

## HISTORICAL DEVELOPMENT OF CONSTITUTIONAL LIMITATIONS OF THE FREEDOM OF EXPRESSION IN GREECE

Konstantinos MARGARITIS<sup>1</sup>

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### ABSTRACT

*One of the most crucial fundamental rights, the freedom of expression guarantees democracy in liberal societies. Its importance could be summarized in the famous line of Voltaire "I disapprove of what you say, but I will defend to the death the right to say it". From a historical perspective, the fact that all authoritarian regimes immediately ban this freedom is far from coincidence. The purpose of this paper is to study the major conceptual issues regarding freedom of expression as included and developed in the Constitutions of Modern Greece since its establishment with a focus on its limitation under different political situations.*

**Keywords:** *Freedom of Expression, Constitutional Rights, Constitutional History, Greece*

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<sup>1</sup> Konstantinos Margaritis, LLM, PhD candidate, Attorney at Law, konstantinos\_margaritis@yahoo.com

## **Introduction**

Freedom of expression has been characterized as a cornerstone of the democratic society. Freedom of expression is essential in enabling democracy to work and public participation in decision-making. It directly affects other major fundamental rights, such as the freedom of personal development or the freedom of religion. Citizens cannot take part in public decision-making effectively if they do not have the chance to develop and express their views freely and therefore convince others. Freedom of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations, especially to political rights and freedoms.

The purpose of this paper is to study the major conceptual issues regarding freedom of expression as included and developed in the Constitutions of Modern Greece since its establishment with a focus on its limitation under different political situations. This will give to the reader the opportunity to understand the general structure and particularities regarding the inception of this specific freedom to the hierarchically highest text within the Greek legal order, the Constitution.

## **The general concept of limitation**

Some general remarks regarding the concept of limits in the exercise of fundamental rights would be useful to be briefly addressed at this point. A first distinction refers to the limits of fundamental rights that are inherent to their concept as guaranteed in the Constitution and those that are necessitated for social reasons.<sup>1</sup>

Fundamental rights do not simply exist in a Constitution as philosophical ideas, but under a specific structure. For example, freedom of assembly is not protected in any sense within the Constitution of Greece, but only if it is exercised peaceably and unarmed.<sup>2</sup> Inherent limitation should always be referred to the relevant constitutional provision; no other legal act is empowered to put restrictions unless this power is strictly delegated by the Constitution. For example, article 4 of the Dutch Constitution which states that the right to elect and stand for elections is subject to limitations and exceptions prescribed by Act of Parliament. Additionally, this power is expressed in the constitutional provision under the general phrase “under the responsibility under the law”.

The second category of limitation is not directly included in the specific provision of the fundamental right, but is dictated for social reasons. Starting with the general observation that people need to co-exist and co-operate for the good functioning and promotion of society, it is quite important a certain balance among human relationship to be secured. This is also a

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<sup>1</sup> DAGTOGLOU, Prodromos. (2002), *Civil Rights*, Athens-Komotini: Ant. N. Sakkoulas Publishers (in Greek).

<sup>2</sup> Article 11 of the Constitution; see a similar approach in the Constitutions of Germany (article 8, par. 1) and Italy (article 17, par. 1).

constitutional demand. Therefore the appeal to fundamental rights shall not be abusive or improper. In certain Constitutions this approach is clearly written. As an example article 28, par. 1 of the German Constitution refers to the “social state under the rule of law”. Also in the Constitution of Greece article 25, par. 4 clearly states that the State has the right “to claim of all citizens to fulfill the duty of social and national solidarity”. Thus, the applicability of a specific right on a specific case should not put in danger coherence within society.

### **The concept of freedom of expression**

It can be said that freedom of expression consists of four basic rights: the right to form an opinion, the right to hold an opinion, the right to express an opinion and the right to propagate an opinion.

It is a commonsense that the first step in order for an opinion to be expressed is to be formed. This is the first right that derives from article 14.<sup>3</sup> The State has the obligation not to use the public media for promoting or dissembling specific ideas or hiding facts. In addition, all institutions that are under the supervision of the State (public schools, public libraries, universities) shall promote objectivity in order not to influence the formulation of a specific opinion within society.<sup>4</sup> The purpose of this specific right is to prevent power abuse on behalf of the State in the form of controlling opinions through brainwashing. This part of freedom of expression is related to article 5A of the Greek Constitution which protects the right of access to information.

