FREEDOM OF THE PRESS IN BRAZILIAN FEDERAL CONSTITUTIONS

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Abstract: This study aims to analyze the path of press freedom in Brazilian federal constitutions throughout history. To do this, it briefly reflects on the importance of the press in society, mainly as a supervisor of the public authority. The intimate relationship between freedom of the press and freedom of expression is exposed, as well as the way in which these institutes emerged in conjunction with liberal revolutions. From this scenario, it seeks, through a literature review and an analysis of constitutional texts, to understand how this institute presents itself in past Brazilian constitutions and how press freedom is addressed in the Constitution of the Federative Republic of Brazil of 1988. It appears that, although it is present in all Brazilian constitutions, the protection of the institute varies according to the democratic predisposition of each Magna Carta.

Keywords: Freedom; Press; Communication; Constitution; Legislative Branch.

1 Introduction

The press is an extremely relevant institution in contemporary society. Through it, information is disseminated, such as reports of poor provision of Public Services, cases of corruption, cases of pollution by a private company, the death of a public figure, the results of a company and a multitude of information that allows the individual to understand the actuality of the world around him. The importance of the press is such that the institution ends up exercising a supervisory function (BUCCI, 2012, p. 42 and 43) on the executive, legislative, judicial and even on power exercised by the private sphere. American doctrine, for example, calls this function of constantly checking, of providing the greatest possible exposure of the State, of its authorities, watchdog function (DE OLIVEIRA; REPOLÊS; PRATES, 2017, p. 233). In Brazil, this critical role makes the press occupy the curious position of being the target of dissatisfaction from both the left and the right on the political spectrum.

When discussing the role of journalists in today's society, the issue of freedom of the press is often discussed. Although repeated several times, whether in the media itself, in the political or academic environment, among other spaces, rarely is the topic approached with the depth and technical rigor it deserves. To start this discussion, it is important to conceptualize the institute. In short, freedom of the press is the right of the media, journalists, editors, and authors to inform, publish news, opinions, analyses, that is, journalistic content, without being restricted

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by individuals and especially by the State. The expression freedom of journalistic information is synonymous with freedom of the press.

Even with regard to the conceptualization of the topic, it is important to distinguish freedom of the press from freedom of expression. Although these terms are usually associated, as previously seen, freedom of the press is linked to the professional exercise, the autonomy of journalistic activity, while freedom of expression is broader and concerns the right of any citizen to externalize, to manifest their thoughts (TRANQUILIM; DENNY, 2003, p.1). Freedom of the press is a kind of freedom of expression, which also covers the spoken word, the arts, academic freedom, among other examples.

Currently, there is wide acceptance that press freedom is a universally guaranteed right (MENDES, 2011, p. 1). In Brazil and in several other countries, the institute has constitutional protection and is considered a right linked to the exercise and very existence of democracy (PEREIRA, 2013, p. 123).

The importance of this institute, observed together with freedom of expression, can be perceived by its inclusion in the list of fundamental rights[2] in the 1988 Constitution, a topic that will be discussed later, and can also be seen by its presence in international documents such as the American Convention on Human Rights (Pact of San José, Costa Rica), which Brazil signed in 1992, and the Declaration of Chapultepec, to which Brazil adhered in 1996.

Given the importance of press freedom and its history, it is necessary to study the protection of this institute within the Brazilian legal system. In this sense, a fundamental aspect is its constitutional scope. This study, therefore, aims to observe the trajectory of the institute throughout the Brazilian federal constitutions up to the Magna Carta of 1988. In this sense, the goal is to answer the following questions: Did past Brazilian federal constitutions ensure press freedom? In what way? How is the theme addressed in the 1988 Constitution?

To elucidate these questions, the methodology of bibliographic research will be used, through the use of previous constitutions, books, and articles that deal with Constitutional Law and Communications Law.

It is important to reaffirm that this study does not intend to examine in depth the infra-constitutional legislation that deals with the institute, nor to analyze the practical effectiveness of press freedom in Brazilian society[3].

