

## Media Freedom and Regulation in the Context of Reporting on National Security Issues

Dora Gelo  
University of Zagreb, Croatia  
doragelo@gmail.com

### Summary

*The conflict in focus – the relationship between the concept of secrecy, which the national security system is entitled to, and the request of the public, which is a norm of a democratic society – is only one of the elements appearing in a specific relationship between the system and the media. On the other hand, as stated by authors Peter Gill and Mark Phythian in their book *Intelligence in an Insecure World* (2018), a part of their relationship can also be marked by a combination of dependence, manipulation, support and praise, which can lead to conflicts of other relevant categories from the group which are related to independence and the quality of information. A similar situation involving the relationship with the source is also conspicuous here – the relationship between the journalist and the source, the system and the source or, also according to the authors mentioned above, the possibility of fraudulent, including illegal, behaviour, in order to obtain the information inaccessible to the public.*

**Key words:** media regulation, secrecy, national security, public interest, self-censorship, democracy, oversight

### Introduction

This paper will look into the notion of media regulation, with special attention to self-regulation in relation to national security system in a broader sense, defined by Grizold (1994), as well as in relation to the public interest, since the basic security of the state and its citizens is unquestionably in the public interest as well as media freedom. By national security system, according to Grizold (1994), we consider mechanisms that ensure “capacity of the states to protect their basic social values against internal or external threats (i.e. to maintain peace and guarantee freedom), to prevent danger and fear – but also their ability to ensure social development as well as well-being of their population”. Furthermore, Grizold (1994) holds the security as an immanent structural element of society in a way that “it involves a state in which the balanced physical, spiritual, psychical and material existence of an individual and the community as a whole is ensured in relation to other individuals, communities, as well as to natural environment”. The national security system in modern states has started to embrace and discuss this broadest definition but still, when it comes to the national security system we still stand more with the traditional concept including a few non-military innovations like ensuring quality of life (food, environment protection). Starting from the basic principle that media freedom cannot be absolute, controversial points should be carefully examined in the framework of current circumstances which are very different from, for example, the circumstances in the late 19<sup>th</sup>-century France, when the Declaration of the Rights of Man and of the Citizen (which covered the freedom of expression and the freedom of the press) was adopted. Different circumstances mostly mean the development of the media, as well as the multilateral aspect of political communication, the speed of information, the frequency of the change of relationships on all levels included in the transfer of socially relevant information. In its essence, media regulation has existed for several centuries. Between the 16<sup>th</sup> and the 19<sup>th</sup> century, in West Europe and North America a battle was fought in the name of political freedom and human rights against publishing limitations and for the industry, including copyright. Over time, when new media appeared, development has been noticed in terms of discussions, framework and modalities. Today, when we talk about media regulation, we also talk about the reasons which legitimise such a procedure, so that the achieved level of freedom of thought, expression and right to information is not lost or significantly reduced by such procedures.

The main aim of the paper is to research the concept of media regulation in the context of national security in the broad sense, especially media self-regulation as the possible tool for maintaining optimal use of the media freedom in achieving goals related to the public interest in defined context. Research will be done by analysing one representative case study (dismissal of the SOA director Dragan Lozančić, 2016). In addition to the case study, qualitative content analysis and narrative analysis are applied as well as analysis of the appropriate theories, analytical jurisprudence and a background analysis of included professions.

### **Case study**

On 5 February 2016, the website Dnevnik.hr (2016a) published a communication from the Office of the President of the Republic of Croatia:

“The President of the Republic of Croatia, Kolinda Grabar-Kitarović, has signed the Decision on the dismissal of the Director of Security and Intelligence Agency, Dragan Lozančić, due to a breach of the Security and Intelligence System Act.

The President personally informed Director Lozančić that she had lost her confidence in him.

The President of the Republic of Croatia, Kolinda Grabar-Kitarović, has also signed the Decision on the dismissal of the Head of Office of the National Security Council (UVNS), Ivica Panenić, due to the failure to ensure the implementation of activities within the scope of the UVNS.

The decisions on the dismissals have been delivered to the Government of the Republic of Croatia.”

