Media Law

Chapter Three
Press Law

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- **Mandatory Reading** Zeno Zencovich (pp 6-22) and Tracy Ross, ‘ A Test of Democracy: Ethiopia’s Mass Media and Freedom of Information Proclamation” PENN STATE LAW REVIEW [Vol. 114:3]

Principles and Elements of Press Freedom

FDRE Constitution Article 29: Right of Thought, Opinion and Expression

1. Everyone has the right to hold opinions without interference.
2. Everyone has the right to freedom of expression without any interference. 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 media of his choice.
3. **Freedom of the press and other mass media** and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements:

(a) **Prohibition of any form of censorship**.

(b) **Access to information of public interest**.

4. In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the **press** shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.

Groundbreaking Addis Ababa City Bureau of Culture & Tourism Head Circular

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የአ/አ ባ/ቱ/ቢ ኃላፊ

…in nutshell

1) Press freedom is constitutionally guaranteed
2) Censorship prohibited
3) Access to information
4) Ethiopian Nationals only can est. mass media/Art 5/

Regulation of the Media/Press

- Is there any need to regulate the media?
- If yes, what sort of regulation is required? By whom? Of all media, or just some?
- If no, how else will you protect weak media against powerful media? And how will you ensure that professional standards are maintained?

Licensing of Journalists

- “We need to regulate media generally. You know when you are a journalist, you are a professional journalist. If you don't have ethics and principles and you mislead on your reporting, like lawyers... if you commit any mistake they take your licence...we should do the same thing with journalists, that is what we need to do if we want to build South Africa”



-Hlaudi Motsoeneng, CEO, SABC (2011-13)

IACtHR, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 (1986)

- In 1985, Costa Rica presented three arguments for its media regulation system:
- Necessary for “public order” – para 45
- Promote professional and ethical standards- para 61
- Guarantee journalists’ independence in relation to their employers-para 62

- What do you think of this?

Cont’d

- The Inter-American Court of Human Rights (IACtHR) rejected Costa Rica’s arguments:

1. Public order is best served by freedom of expression and the right of the public to receive information

“**Freedom of expression constitutes the primary and basic element of the public order of a democratic society**, which is not conceivable without free debate and the possibility that dissenting voices be fully heard … It is … in the interest of the democratic public order … that the right of each individual to express himself freely and that of society as a whole to receive information be scrupulously respected.” para 69

2.Journalism is not a profession like medicine and law

- “The practice of journalism … **requires a person to engage in activities that define or embrace the freedom of expression which the Convention guarantees.** This is not true of the practice of law or medicine, for example.” para 71-73
- “Within this context, journalism is the primary and principal manifestation of freedom of expression of thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional " colegio. “
- Profession: A vocation requiring advanced education and training; esp., one of the three traditional learned professions(existence of confidential relation) - law, medicine, and the ministry/theology. Black’s Law Dictionary 9th ed p.1329

…cont’d

3. **Journalists’ independence could be guaranteed by less intrusive means-para 79**

- Licensing of individual journalists is a violation of freedom of expression
- “Journalism is a function **shared by a wide range of actors**, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with [freedom of expression as a vehicle for transparency and accountability.”
- “**Limited accreditation** schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is nondiscriminatory and compatible with article 19 and other provisions of the Covenant, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors.”

UN HRC General Comment 34, para 44

- **“Individual journalists should not be required to be licensed or to register.”**

UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, Joint Declaration of 18 December 2003.

Case Laws- EACJ & ACmHPR

- **Burundi Journalists Union v Attorney General (EACJ) May 2015**

-The applicant submitted that **compulsory accreditation(a journalist hold a "press card/pass"** before they could practice their profession) under Articles 5-9 of the Press Law is not in conformity with Articles 6(d) and 7(2) because it unnecessarily and unjustifiably restricts those who become journalists (para 49). The court said **accreditation *per se* is not objectionable,** it is the manner of implementation of the law that is problematic.(para 88-91)

-In this case, the EACJ held that a number of the Press Law's provisions were in violation of the Treaty for the Establishment of the East African Community (the "Treaty") as they violated the right to a free press. (para 119)

- **Media Council of Tanzania and others v. Attorney General (EACJ) March 2019**

-The East African Court of Justice unanimously held that numerous provisions in Tanzania's Media Services Act violated the Treaty for the Establishment of the East African Community as they infringed the right to freedom of expression.

-The case had been brought by three non-governmental organizations in Tanzania who were concerned that the legislation's use of criminal offences for defamation, false news and other conduct by the media; the restrictions the Act imposed on the publication of conduct; and the requirement of media accreditation seriously infringed freedom of expression and media freedom in Tanzania. **In relation to accreditation, [i]n the context of section 19 of the Act, it is also not clear** what legitimate aim the requirement therein (as a limitation on the right to freedom of expression), pursues" [para. 80].