The second part of the freedom of expression is the right to hold opinion. Nobody shall be bothered for his opinions. In that sense the Constitution forbids a special treatment because of different opinions. More importantly, negative consequences because of different opinions are prohibited since this action would violate the fundamental principle of equality. The recent Greek history (especially at the time of military junta) has unfortunately demonstrated that people were judged and imprisoned or even exiled because of holding opinions different from the “official” State line. Therefore, this right contributes to the substantial development of democracy.<sup>5</sup>

The third right that derives from the freedom of expression is the (obvious) right to express an opinion. A right that is explicitly mentioned separately in many Constitutions (article 7 Dutch Constitution, article 5 German Constitution) is essentially of the same concept as the freedom of expression here, underlined in different terms.<sup>6</sup> Another example may be article 21 of the Italian

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<sup>3</sup> VLACHOS, Georgios. (1979), *Sociology of Human Rights*, Athens: Papazisis (in Greek).

<sup>4</sup> DAGTOGLOU, Prodromos. (2002), *Civil Rights*, Athens-Komotini: Ant. N. Sakkoulas Publishers (in Greek).

<sup>5</sup> KASIMATIS, Georgios. (1980). *Constitutional Law, Volume IIa*, Athens-Konmotini: Ant. N. Sakkoulas Publishers (in Greek).

<sup>6</sup> BESSELINK, Leonard. (2004), *Constitutional Law of the Netherlands. An Introduction with Texts, Cases and Materials*, Nijmegen: Ars Aequi Libri.

Constitution which refers to “freedom of communication”.

It is part of the human nature after forming an opinion to willing to express it, to make it clear to other people. This is a major form of participation in social life. The Constitution protects the expression of opinion “orally, in writing and through the press”. The definition of oral expression is the one that is achieved with the human voice no matter if the voice is living or recorded (songs). Written expression of opinion includes all forms of written communication from a text in a paper to an e-mail or an SMS in the self-phone. Of course, different systems of written communications, such as the Braille system are also included. The expression of an opinion through the press can be achieved with the publication of a written opinion in a book, in a newspaper or a magazine, normally any form that can be produced in several copies.

The fourth and last specific right-element of the freedom of expression is the propagation of an opinion. Usually, people’s will does not end in expressing a specific opinion, but also to convince as many as they can. Especially, in the field of academia or politics where convincing is a crucial factor for success. That particular social activity is also protected; like the expression of opinion, the propagation of opinion can also be achieved “orally, in writing and through the press” according to article 14 and therefore there is no need for further analysis. Usually expression of opinion contains propagation. In practice, the most common way to spread an opinion is through the press.

### **The initial years**

The beginning of the Modern Greek State can be put in 1830 after the end of the successful Greek War of Independence against the Ottoman Empire (1821-1829).<sup>7</sup> From a constitutional perspective, modern Greece had inaugurated a Constitution earlier, in 1822, after the first winning battles and the delivery of the first regions (Peloponnese, a part of Central Greece and some islands, such as Hydra, Spetses and Psara).<sup>8</sup> At that time, the First National Assembly took place in Epidaurus which resulted in the adoption of the very first Constitution of the Modern Greek state under the title “Provisional Regime of Greece”. The Constitution of 1822 replaced the regional pre-revolutionary legal texts that existed before (the Legal Order of Eastern Continental Greece, the Senate Organisation of Western Greece and the Peloponnese Senate Organisation) and summarized basic fundamental rights. Being influenced by the French Revolutionary constitutional texts, the Constitution of Epidaurus consisted of four parts and was the first attempt of organization of public administration in a central level.<sup>9</sup>

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<sup>7</sup> CLOGG, Richard. (2002), *A Concise History of Greece*, Cambridge: Cambridge University Press.

<sup>8</sup> JELAVICH, Charles, Barbara Jelavich. (1977), *The Establishment of the Balkan National States, 1804-1920*, Seattle: University of Washington Press.

<sup>9</sup> DASKALAKIS, Georgios. (1951), *Hellenic Constitutional History 1821-1935*, Athens: To Nomikon (in Greek).

Nevertheless, the first approach to freedom of expression was included one year later, in the second constitutional attempt, in 1823, with the Law of Epidaurus. Section B was dedicated to the “civil rights of Greeks” as titled and article η was devoted to freedom of expression. It stated that “all Greek citizens enjoy the right to publish in any way and via press their judgments”. But this right may be exercised freely, limited under three circumstances; the relevant judgments should not a) be against Christianity, b) contravene the principles of morals and c) consist of any kind of verbal abuse.