It was later reported (Vlašić, 2016) that the Government had confirmed that they had received the Decision of the President of the Republic of Croatia (referred to in the text below, except in quotes, as the President) on the dismissal of the Director of the Security and Intelligence Agency (referred to in the text below, except in quotes, as Director) due to a breach of the Security and Intelligence System Act: “We have received an initiative, which the President started in accordance with the Act on the Security and Intelligence System of the Republic of Croatia.”

### **Relevant provisions of the Act on Security and Intelligence System of the Republic of Croatia**

Article 66 of the Act on Security and Intelligence System of the Republic of Croatia defines elements of the procedure. The appointment or dismissal is co-signed by the President of the Republic and the Prime Minister. Pursuant to the said article, Director may be relieved of his/her duty if he/she: requests it personally; is incapacitated for the performance of his/her duties; does not implement the decisions of the President of the Republic and the Prime Minister which direct the work of the security and intelligence agency or does not implement their measures related to the oversight of work; violates the Constitution, laws or other rules and regulations; exceeds or abuses his/her authority; violates the confidentiality of classified data; and is convicted for a crime which renders him/her unworthy of the position. The procedure for the dismissal of the Director may be initiated by the President of the Republic, the Prime Minister and the Croatian Parliament. When the dismissal procedure is initiated by the President of the Republic or the Prime Minister, the Croatian Parliament may be asked for an opinion before a decision on the dismissal is issued. When the dismissal procedure is initiated by the Croatian Parliament because of illegality of the work of the agency or its employees discovered in the oversight procedure, the President of the Republic and the Prime Minister issue a decision on the dismissal.

### **Comparative analysis of the selected articles**

Units for analysis are articles from the few national newspapers (online editions) chosen by convenience sampling in the period from 5 February 2016 to 4 May 2016 as the relevant period for concerned case study, defined for the purpose of this work. Samples are chosen in order to get various perspectives of the studied event considering usual practice referring to the level of critical thinking, as well as by basic political orientation. Both criteria, meaning the level of critical thinking and the basic political orientation, are identified qualitatively by observation, together with the assessment of each newspaper/author accordingly. A certain number of articles were included and further exploration stopped when the findings started to repeat themselves unlikely to open a new perspective. All the links are added to the references at the end of the paper.

In addition to the case study, qualitative content analysis and narrative analysis are applied as well as analysis of the appropriate theories and analytical jurisprudence.

According to the claims published on 5 February 2016 on Telegram.hr (Vlašić, 2016), Prime Minister Tihomir Orešković (referred to in the text below, except in quotes, as the Prime Minister) replied to journalists that the President and he would jointly decide on the dismissal of the Director. A communication from the Government later stated that the Prime Minister would decide on the President's initiative the following week.

Going back to the first news in the media regarding the decision of the President (Dnevnik.hr, 2016a), one may notice that at the very beginning the media used different concepts: decision and initiative. The ambiguous and inconsistent use of the notions immediately created the effect of confusion over the situation. As part of the analysis of this moment, it should be stated that the Government confirmed (Vlašić, 2016) that the President had initiated the dismissal procedure according to the Act, which means that she had made her decision on the matter. It was therefore completely wrong to use the word "initiative".

The second element that should be highlighted is that the media failed to report or insufficiently reported about the important fact that there is a legally specified alternative way of initiating the dismissal procedure in terms of the President of the Republic/Prime Minister as it is not explicitly stated that signatures must be simultaneous. The consensus of the two decision-makers is implied in the content of the whole provision. However, the structure of the provision allows them to be successive, which again means that the procedure was actually initiated in accordance with the relevant law.