-The Court found that the Tanzanian government had failed to demonstrate that the limitations to the right in the law were legitimate, and held that the impugned provisions violated the treaty by infringing the right to freedom of expression protected by the African Charter on Human and Peoples' Rights. The Court directed Tanzania to bring the Act into compliance with the Treaty.

…cont'd

- **Scanlen & Holderness v Zimbawe (ACmHPR, 2005)**

-In March 2002, the Zimbabwean legislature passed the Access to Information and Protection of Privacy Act AIPPA). Section 79 required all journalists to register with the Media and Information Commission (MIC), and section 80 imposed punishments of up to two years imprisonment for "abusing journalistic privilege" which included the publication of false news (paras. 4 and 77).

-The African Commission on Human and People's Rights (ACmHPR) held that Zimbabwean legislation which introduced an onerous regime for the accreditation of journalists was inconsistent with the African Charter on Human and People's Rights.

-The ACmHPR reasoned that registration procedures for accreditation and the regulation of journalists do not themselves constitute a violation of the right to freedom of expression. However, **the imposition of onerous conditions and the control of journalists by a non-independent** body infringed the rights to freedom of expression and to receive information.

-The Commission recommended that Zimbabwe repeal the offending sections of the legislation, decriminalize offences relating to the accreditation of journalism, adopt a legislative framework for self-regulation and bring the legislation into line with the African Charter and other international human rights instruments.

Lingens v. Austria, ECtHR Application No. 9815/82

- The Court emphasized the particular importance of the press in imparting "information and ideas on political issues just as on those in other areas of public interest." [para. 41]
- The ECtHR found that the defamation conviction of a journalist who had criticized a politician, violated his right to freedom of expression. Peter Lingens, an Austrian journalist, had accused Bruno Kreisky the President of the Austrian Socialist Party, for his accommodating attitude toward former Nazis who had continued to take part in Austrian politics.
- The European Court reasoned that politicians and other public officials should tolerate a high degree of criticism due to their public position in democratic societies. Furthermore, the Court noted that the journalist was covering political issues that were of immense public interest to Austrians and that censuring the articles would deter other journalists from contributing to public discussion.

Actors involved in Press

1)Editor-in-chief (Art 6)

-the power to supervise the publication of the periodical and to determine the contents thereof in such a way that nothing may be printed therein against his will. Any practice or agreement that restricts this power shall be null and void**.**

See Art 45—monetary penalty imposed on owners who violate this duty

2) **Distributors**(Art 8)

Responsibilities of the Mass Media

- Article 40 **Right of Reply or correction**

-Where any **factual information or matter injurious** to the honor or reputation of any person is reported in a mass media, such person shall have **the right to have his reply inserted**, free of charge in publication in which the report appeared.

a) The editor or his deputy shall have a duty to publish **free of charge and with out correction**

any reply addressed to him, incase of a **daily news paper within three days** of receipt or,

incase of **a weekly news paper within nine days of receipt** and in other publications in the next issue appearing after receipt;

b) Where the statement which has given rise the reply is made in broadcasted radio or television program, the responsible **program editor shall, free of charge and with out correction**, insert the reply in the next part of the program or other similar program within fourteen days of receipt;

The Mass Media Proclamation No.590/2008: Salient Features

1. Liberal Preamble

- The proclamation **removes all obstacles** that were impediments for the operation of media .” para IV
- The right of the media to collect and disseminate information, including of **a critical nature**; realizing that an independent mass media that serves as a public forum for uninhibited democratic dialogue. Para VII
- promote and consolidate the values of **transparency and accountability.** Para IX

-a preamble is an explanation for the reasons for the law’s enactment and the objects sought to be accomplished by the law. It neither enlarges nor confers power.(Black’s Law dictionary)

-The government has been using the preamble language to justify free press.

2. Registration and licensing

- Art 9—Anyone who desires to publish a periodical shall register such periodical(Newspaper+magazine) before Ministry of Information(Office of Gov't Communications Affairs) now Press Secretary under PMO?
- See Art 23 et seq Draft MMP
- Timing : 30 days
- **Why registration**? responsibility, repetition of names, ensuring ownership control and compiling information.
- Compare with Articles 6 & 7 of the Press Proclamation No.42/1992—registration and licensing requirements.
- Article 9(5) Presumption of registration *contra* with article 6 of the former press law
- **Is registration and licensing the press legitimate under IHRL?**

unlike broadcasting……

HRC, GC No.34(2011), para 39

- “States parties should ensure that legislative and administrative frameworks for the **regulation of the mass media are consistent with the provisions of paragraph 3**. [sic] Regulatory systems should take into account the differences between **the print** and broadcast sectors and the internet, while also noting the manner in which various media converge. It is incompatible with article 19 to **refuse to permit the publication of newspapers and other print media** other than in the specific circumstances of the application of paragraph 3. Such circumstances may never include a ban on a particular publication unless **specific content**, that is not severable, can be legitimately prohibited under article 19(3).”
- See concluding observations on Viet Nam (CCPR/CO/75/VNM), para. 18, and concluding observations on Lesotho (CCPR/CO/79/Add.106), para. 23.