The limits in the exercise of freedom of expression could be justified given the fact that the second Constitution was drafted during the revolutionary period. Regarding the position of Christianity, the role of religion within Greek society throughout all modern history of Greece should be taken into account. During the years of enslavement to the Ottoman Empire and the preparation of the Revolution of 1821, Orthodoxy was a mark of coherence among Greek people that stiffen their perseverance through those difficult years, when religious minority citizens were considered to be inferior and hence played a major role in the resurgence of Greek identity.<sup>10</sup> Therefore, a protective position towards Christianity was institutionalized from the first constitutional texts while its influence remains even until nowadays.

Moral principles have a more ethical dimension; they reflect the perception of the society concerning a series of issues that affect social behavior. In that sense, the notion of moral principles is quite vague; thus it can be interpreted at will. For example the translations of Marquis de Sade’s writings were definitely against moral principles of the time and thus would have been banned.

The third Greek revolutionary Constitution, the Constitution of Troizina was adopted in 1827, which could be described as the most complete of its period in Greece.<sup>11</sup> Nevertheless, a similar approach to freedom of expression was included therein, in article 26. Only, the wording of the prerequisites under which someone could exercise that particular freedom was changed without conceptual variations. The phrase “principles of morals” was replaced by the word “decency” whilst the public means of expression should not contain defamations apart from verbal abuse.

The major improvement of the 1827 Constitution regarding freedom of expression may be seen in the written prohibition of censorship. Article 26 introduced the phrase “without prior examination” to someone’s right to write and publish and generally express his/her opinions and ideas. In that sense, the protection of freedom of expression became more complete.

### **The Period of Constitutional Monarchy**

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<sup>10</sup> MARGARITIS, Konstantinos. (2009), *The Freedom of Religion and its Limits in Greece and the Netherlands: A Comparative Approach*, Munich: GRIN Verlag.

<sup>11</sup> MANESIS, Aristovoulos. (1982), *Constitutional Rights, Volume A*, Athens-Thessaloniki: Sakkoulas Publications (in Greek).

After the signature of the London Protocol in 1830 Greece officially gained independence from the Ottoman Empire and recognition by the Great Powers of the time (Great Britain, France and Russia) which guaranteed that independence. According to that Protocol Greece was established as a “monarchical State”.

At the year 1831 Governor Ioannis Kapodistrias was assassinated by political rivals<sup>12</sup> and as described in the London Protocol, King Otto, son of King Ludwig of Bavaria, was appointed as the new head of State. Initially, he ruled as an absolute Monarch giving no fundamental rights or freedoms to citizens.

On 3 September 1843, the military garrison of Athens, with the help of citizens, rebelled and demanded from King Otto the concession of a Constitution.<sup>13</sup> The King agreed upon the enactment of a new Constitution which was established in 1844. Despite the strict monarchical regime, the freedom of expression was sufficiently guaranteed in the Constitution. Article 10 referred that “everyone is able to publish his thoughts orally, written and through the press in accordance with the laws of the State”. Compared to the revolutionary constitutional texts, the Constitution of 1844 seemed to have included a more modern terminology. Really vague terms such as “principles of morals” or “decency” were abandoned as well as all prerequisites for the exercise of freedom of expression. Extremely revolutionary for the time was definitely the absence of reference to special protection of Christianity against press releases. The only limit to the exercise of freedom of expression was put by the laws of the State. Furthermore, the new Constitution directly protected press from censorship by characterizing it as “free”.

The only negative issue in the structure of article 10 was the distinction based on nationality for newspaper publishers. According to that “all newspaper publishers shall be Greek citizens”. This discrimination was obviously based on the political instability of the State during those historical periods. Only 14 years had passed since the establishment of modern Greece and the external threats in conjunction with the political will of the King to stabilize the regime, led the State authorities to protect the “national identity” regarding the most influential (and only at that period) source of mass media.

As a result to severe ruling, large social unrest was brought among the population of Greece and King Otto became extremely unpopular. At the end, he decided to abdicate his throne and left the country in 1862.<sup>14</sup> After this institutional crisis, the country needed a new ruler; the Danish prince, George I, was chosen to be the next King. In 1864 a new Constitution

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<sup>12</sup> VOURNAS, Tasos. (1976), *The Assassination of Kapodistrias: The Price of Independence*, Athens: Fitrakis Publications (in Greek).