[2] Rights related to Freedom and Equality and which aim to protect and promote the dignity of the human person. Human rights enshrined and promoted in the Constitution of each country (NOVELINO, 2019, p. 312). The minister of the Supreme Federal Court (STF, Supremo Tribunal Federal) Luís Roberto Barroso argues that press freedom and freedom of expression should have a preferential position among fundamental rights, with a presupposed legitimacy of what is disclosed. For this minister, the burden of proving that these freedoms should not subsist, in a concrete case, should be on the claimant. (International Seminar on World Press Freedom Day - Information as a public good. UNESCO Portuguese, 2021).

[3] There are several studies with this proposal, such as the annual reports "Violence against Journalists and Freedom of the Press in Brazil", by Fenaj (Federação Nacional dos Jornalistas, National Federation of Brazilian Journalists), and "Violation of Freedom of Expression in Brazil", by Abert (Associação Brasileira de Emissoras de Rádio e

2 The advent of press freedom around the world

The first relevant legislative initiatives to defend press freedom date back to 1695, when England abolished censorship (MAIA; PEREIRA, 2010, p. 196). However, it was the advent of the Enlightenment in the eighteenth century, that spread the freedoms of expression and of the press as significant values for the individual and for the development of societies, as was done with reason, the separation of church and state, progress and constitutional government. As is known, this philosophical and intellectual movement was not restricted only to the theoretical field, having influenced practical political changes in various parts of the world, such as the French Revolution.

A representative document of the Revolution and also of the Enlightenment, the Declaration of the Rights of Man and of the Citizen (1789) defines, in its 17 articles, individual and collective rights that have come to strongly influence human rights in contemporary society. In the perspective of the Constituent Assembly of revolutionary France, which drafted the document, these rights would be universal, that is, of all individuals everywhere. The document protects the freedoms of communication as being among the most important human rights:

> Art. 11 - The free communication of ideas and opinions is one of the most precious rights of man. Every citizen may, accordingly, speak, write and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law. (FRANCE, 1789).

The independence of the United States of America (1776) and the U.S. Constitution were also heavily influenced by Enlightenment ideals. In 1891, the succinct initial text of the U.S. Constitution received 10 amendments, known as the Bill Of Rights, with content that promoted individual freedoms, such as freedom of religion and of peaceful assembly. The first of these amendments was already concerned with protecting the freedoms of speech and the press (MENDES, 2011, p. 2), as can be seen below.

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (1ST AMENDMENT - CONSTITUTION OF THE UNITED STATES OF AMERICA, 1891).

While defending press freedom was already a reality in Europe and the USA since the end of the eighteenth century, in colonial Brazil there was no freedom of printing (TRANQUILIM; DENNY, 2003, p. 4). In Brazil, before the arrival of the Portuguese court (1808), any and all press activity, including books, was prohibited by the metropolis, and was done only clandestinely. The press came into existence only in 1808[4] but only officially,

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Televisão, Brazilian Association of Radio and Television Broadcasters). The NGO Reporters Without Borders also establishes annually a ranking of countries in terms of press freedom.

[4] The newspaper Correio Braziliense was launched in the same period, but was edited and printed in London.

through the newspaper Gazeta do Rio de Janeiro, which was an instrument to spread the ideas of the Crown.

It was only in the 1820s that the institute was protected by the legal system applied to Brazil, first with a decree from the Government of D. João VI, of 1821, abolishing prior censorship, and later with an ordinance, properly ensuring press freedom in Brazil (TRANQUILIM; DENNY, 2003 p. 5).

3 Press Freedom in past Brazilian federal constitutions

The influence of the press in society and in the formation of Brazilian public opinion has always been recognized by Brazilian constituent legislators. The Constitution of the Empire of 1824, for example, the first Brazilian Constitution, granted by D. Pedro I two years after the independence, already addressed the issue in Title 8, which dealt with the civil and political rights of Brazilians. Its article 179, IV, thus stated:

> Everyone can communicate their thoughts, in words, in writing, and publish them by the Press, without depending on censorship; provided that they have to answer for the abuses they commit in the exercise of this right, in the cases and manner defined by Law. (BRAZIL, 1824).