3. Defamation Provisions

- Article 43(7) provides that defamation and false accusation against "constitutionally mandated legislators, executives and judiciaries" will be prosecutable "even if the person against whom they were committed chooses not to claim."
- It **fails to meet the quadruple tests of IHRL** because the law allows the government to prosecute without a defamed victim coming forward, it follows that the law has no genuine purpose of protecting a legitimate reputation interest. It seems unreasonable to prosecute someone for causing an injury when there is no victim claiming one.

Such provision encourage developmental journalism.

- Yet defamation laws for protecting individuals' reputations, but the experts found the following instances in which **defamation charges are not justified**: legitimate criticism of officials; statements affecting the reputation of objects, such as the state or nation; and statements affecting the reputation of those who have died.

HRC GC No.34(2011), para 47

- All such laws, in particular criminal defamation laws, should include such defences as the **defence of truth** and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. See for civil defamation: truth vindicates slander : Art 2047.
- In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties.
- See Art 43 FDRE Criminal Code

4. **Excessive Fines**

- The fine for a conviction of defamation can reach up to **100,000** birr as per art 41(2)
- Tracy Ross questions the **magnitude of this fine** can best be understood when compared to the fines for other criminal violations. Specifically, the fines for offenses such as rape and child labor abuse may not exceed 1,000 birr. Yet in developed countries, the degree of fines for defamation and rape or child labor abuse is opposite that in Ethiopia.
- This also has a **chilling effect** on journalists since it makes them to do a self-restraint, self-censorship.

5. Impounding order –Art 42

- Where the Federal or Regional public prosecutor ,as the case may be , has **sufficient reason to believe** that a periodical or a book which is about to be disseminated contains **illegal matter** which would, if disseminated, lead to **a clear and present grave danger** to the **national security** which could not otherwise be averted through a subsequent imposition of sanctions , may issue an order to impound the periodical.
- Impounding means seizure of the press outlets [Oxford Dictionary]

- When do sufficient reason to believe arises?
- Subjectivity: illegal matter?(encouraging terrorism, crime or morality?)

Access to Information

Why access to information? Art 11

1) to give effect to the right of citizens to access, receive and impart information held by public bodies.
2) to establish mechanisms and procedures to give effect to that right in a manner which enables persons to obtain information as quickly, and cost effectively.
3) to encourage and promote public participation, public empowerment , to foster a culture of transparency, accountability and efficiency in the functions of public bodies and
4) to encourage and promote good governance.

The right to access information-Art 12

- All persons have the **right to seek, obtain and communicate** any information held by public bodies.
- This include the **right to be informed** whether or not the public body holds a record containing the requested information and to obtain information from any public body by means of;

a) inspection, taking extracts and notes;

b) certified copies of any records of such public authority;

Exceptions

1. Third party information-Art 16

2. Commercial information of third parties—trade secrets & technical info

Art 17

3. Confidential information of third parties—Art 18

4. Public order limitations—Art 21

5. Classified information—Defense, Security and International Relation—Art **23**

6. Requests that are too broad, likely to divert resources or pertaining to information's to be published in the future—Art 27

Classified information

- UK—1889 National Secrets Act criminalized the sharing, disclosure, or publication of government information by employees and former employees of the intelligence and security forces.
- The **Amended UK's Official Secrets Act of 1911** included provisions criminalizing the sketching or photographing of restricted places, especially military installations.
- Opponents claimed it permitted government abuses in the intelligence and security forces to go unchecked, and failed to provide information to the public regarding security and terrorist threats.
- In 1989, Parliament revisited the Official Secrets Act and replaced the long controversial Section 2 of the 1911 draft. The **definition of secrets and information** covered by the act was **tightened to include only information deemed vital** to national security and intelligence interests.

Classified information in United States

- Classified information is any data or material that belongs to the federal government and relate to sensitive topics such as military plans or the vulnerabilities of security systems.
- **As per Classified Information Procedure Act(CIPA),** classified information is any information or material that has been determined by the United States government pursuant to an executive order, statute, or regulation, **to require protection against unauthorized** disclosure for reasons of **national security** and any restricted data, as defined in paragraph R of section 11 of the Atomic Energy Act of 1954.
- **Executive Order 12958**—confidential, secret, and top secret. It is a Bill Clinton Act issued in 1995. “If there is significant doubt about the need to classify information, it shall not be classified.”

Declassification and Executive Order 13142

- Declassification: the removal of restrictions on access to information.
- ACT 12958—Information is to be automatically declassified after 10 years.
- Executive Order 13142, signed November 19, 1999, amended 12958 by extending the amount of time until certain types of information can be declassified. Specifically, the order addresses Section 3.4 in the earlier order, which provides for the declassification of information **more than 25** years old that has been determined to have **historical value.**
- *Washington Times* reported in December 1999, this change angered the American Legion and other veterans' groups eager

??? Questions

Thank you !

Dank Je wel

merci beaucoup