<sup>13</sup> VOURNAS, Tasos. (1997), *History of Modern and Contemporary Greece*, Athens: Patakis Publications (in Greek).

<sup>14</sup> CLOGG, Richard. (2002), *A Concise History of Greece*, Cambridge: Cambridge University Press.

was adopted that changed dramatically the political situation in Greece. The powers of the King were clearly reduced and the principle of popular sovereignty was clearly established for the first time. The Parliament was the only institution competent for the revision of the Constitution and from 1875, the members of the Cabinet needed to enjoy the confidence of the majority of the Parliament.<sup>15</sup>

In this clearly more democratic environment, someone would expect the modification in freedom of expression to be even more liberalized. In a sense, the prohibition of censorship (and all other preventive measures) was better clarified in the new Constitution. The prohibition of seizure of newspapers and other written treatises was added in article 14, before or after publication. Although free press was already guaranteed from the previous Constitution, the introduction of seizure as an additional prohibition makes the freedom of press and therefore expression, stronger.

On the other hand, article 14 of the 1864 Constitution reflected some conservative ideas compared to its predecessor. It revived the protection of Christianity from any insult as an exemption from the seizure of newspapers. In the same way, the protection of the King was added. Surprisingly, in a less strict monarchical regime, under the rule of a relatively more flexible King, the protection of his name from written insults was specifically instituted in the State's highest norm. Finally, article 14 also described the process of seizure and the procedural means of defense for the writer.

Social changes expressed in the military coup of 1909,<sup>16</sup> the riots of agriculturalists in the village Kileler and the general economical changes influenced the revision of the 1864 Constitution, in 1911. The revised version was generally focused on the enrichment of fundamental rights and the increase of their protection. Regardless of the general constitutional spirit, the provisions related to freedom of expression had remained anachronistic.

A second and a third paragraph was added in article 14. According to the second paragraph the publication of news or statements related to military operations or the fortification of the country could be forbidden under the threat of seizure and criminal prosecution. It was a provision of highest importance that decreases the level of protection of freedom of press by allowing the forbiddance of publication. That implied the interference of State authorities at the process before publication in cases regarding national defense. This firstly introduced provision was connected to the general situation of external relations of the State at that time. The unfortunate (for Greece) Greek-Ottoman war of 1897 on one hand and the preparation of the Balkan League (Greece, Bulgaria and Serbia) that led to Balkan Wars of 1912 and 1913 on the

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<sup>15</sup> ALIVIZATOS, Nikolaos. (1981), Introduction to Hellenic Constitutional History, Athens-Komotini: Ant. N. Sakkoulas Publisher (in Greek).

<sup>16</sup> PETMEZAS, Sokratis. (2007), "History of Modern Greece", in About Greece, (ed. A. Bacaloumis), Athens: General Secretariat of Communication, General Secretariat of Information, p. 17-43.

other,<sup>17</sup> increased the concerns regarding the military force of the State. Hence, dissemination at this sensitive matter was tried to be avoided at all costs.

The third paragraph initiated the liability of the publisher and the writer of illegal publication referred to private sphere. They were responsible to remedy any damage caused because of the article and remunerate the victim at an amount not less than 200 drachmas. This provision was quite unique in world constitutional history. It inserted norms mostly related to civil law into the Constitution. Principles of private liability and remuneration traditionally refer to relations between citizens themselves, especially the second, not between citizens and the State which are covered by the Constitution. Consequently, the third paragraph was quite useless since relevant provisions could be found or instituted in Civil Code.

### **The Constitution of the Second Hellenic Republic**

The year 1924 was a benchmark in history of modern Greece. The institution of kingship was abolished under a popular will that was expressed in a referendum. Consequently, the necessity of a new Constitution became imperious. This new Constitution was adopted in 1927 and described, for the first time, the form of Government as Parliamentary Republic.

The new institutional structure had little effect on the freedom of expression. The only major difference can be observed in the newly-instituted concept of “protection of youth”. Based on that, preventive measures could be taken regarding movie theatres and all other public performances. Furthermore, additional measures could be taken (set by special Law) for the protection of youth and morals of society from inappropriate public showing and insulting literature.