It can be noticed that the legislator sought to establish, as a general rule, full freedom of the press. It is also noteworthy that the accountability regime related to this right in the 1824 Constitution is repressive, that is, as a rule, there is no prior censorship, punishing only possible abuses after they are committed. However, it is worth remembering that the said Magna Carta still concentrates great power on the figure of the Emperor, through the Moderating Power, which allows the Emperor to interfere in the other branches, including in the Judiciary. It is also worth noting that, according to some authors, the Empire sought to exert some control over demonstrations that went against the morals and good customs of the time, or against the interests of the Portuguese court. (TRANQUILIM; DENNY, 2003, p. 6).

It should also be noted that the Constitution of the Empire provided for the possibility of suspending the civil and political rights of Brazilians, in which it can be inferred that freedom of the press is included, in cases of risk to the safety of the State, as in rebellions or invasions by enemies (Art. 179, XXXV). The suspension of these rights in cases of state of exception is also included in other Magna Cartas throughout Brazilian history.

Still on the Constitution of the Empire and the Moderating Power, the contribution of Maria Fernanda Salcedo Repolês is important. The author, when discussing the nature of this Power and whether it performs the function of Guardian of the Constitution, makes reference to the essay "Da Natureza e Limites do Poder Moderador" (The Nature and Limits of the

Hipólito José da Costa Pereira was the editor, and he launched the publication in the English capital due to the difficulty of publishing journals in Brazil, because of prior censorship and the dangers to which the editors would be exposed. (GONDIM; ALVES; BERNARDES apud TRANQUILIM; DENNY, 2003, p. 5).

Moderating Power), by the liberal politician Zacarias de Góes e Vasconcelos at the time of the Empire. Amidst considerations about the inviolable condition of the monarch and the need for accountability of the ministers, who sign the acts together with the Emperor, Vasconcelos asks who watched over the Moderating Power, which, as said, oversaw the other powers. The deputy recognizes in the "national opinion, in the chambers and in the press" the task of watching over, of keeping an eye on, the Moderating Power, as well as the other powers (VASCONCELOS, 1978, p. 45, *apud* REPOLÊS, 2008, p. 50). The recognition of a broad public sphere, with the public opinion and the press exercising a duty of extra-institutional supervision, from outside the State, is of great importance for an analysis of our institutional history, although it must be recognized that the limitation of this public opinion is rooted in an enslaver and patriarchal society (REPOLÊS, 2008, p. 50).

The following Magna Carta of 1891 also adopts press freedom as a general rule and a repressive accountability system, rejecting censorship. The Republican constitutional text brings an important innovation to Brazilian legislation by introducing the prohibition of anonymity. This prohibition aims to prevent the dissemination of texts without the indication of an author, a common practice in the press at the time, especially on political issues, and also to enable the accountability of those who commit abuses (MONTEIRO, 2012 p. 1). The prohibition of anonymity proved to be an institute of great importance, considering that it remains in the Brazilian legal system to the present day. Next, there is the literal transcription of Article 72, § 12.

> Regarding any subject, the manifestation of thought by the press or by the tribune is free, without depending on censorship, each one being responsible for the abuses they may commit in the cases and in the manner determined by law. Anonymity is not allowed.

The 1934 Constitution already presents some differences compared to the previous Magna Cartas. The general rule remains freedom of expression and of the press and the repressive system. The mentioned Fundamental Law, however, establishes the possibility of censorship for public amusements and shows and explicitly states, among other things, that propaganda of violent processes to subvert the political or social order shall not be tolerated, as can be seen in the transcription of Article 113, no. 9.

> Regarding any matter, the manifestation of thought is free, without depending on censorship, except for public shows and amusements, each one being responsible for the abuses they may commit, in the cases and in the manner determined by law. Anonymity is not allowed. The right of reply is guaranteed. The publication of books and periodicals does not require a license from the public authority. However, propaganda of war or violent processes to subvert the political or social order will not be tolerated.

It is worth noting that, in a way, this wording opens some space for the repression of opponents of the ruling power. About the 1934 Constitution, it is also important to note that it

introduced an important directive by prohibiting the imposition of direct taxes on the professions of journalist, writer and teacher (Art. 113, no. 36). The 1934 Charter, as well as subsequent Constitutions, has other provisions dealing with journalistic activity, such as the rules for exercising the profession and also for owning a media company, which, because they do not deal directly with the institute of freedom of the press, will not be the object of this study.