Further development of the said story encouraged the usual narratives in the Croatian public space, such as the differentiation between the left-wing and the right-wing, defamation and the like. For example, in article entitled "The Life of the Head of the Main Croatian Secret Service, Former Hard-Core Rightist and Supporter of Gojko Šušak has Become Zoran Milanović's Favourite Staff Member" (Korbler, 2016), Director is called a semi-dismissed chief of Croatian intelligence agents. The article gives a rather detailed description of the Director's actions, which seem impeccable, and it subtly introduces doubts into the President's actions and her contacts obviously trying to undermine the credibility of the President's decision as well as her own credibility. It only briefly mentions that ex-president of the Republic of Croatia Josipović did not find her dismissal without a cause disputable and that he stated that during his mandate some secrets had never reached his office. Another article (Toma, 2016) also questioned legality of the President's decision. It claimed that the violation of law would be a basis for a dismissal, but that it should be determined in a disciplinary procedure, criminal proceeding or at least by a conclusion of the Parliamentary Committee, although this is not explicitly set by the Act. It is not clear if that is opinion of the author or introductory paraphrasing of the following statement of Ranko Ostojić, President of the Committee, who insisted on legality and in his opinion lost confidence is not legally justified reason for a dismissal. On 10 February 2016 Kamenjar.hr (2016) also reports professor Jurčević's claims and comments and, among others, lists the reasons for the President's decision confirmed by other media outlets. SOA intercepted the President, and the transcripts were then delivered by the Director to then-Prime Minister Milanović. On 26 January 2016, it is additionally reported (Žabec, 2016) that SOA first informed the State Attorney's Office of the Republic of Croatia (DORH) about all of this, and only then the President. However, the President was mainly dissatisfied with the fact that she had not been warned that the people who, at the time, were surveilled had been trying to approach and contact her.

These few examples show that it is possible to comment the (il)legality of the President's decision in various ways in order to direct contextual perception of that specific information.

On 4 May 2016, Dnevnik.hr (2016b) published that Daniel Markić had been appointed as the new SOA Director, following the opinion given by the Parliamentary Committee and as proposed by the President and the Prime Minister. In the Parliamentary Committee, the ruling party had been against the appointment, whereas the opposition had voted for the appointment.

The gaps (the left vs. the right, the defamation, etc.), materialised as the lack of a meaningful discussion, are the opposite of the essence of the freedom of public communication. The encouragement of a meaningful discussion, on the other hand, would have been a suitable practice of freedom of public communication because, since the story about the indisputably sensitive issue, in regards to the actors and content as well, had already been started in the media. The public may have had a deeper and more coherent knowledge about the matter and this, in turn, would have provided

the opportunity to have more public discussions about the relevant legal solution and fewer games with the low, sensationalistic elements of the story.

Thus directed reporting might then have imposed the need to evaluate the provisions regarding the agreement of the responsible people in a socially and politically important matter related to the national security, such as the dismissal of the SOA Director. It also might have started a public discussion regarding the formulation of the alternative procedure initiation and at the end of the day regarding the whole Act. Said issues are stated as examples allowing the possibility of the emergence of new issues regarding this matter, which would steer the discussion towards a constructive, rather than completely destructive information process.

The fact that the participants in the story contributed to the media perception of the event should not be disregarded: (1) The President stated that there was a serious breach of trust; (2) By delaying the signing, the Prime Minister made the citizens distrust the most important state institutions; (3) The President, to whom safeguarding the stability of the state is a basic duty, possibly initiated the procedure without discussing it with the Prime Minister etc. This also grazed the part of freedom which refers to the officials' freedom of expression and the classification of information confidentiality, where media exploitation of (partial) information may or may not be counted on. However, if one only looks at the media perception, it would be irresponsible to claim that. It would also represent the violation of the purpose of the freedom of expression because individual responsibility would be presumed, or even claimed, without a single piece of valid evidence other than "our gut feeling", common partner of the disinformation spiralling which, once it has been started whether intentionally, because of disregard or by coincidence, very often nobody controls.

If at the core of the freedom of the press is the citizen, and at the core of the ethics of journalism is the freedom of expression and the right of the citizen to information and information dissemination (Cayrol, 1997 quoted in Jergović, 2003), texts which report on the said topics are expected to cover more specifically the roots of the created problems, unclear legal provisions and the potential use of the system for the purposes of political clashes. However, one finding – a wide variety of image deformations which cannot be corrected by an exception or two – opposes this idea.