### **Severe years, political instability and military junta**

Parliamentary Republic ended after the elections of 1936 when Ioannis Metaxas came on power by taking advantage of the inability of the major parties to form a Government and at the end, he established a dictatorship.<sup>18</sup> Additionally, the participation of Greece in World War II, with the subsequent occupation by the Nazis and the tremendous Civil War that followed (1946-1949), changed dramatically the socio-political status; as a result the country needed to reconstruct all its institutions from the very beginning. A new Constitution, in 1952, established Constitutional Monarchy as the form of government, based on the Constitution of 1864/1911.

With reference to freedom of expression, the general provisions as described in the Constitution of 1864/1911 applied with some important changes. First of all, seizure could be allowed not only for the

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<sup>17</sup> KOLIOPOULOS, John, Thanos Veremis. (2002), Greece, The Modern Sequel: From 1831 to the Present, London: Hurst & Company.

<sup>18</sup> KITSIKIS, Dimitris. (1974), Greece of the 4<sup>th</sup> of August and the Great Powers. Files of the Hellenic Ministry of External Affairs, Athens: Ikaros (in Greek).

person of the King, as it used to be, but also for the members of the royal family. That specifically included the crown prince as well as the spouses and children of both. The way the provision was structured was totally disproportionate to its aim which was the protection of the King.

The Constitution of 1952 obliged the Court to ban or temporarily suspend the publication of papers. This provision applied only in cases of conviction of three times or more for crimes that seizure is allowed. In extreme cases the exercise of the profession of journalist could be revoked. Additionally, the title of a newspaper that had been banned was not allowed to be used for a decade from the time of its ban.

It is clear that the Constitution of 1952 was quite extensive regarding freedom of expression. This demonstrates the will of the constitutional legislator of the time to institutionalize all aspects of freedom of expression, from rights derived to obligations and sentences. This is the reason why the text of 1952 influenced the current Constitution of the State to a high extend.

After 10 years of efforts for achieving political stability, in 1967 a coup d'état took place, led by a group of army colonels; the outcome was the establishment of a military junta for seven years (1967-1974). During this dark period for the Greek history two "Constitutions" were drafted (1968, 1973)<sup>19</sup> under totally undemocratic and anachronistic methods; hence there is no need for further analysis. In fact, freedom of expression was one of the first freedoms that were violated, practically banned, by the regime.

### **Finding peace: the Constitution of the Third Hellenic Republic**

In 1974 after Democracy was restored, the adoption of a new democratic Constitution became the first priority. The Constitution of the Third Hellenic Republic was drafted and came into force in 1975; it is active up to now, after being revised three times (1986, 2001 and most recently 2008).

Freedom of expression is described in article 14 of the Greek Constitution; a very lengthy provision consisted of 9 paragraphs. A brief analysis of some of their major issues will be attempted here. The first paragraph provides that "every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State".

Paragraph 2 of article 14 is dedicated to the protection of press. According to the Constitution "the press is free. Censorship and all other preventive measures are prohibited". Therefore no public, State authority can put a priori restrictions or censor any form of press. That paragraph secures free access to the press as a mean of exposing opinions or propagating in favour

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<sup>19</sup> PAPACHRISTOS, Nikos. (2001), The "Constitutional" Attempts of the Dictatorship and the Constitutional Work of the Transitional Polity, Athens-Komotini: Ant. N. Sakkoulas Publishers (in Greek).

of or against opinions.<sup>20</sup>

The Constitution also protects the freedom of expression in a negative form. This means that people have the right not only to express and propagate an opinion but also to silence according to their will. Hence nobody is obliged to answer in any questions concerning personal opinions from any State institution, even at Court during testimony. The concept of the freedom of expression is sufficiently protected only if this negative form is secured.

Freedom of expression applies to all people in Greece not only to those who hold the Greek nationality. Article 14 explicitly mentions “every person”, so nationality cannot be a discriminative factor. Article 14 includes not only people but also public or private corporate institutions (universities, trade unions etc.).<sup>21</sup>

The limits of the freedom of expression are also set in the first paragraph of article 14. Every person has the right to express and propagate his opinion “in compliance with the laws of the State”. This is a general reservation in favour of the law which derives from article 25, paragraph 1 of the Constitution. Restrictions of any kind which, according to the Constitution, may be imposed upon fundamental rights, should be provided either directly by the Constitution or by the law, in case a reservation exists in the latter’s favour and always in accordance with the principle of proportionality.<sup>22</sup> It is obvious that the law shall have been established by the competent institution. In that sense the freedom of expression does not imply that every person can offend or insult without consequences. As it is also mentioned in article 25, paragraph 1 the principle of proportionality shall be respected. Therefore the laws of the State when limiting the freedom of expression shall always be in compliance with the general concept of the human right that shall always be interpreted in the way that its core is not getting castrated.

