

Introduction to Media Law

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1. Why do we need to regulate media?

- they influence society both in a positive and negative way – *agenda setting*
- media as *public watchdog* or the *Fourth Estate*
- public interest:
 - o has to be prescribed by law and necessary in a democratic society
 - o national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others, preventing the disclosure of information received in confidence, maintaining the authority and impartiality of the judiciary (according to the European Convention on Human Rights)
vs. protection of children and consumers and the combat against racial and religious hatred (Audiovisual Media Services Directive)

ARTICLE 10 of European Convention on Human Rights

Freedom of expression

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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*

2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

Article 19 of International Covenant on Civil and Political Rights

1. *Everyone shall have the right to hold opinions without interference.*

2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) *For respect of the rights or reputations of others;*

(b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

QUESTION: Which legal acts regulate freedom of expression and media law in your country?

2. Freedom of expression as an essential of media law

Legal background:

- European Convention on Human Rights
- International Covenant on Civil and Political Rights
- Audiovisual Media Services Directive (European context)
- Charter of fundamental rights and freedoms (made by UN, in the Czech Rep legally binding)

“Freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. This is underlined by the Article 10 where the public’s right to receive information and ideas is expressly mentioned.

The limits of acceptable criticism are accordingly wider with regard to a politician acting in his public capacity than in relation to a private individual. He must display a greater degree of tolerance, especially when he himself makes public statements that are susceptible of criticism.”

(CASE OF OBERSCHLICK v. AUSTRIA)

This case concerned a disclosure order imposed on a journalist (working for The Engineer) requiring him to reveal the identity of his source of information on a company’s confidential corporate plan.

There was not, in the European Court of Human Rights’ view, a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim. Both the order requiring the applicant to reveal his source and the fine imposed upon him for having refused to do so gave rise to a violation of his right to freedom of expression under Article 10 of the European Convention on Human Rights.

(CASE OF GOODWIN v. THE UNITED KINGDOM)

Czech Legal Framework for Media Law:

- Press Act 46/2000
- Civil Code 89/2012
- Czech Television Act 483/1991
- Czech Radio Act 494/1991
- Radio and Television Broadcasting Act 40/1995 – now waiting for a novel
- European: Audiovisual Media Services Directive (AVMSD)

Where to find more information on freedom of speech / media? For example:

- OSCE Representative on Freedom of the Media:
<http://www.osce.org/fom> or <https://www.facebook.com/osce.rfom>
- European Centre for Press and Media Freedom: <https://www.facebook.com/ECPMF>
- Council of Europe Media Freedom: <http://www.coe.int/en/web/media-freedom>
- European Commission – digital market and media:
<https://ec.europa.eu/digital-single-market/en/content-and-media>