The 1937 Constitution, which received the nickname “Polish " because it was inspired by the Polish semi-fascist model, presented several setbacks with regard to press freedom and other individual guarantees (MONTEIRO, 2012, p. 2). Seeking to centralize powers in the federal government exercised by the political group led by Getúlio Vargas, the charter of the so-called "Estado Novo" was more detailed and specific in its provisions regarding communication. Despite initially defending freedom of expression (Art. 122, no. 15), the constituent legislator drafted several provisions deeply limiting said right (MONTEIRO, 2012, p. 2). The control of the exercise of press freedom started to be carried out in a preventive way, not in a repressive way as in previous Brazilian constitutions. The 1937 Constitution[5] also established prior censorship of the press, theatre, cinema and radio, enabling the competent authority to prevent the circulation, dissemination or representation in these of works of these segments (Art. 122, no. 15, a). It also provided for the possibility of limiting press freedom based on vague and discretionary concepts such as "protection of the public interest", "welfare of the people", "State security", "public morality" and "good morals" (MONTEIRO, 2012, p. 2). Another attack on press freedom is the impossibility for newspapers to refuse the inclusion of government communications (Art. 122, no. 15, b).

In addition to the aforementioned provisions limiting freedom of the press, the 1937 Constitution also provided for the possibility of censorship in cases of declaration of a state of emergency or a state of war. In addition, the 1937 Constitution also prohibited anonymity and instituted the right of reply, an important innovation of the said Charter[6].

After the serious crimes committed by totalitarian regimes around the world and Vargas' departure from power, there was no more room in Brazil for an authoritarian Constitution like that of 1937. In light of this, a new constitution was enacted in 1946, which sought to rescue individual rights and guarantees present in the 1934 charter, including freedom of the press. The adopted model of limitation was once again repressive, allowing only later accountability for any abuses committed in the exercise of press freedom. The 1946 Magna Carta also prohibited the imposition of taxes on paper intended for books and periodicals. Within the scope of freedom of expression, the Magna Carta, however, continued to prohibit propaganda of violent

[5] The 1937 Constitution contains several provisions limiting freedom of the press, so transcribing them would make the text too long. Reading its entire Art. 122, no. 15 is suggested.

[6] An important tool to restrain possible abuses by the press, the right of reply was introduced in Brazil through Law no. 4743, of October 31, 1923 (Adolfo Gordo Law). Later it was enshrined in the 1934 Constitution and maintained in the others. (MENDES, 2011, p. 36)

processes for “subversion of the political and social order” and to allow prior censorship on public shows and amusements (Art.141, § 5º).

After the 1964 military coup, there was an advance of the State on the individual freedoms of the population. The 1967 Constitution and, especially, subsequent normative acts institutionalized and regulated this stance. Despite guaranteeing freedom of thought, license independence, and tax immunity for the circulation of newspapers, and, as a general rule, the provision of information independent of censorship, article 153 of the 1967 Constitution, in its § 8, makes an exception for examination of public amusements and shows, and also states that propaganda, among other things, for subversion of the order will not be tolerated. The constitutional text goes deeper into the theme when it defines, in Article 154, that the abuse of individual or political rights, with the purpose of subverting the democratic regime or corruption, will result in the suspension of those rights from two to ten years. In this sense, the "abuse" of the right to press freedom, whether by an individual or by a news company, could imply the sanctions provided in the mentioned article (MONTEIRO, 2012, p. 3).

Following the Brazilian constitutional tradition, the 1967 Magna Carta also established the possibility of curtailing press freedom in cases of state of siege and state of emergency. Also, in Article 82, III, of the Constitution, there is a provision for criminal responsibility of the President of the Republic for acts that attempt against "the exercise of political, individual, and social rights".

Another position of the constituent legislator that, in practice, implied the curtailment of press freedom can be observed in Article 30, sole paragraph, b. This article, which dealt with the organization of the legislative branch, determined that "the publication of pronouncements involving offenses against national institutions, propaganda of war, of subversion of the political or social order would not be authorized". As Manoel Gonçalves Ferreira Filho points out (*apud* MONTEIRO, 2012, p. 3) the content of parliamentary debates is of great public interest and the ideas discussed there are the foundation of the democratic regime. Their curtailment, however small, can limit the electorate's ability to evaluate the government in light of opposition criticism.