According to paragraph 3 of article 14, “the seizure of newspapers and other papers before or after circulation is prohibited”. Seizure is only allowed and always after circulation in the following four cases: a) insult of Christian religion or any other known religion, b) insult against the person of the President of the Republic, c) a publication which discloses information on the composition, equipment and set-up of the armed forces or the fortifications of the country or which aims at the violent overthrow of the regime or is directed against the territorial integrity of the State and d) an obscene publication which is obviously offensive to public decency, in the cases stipulated by law.

In the first case, the difference between this structure and the one included in previous Constitutions is quite obvious; now all religions are protected from an insult through press, not only

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<sup>20</sup> DIMITROPOULOS, Andreas. (2008), *Constitutional Rights*, Athens-Thessaloniki: Sakkoulas Publications (in Greek).

<sup>21</sup> DAGTOGLOU, Prodromos. (2002), *Civil Rights*, Athens-Komotini: Ant. N. Sakkoulas Publishers (in Greek).

<sup>22</sup> ANTHOPOULOS, Charalampos. (1993), *The Problem of Functioning Commitment of Fundamental Rights (in the view of article 25, par. 2, 3 and 4 of the Constitution)*, Thessaloniki: Sakkoulas Publications (in Greek).

the Orthodox. This is a very important novelty since it constitutes a form of religious equality, which is also crucial in modern democracies. The term “known” refers to religions that have spiritual ceremonies, worship and organization unconcealed and open to everybody who wants to participate.<sup>23</sup> “Known” religions do not need to be known to public authorities or have a specific permission for professing. Of course the constitutional term “known” shall not be confused with the term “popular”.

With reference to the second case, this quite old limitation remains active. Under this provision, the person of the President is protected and not the institution itself. The rationale is the institutionalization of respect towards the President as the guardian of Republic in Greece.

In the third case, disclosing an information requires that this information is secret. Any information being disclosed before, either legally or illegally, cannot be disclosed again. Hence, the re-publication of such information does not lead to seizure of the paper. Regarding the protection of regime and territorial integrity of the State, the publication against shall contain the application of violence. This provision does not apply in cases of political disagreement or even alternative approaches referred to the territory of the country.

Regarding the fourth case, delineating the term “public decency” in modern constitutional wording is not an easy task. The principle of proportionality shall apply, hence, the nature of paper and the person of the recipient shall be taken into account. For example, magazines with sexual content should not be accessible to minors.

The fourth paragraph of article 14 describes the process of seizure and the rights of the defendant, while paragraph 6 repeats the wording of the 1952 Constitution, obliging the Court to ban or temporarily suspend the publication of the paper and in severe cases, prohibit the convicted person from practicing the profession of journalist after at least three convictions within five years for the criminal acts defined under paragraph 3. The ban or suspension of publication shall be effective as of the date the Court order becomes irrevocable.

A very controversial issue rises from article 14, paragraph 8. According to that, “the conditions and qualifications requisite for the practice of the profession of journalist shall be specified by law”. The purpose of the provision is to raise the standards of journalism by protecting the profession from people that are incapable of exercising it. Although the rationale is positive, it may lead to negative effects regarding freedom of expression. Under this constitutional provision, the State could manipulate the profession of journalist, by deciding via Law, in favour of its preferred ones to practice journalism. Since journalists’ occupation is strictly connected to press and press is the ultimate mean of expressing and propagating an opinion, freedom of expression could end up

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<sup>23</sup> NASKOU-PERRAKI, Pelagia. (2000), *The Legal Framework of Religious Freedom in Greece*, Athens-Komotini: Ant. N. Sakkoulas Publishers.

being limited in some sense. Especially, in cases that the State uses this power to banish journalists who simply do not agree with State policies, it is a conspicuous violation of freedom of expression.

### **Especially the revision of 2001**

During the process of constitutional revision in 2001, many issues related to the freedom of expression were either changed, or included for the first time in the Constitution.

