order to maintain a balance between individual freedom and the protection of the public interest. Thus, there must be a balance between freedom of expression and the limits imposed by law, so that this right is exercised responsibly and does not affect the rights of others or the general interest of society.

We conclude by noting that freedom of expression is one of the most important fundamental human rights because it allows each person to freely express their ideas, opinions, and information, but not only that, it is also an essential right for the functioning of a democratic society, being protected by important legal documents such as the Constitution or the European Convention on Human Rights.

<sup>28</sup> Constituția României revizuită 2003.

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