However, the curtailment of press freedom during the validity of the 1967 Constitution was done mainly through other types of legislation. Although it is not the purpose of this study to delve into legislation outside the constitutional texts, in the specific case of the military regime it is important to mention some of these provisions. First, The Press Law, also of 1967, which instituted some restrictions on the exercise of press freedom. Subsequently, Institutional Act no. 5, of 1968, institutionalized the dictatorial character, allowing, for example, the President of the Republic to discretionally revoke the political rights of any citizen for a period of 10 years, and also determining that all acts carried out in accordance with the Institutional Act would be excluded from judicial review. It is also worth mentioning Decree-Law No. 1077,

of 1970, which, under the pretext of regulating Article 153, § 8 of the 1967 Constitution, instituted prior censorship, allowing the Federal Police to verify the existence of publications "offensive to morals and good manners", and the Minister of Justice to prohibit the dissemination of publications and determine the search and seizure of all the copies, among other things.

4 The protection of the institute in the 1988 Federal Constitution

After years of repression with the military in power, Brazil went through a process of redemocratization that culminated in the drafting of the 1988 Constitution, as noted by Luiz Henrique Vogel (2013, p. 3):

> For several reasons, the 1988 Constitution represented the high point in a long process of social mobilization against the arbitrary rule and attacks on the rule of law that characterized the long period of military dictatorship. As is well known, the '88 Charter was elaborated in a social and political context characterized by strong union activity and effective politicization of the social movements that fought for the end of the military dictatorship.

After strong debates on the provisions regarding Social Communication in the 1987 National Constituent Assembly[7], the 1988 Constitution was enacted in order to break with the past of authoritarianism and censorship (BISOL, 2020, p. 14). The constitutional text takes special care in clearly formulating the rights and guarantees for freedom of expression and information, which constitutes a significant advance compared to the censorship and lack of guarantees caused by the institutional acts of the military regime (VICENTE, 2009, p. 156 *apud* BISOL, 2020, p. 14).

In Title II, in which the Fundamental Rights and Guarantees are stated, the 1988 Constitution presents provisions that protect the freedom of expression and communication, institute the right of reply, and prohibit anonymity, as can be seen below:

> Art. 5: All are equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security and property, in the following terms:
> [...]
> IV - the manifestation of thought is free, anonymity is forbidden;
> V - the right of reply is guaranteed, proportional to the offense, in addition to compensation for material or moral damage, or damage to the image;
> [...]
> X - the expression of intellectual, artistic, scientific and communication activities is free, independent of censorship or license;

[7] For more information on debates in the National Constituent Assembly regarding the Media and the Press, you should read the article "Comunicação na Constituinte de 1987/88: a defesa dos velhos interesses" (Communication in the 1987/88 Constituent Assembly: the defense of old interests) (LIMA, Venício A. 1987, Brasília: Cadernos do CEAC / UnB, Ano 1, no. 1) and the article "A comunicação social na constituição de 1988 e a concentração de mídia no Brasil" (The social communication in the 1988 constitution and media concentration in Brazil) (VOGEL, Luiz Henrique. (Consultoria Legislativa). Brasília: Câmara dos Deputados, 2013).

> [...]
> XIV - everyone is ensured the access to information and the confidentiality of the source, when necessary to the professional exercise;

Besides these broad provisions present in Art. 5, the 1988 Constitution innovated by being the first Magna Carta in the history of the country to contemplate a specific chapter for Social Communication (V), with five articles. This fact shows the importance given by the constituent legislator to communication in the post-dictatorship context. Regarding press freedom, it is important to highlight the following excerpts:

> Art. 220. The manifestation of thought, creation, expression and information, under any form, process or vehicle shall not suffer any restriction, in accordance with the provisions of this Constitution.
> § 1. No law shall contain provisions that may constitute an obstacle to the full freedom of journalistic information in any media outlet, observing the provisions in Article 5, IV, V, XIII and XIV.
> § 2. Any and all censorship of a political, ideological, or artistic nature is forbidden.
> [...]
> § 6. The publication of printed communication vehicles does not depend on a license from an authority.