Initially, the manner, in which full retraction shall be made in cases of inaccurate or insulting publications, is referred in paragraph 5. The offended person has the right to respond and the mean that published the initial text is obliged to publish that response. This provision intends to protect the dignity of people that may be offended and applies additionally to the relevant criminal and civil law articles.

Only the wording of the provision changed in the case of paragraph 7 which now states that the civil and criminal responsibility of the means of press will be set by law as well as the immediate court hearing. This very strict approach to press offences should be seen in association with the general influence of press in society and the rapidity that news is spread throughout large populations. Under this perspective, an inaccurate article in a popular newspaper may cause panic unnecessarily. Additionally, since the slander of people in low quality newspapers is a rising phenomenon, there shall be special judicial mechanisms for their redemption.<sup>24</sup>

Issues related to transparency in press are included in paragraph 9 of article 14.<sup>25</sup> The first issue is the economic transparency in media as the ownership status, the financial situation and the means of financing of information media must be made known. The second issue is plurality as an aim which reflects democracy. Hence, the concentration of the control of more than one information media of the same type or of different types is prohibited, especially with reference to electronic information media that are the most commonly used nowadays. Thirdly, paragraph 9 introduces the incompatibility between the position of owner, partner, major shareholder or managing director of an information media enterprise and the position of owner, partner, major shareholder or managing director of an enterprise that undertakes towards the Public Administration or towards a legal entity of the wider public sector to perform works or to supply goods or services. This incompatibility extends to all types of intermediary persons, such as spouses, relatives, financially dependent persons or companies. The reason for such an approach is the prevention of absolute control of power that may lead to corruption in the public sector. Finally, paragraph 9 contains sanctions in cases of infringements of the above mentioned, that may extend to the point of revocation of the license of a radio or television station and to the prohibition of conclusion or to the annulment of the

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<sup>24</sup> DAGTOGLOU, Prodromos. (2002), *Civil Rights*, Athens-Komotini: Ant. N. Sakkoulas Publishers (in Greek).

<sup>25</sup> CHRISOGONOS, Kostas. (2006), *Civil and Social Rights*, Athens: Nomiki Vivliothiki (in Greek).

pertinent contract. The purpose of the constitutional legislator is clarified under the revision that put issues of transparency at constitutional level, unlike the period before 2001 (included at the level of typical law).

Article 14 refers to protection of freedom of expression as a general concept as well as the protection of traditional type of press, like newspapers. Article 15 specifies the protection to films, sound recordings, radio, television or any other similar media for the transmission of speech or images. For that purpose, after the revision of 2001, an independent authority has been established, the National Radio and Television Council which has exclusive competence of controlling radio and television and imposing administrative sanctions when needed. Its aims are multiple. On one hand achievement of objectivity and equality regarding transmission of information and news reports and on the other hand cultural development of the country by ensuring the quality level of programs via promotion of art and literature works, always in compliance with respect of the value of the human being and the protection of childhood and youth.<sup>26</sup>

## **Conclusion**

The provisions related to freedom of expression have not been dramatically changed throughout constitutional history of Greece. Serious improvements have been made, especially in the formulation of article 14 in the current Constitution, hence it can be supported that the Constitution sufficiently protects one of the ultimate fundamental rights.

Nevertheless, there are issues that need to be revised. The insult of the person of the President of the Republic should not be included in the reasons for possible seizure. The institution of the President of the Republic is by all means very crucial to the good functioning of the regime since its role is the guarantee of this good functioning. In cases that the person proves to be incapable of handling this fundamental position, severe critics that may reach the level of insult should be legalized exactly because of the importance of the situation, especially under conditions of violation of democratic principles. In addition, the other reasons of seizure should be interpreted narrowly. Comments mostly related to different beliefs or behaviours do not necessarily lead to an insult to religion or ethical values. This is exactly the very basic of the concept of multi-cultural, modern societies: respect of the different.

Finally, article 14 remains a very lengthy and complicated provision which includes many issues that could be arranged at the level of typical Law; also the existence of a specific article, article

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<sup>26</sup> PAPANASTASIADIS, Georgios. (2008), "Independent Authorities. The Slow Way to Maturity", in *Independent Authorities in Modern Democracy*, (ed. N. Fragkakis), Athens-Komotini: Ant. N. Sakkoulas Publishers, p. 45-51 (in Greek).

15, for protection of radio etc. seems unnecessary. As a result, there could be some structural modifications at the next amendment process.

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