In a parallel simulation, the moment when the story disappeared from the media could be the moment when the story was created. Alternatively, those points in time could be characterised as mitigation of a crisis in which the system was so overexposed to the media that it did not contribute to national security. In the long run, the case – which is by no means the only one and during which a story was being told about the instability of the entire system of government, including its essential part which refers to national security and which especially encouraged the feeling that the relationship between the President and the Prime Minister was not good – creates the image of extremely bad relationships between institutions rather than between people. This is where the truth of the information and the relevance of information, as well as its purpose in the context of public interest in a wider sense, start being questioned. Just how much media representation of bad relationships, verging on an incident, contribute to the security of the country (even when that information is true) should be able to be expressed in certain models of communication, where variables such as the ones stated above, or the variables of time, international relations and internal horizontal and vertical political relationships, would be interconnected.

### **Freedom and regulation**

In his text "Right to the Freedom of Expression of Thoughts", Mato Arlović (2016) elaborates the notion of freedom in terms of the constitution and the law. He perceives it as a higher concept and divides it into several lower concepts; a) freedom of expression of thoughts, b) freedom of speech and speaking in public, c) freedom of the press and other media, and d) freedom of founding any media institutions. Furthermore, he emphasizes that the freedom of thought and expression of thought, guaranteed by the Constitution of the Republic of Croatia, is indirectly supplemented by the rights and the content which are substantially related to it and influence its implementation. They are: a) prohibition of censorship, which should be interpreted as prohibition of official state bodies' oversight of the media, b) constitutional guarantee of the right to the access to information, c) reasons for limiting the right to access to information, d) constitutional guarantee to the right to correction to anyone whose right guaranteed by the Constitution or the law has been infringed. What should be

mentioned here is the appearance of journalists' self-censorship, which prof. Smerdel refers to as "danger" (Smerdel, 2013 quoted in Arlović, 2016), an opinion Arlović also agrees with. Contrary to the stated opinion, in this paper self-censorship will be depicted as an institute whose possibility should not be mystified or discarded. A different view mostly derives from a different description of self-censorship. It is understandable that the description – "the danger of self-censorship, whereby the people in the media, aware of the circumstances they are working in and the risks related to free reporting, pay special attention not to hurt the feelings of the government and its officials" – does not seem promising for the journalists' profession or their readers. However, viewed synthetically, this set of words tells us that journalists choose not to write because they do not want to be vulnerable (hurt), or they do not want to hurt somebody important, which does not seem convincing. If the aim of media activity is public interest, it would be useful to perceive self-censorship as an inhibition mechanism for the purposes of ensuring true freedom of reporting, as well as personal filtering and an invitation to deliberation. The issue of the meaning of the notion "public interest" could also be raised, but that goes beyond this paper. However, it is unlikely that subtle differences in the perception of public interest would significantly erase important elements such as truthfulness of information, relevance of information, clarity and coherence of reporting. In addition, it is true that public interest is everything that, as McQuail (2010) states, is widely considered essential for long-term benefits to the society and its members.

Self-censorship is similar to media self-regulation, which will probably not survive on its own, without legal help. However, it may contribute to better legal solutions, better understanding of the problem, and the development of intrinsic motivation for the improvement of quality instead of strict external legal regulation. The aforementioned is closely connected with media accountability defined by McQuail (2003) as the orientation process claiming that "responsible communication exists where authors (gatekeepers) answer for the quality and consequences of publication, are oriented towards the audience and others who are affected by the publication and respond to their expectations and to the expectations of the society as a whole". In a wider context, self-censorship, or more accurately self-regulation, should be connected with media transparency, which can broadly be defined as a transparent relationship between the journalist and the source of information. In that sense, article entitled *How Effective Is Media Self-Regulation? Results from a Comparative Survey of European Journalists* (Susane Fengler et al., 2015) presents the results of research on media accountability, conducted on journalists from 14 countries. In addition, with its empirical data, the research contributes to the debate on the future of media self-regulation in Europe. For the purposes of this paper, from a series of results the author will highlight the one revealing the attitude towards media transparency. It shows that journalists from Central, Eastern and Southern Europe (the participants were journalists from Romania, Poland, Spain and Italy) are more sceptical about the concept. While the journalists from Northern and Western Europe are convinced that transparency related to journalists' treatment and publications of corrigenda and apologies develop more trust in the media, their counterparts in the parts of Europe listed above believe that this, together with newsroom transparency, damages the trust between the journalist and the audience. Research also shows that, although journalists from all over Europe univocally support the statement "Journalistic responsibility is the precondition for the media freedom", actual support for the concept of media self-regulation is not great as journalists question the efficacy of the existing apparatus (journalists' councils, ombudsmen, etc.) On the other hand, laws (regulation) and company instructions were highly graded.

### **Normative media theory**

McQuail (2010) defines media theory as a complex structure of socio-political and philosophical principles which organises ideas on the relationship between the media and the society. One type of this theory is the normative media theory, which deals with the issue of what the media should do rather than what they are really doing. The premise of the immersion of the media in a concrete society is important in terms of the fact that dominant ideas about media obligations will correspond to other social values and processes, which in liberal societies means freedom, equality before the law, social solidarity and cohesion, cultural diversity, active involvement, and social responsibility. Basic varieties of normative theory are: authoritarian theory, theory of the free press, theory of social responsibility, theory of development, alternative theory. In reality, there are no clean models; rather, what exists in a concrete society is a model combining theoretical elements and media types.

Normative theory is important because it, according to McQuail (2005), plays the role in shaping and legitimizing media institutions. Furthermore, McQuail (2010) claims that there are differences in problem analysis. However, they lie more in the ways of dealing with the problem (regulation/self-regulation, competition). He also believes that basic principles of media activity can be isolated: independence, diversity or pluralism, information quality, preservation of social and cultural order. He warns that some of these principles are conflicting, but that one of the aims of regulation is the very management of tensions and settlement of conflicts. The conflict in focus – the relationship between the concept of secrecy, which the national security system is entitled to, and the request of the public, which is a norm of a democratic society – is only one of the elements appearing in a specific relationship between that system and the media. On the other hand, as stated by authors Peter Gill and Mark Phythian in their book *Intelligence in an Insecure World* (2018), a part of their relationship can also be marked by a combination of dependence, manipulation, support and praise, which can lead to conflicts of other relevant categories from the group which are related to independence and the quality of information. A similar situation involving the relationship with the source is also conspicuous here – the relationship between the journalist and the source, the system and the source or, also according to the authors mentioned above, the possibility of fraudulent, including illegal, behaviour, in order to obtain the information inaccessible to the public.

### **Conclusion**

Key problems of reporting on national security and variables of that information process have been identified by analysing suitable theoretical premises and one case study. The nature of reporting does not depend solely on the media; it also depends on those involved in the process. However, that does not minimise the responsibility of the media which, thanks to the freedom, are entitled to use when doing their job, to a certain extent control public information space and shape public knowledge. The media are sometimes also considered to conduct oversight *sui generis* of the intelligence and security system, which should not be a problem in a democratic society. However, by following and analysing media publications, it is safe to conclude that no significant aim beneficial to public interest was actually achieved in most of the analysed units. Moreover, as stated above, what was created was a confusing situation which, at certain points, became more serious information chaos. In his text *Regulation by Revelation*, Richard Aldrich (2009) offers specific revelation models, induced/allowed by the systems of Western countries, particularly in relation to the end of the Cold War and, in principle, the opening of the system to the public. He also mentions big globalisation trends, internet development, and whistle-blowers. In addition to the models, Aldrich also discusses problems which appeared at the time. He concludes his text with a part entitled *Regulation by Revelation?* In it, he mentions several similarities between the said factors – the media and the national security system. He offers the functions of informing and enlightening as examples. He also mentions the similarities between work methods and interaction, which is more frequent than it is perceived by the public. The author emphasises that, on the path toward a discretely different legal treatment of reporting about the national security system, future guidelines should provide solutions for cases when journalists believe that the revelation of information is in the public interest, as well as for the opposite cases, when information is not published in order to prevent obvious harm. Considering the said statement, the author of this text believes that the fragile line between constructive public criticism of political institutions and destructive, purposeless incoherent publications with an agenda or negative motivations, and the line between the requirements of the public and the secrecy requirement, should be studied continuously. By compiling examples of the freedom of public communication in the context of satisfying the needs of public interest related to national security and their adequate methodological processing, it is necessary to produce test patterns within the concept of media freedom, or media self-regulation in the best-case scenario, for future research in order to create a model of information analysis in defined context.

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