It is noticeable in the chapter that the legislator seeks to reinforce the protection of freedom of speech and of the press in several ways, ratifying the freedom to manifest one's thoughts, forbidding "any and all forms of censorship," as well as prohibiting the enactment of laws that hinder journalistic activity, and reaffirming that the publication of printed media does not require authorization from the public authorities.

Furthermore, Vogel's analysis, which compares the guidelines of the provisions regarding Social Communication with the general perspective of the 1988 Fundamental Law, is salutary.

> If, from the point of view of social regulation, the 1988 Constitution manifests a project of building a "welfare state", the regulation of media items clearly expresses a "non-interventionist" posture, in response to pressure from media owners and influential sectors of society against the period in which the media suffered heavy censorship from the dictatorship's organs of repression. (VOGEL, 2020, p. 3)

It is important to point out, however, that the Constitution does not defend the existence of an unlimited freedom of the press. Hate speech and violence against certain social groups are not protected by the institute. The constitutional right of reply itself (Art. 5, V) reveals that there are limits; that freedom of the press does not cover abusive claims; that these, when proven, can and should be held accountable (DE OLIVEIRA; REPOLÊS; PRATES, 2017, p. 230)

5 The Supreme Court (STF) Jurisprudence

Although it is not the main purpose of this study, a brief analysis of the Supreme Court's jurisprudence is an important element when it comes to the perception of press freedom after the 1988 Constitution came into effect. Several relevant judgments on the subject have been held by the Brazilian constitutional court since then.

Among the main ones, one can cite the Argument of Non-compliance with Fundamental Precept (ADPF, *Arguição de Descumprimento de Preceito Fundamental*) 130, proposed by the Democratic Labor Party (PDT, *Partido Democrático Trabalhista*). In this lawsuit, tried in April 2009, PDT contested the compatibility of several articles of Federal Law 5.250/1967, known as the Press Law, with the new constitutional order installed in 1988. The PDT also requested, alternatively, the declaration of the total incompatibility of the law with the current constitution. Minister Carlos Ayres Britto was designated to be the rapporteur for the ADPF. (STF. ADPF 130/DF)

In an extensive vote, Ayres Britto emphasized the importance of the press in various dimensions, such as in its functions of controlling the State and driving the development of societies. The rapporteur stressed that it has a mutual relationship of dependence and feedback with democracy. The minister also defended that the text of the 1988 Constitution overtightened press freedom, highlighting that it should be full and should not go through the mediation of the State. Ayres Britto voted, finally, not only regarding the incompatibility of the articles pointed out by PDT with the Constitution, but for the non-acceptance of the entire Law (NAPOLITANO, 2011, p. 263). The vote of the rapporteur Ayres Britto was accompanied by ministers Cármen Lúcia, Celso de Mello, Cezar Peluso, Eros Grau, Menezes Direito and Ricardo Lewandowski, and partially by ministers Gilmar Mendes, who was presiding over the trial, Joaquim Barbosa and Ellen Gracie. Minister Marco Aurélio voted for the total dismissal of the request.

Months after the decision on the Press Law, the STF rendered another important ruling related to freedom of the press. In June 2009, the Extraordinary Appeal (RE, *Recurso Extraordinário*) 511.961 was judged by the STF plenary session, which decided that it is unconstitutional to require a journalism diploma and professional registration with the Ministry of Labor as a condition to exercise the profession of journalist. The RE was filed by the Federal Public Ministry (FPM) and by the Union of Radio and Television Companies of the State of São Paulo (Sertesp, *Sindicato das Empresas de Rádio e Televisão do Estado de São Paulo*), an employer entity in the capacity of simple assistant, against a decision of the Federal Regional Court of the 3rd region that determined the necessity of a diploma, in opposition to a sentence of the 16th Federal Civil Court in São Paulo, in a public civil action.

In the lawsuit, Sertesp and FPM argued that the 1988 Constitution (Art. 5, IX and XIII, and Art. 220, caput and §1) did not approve Decree-Law 972/1969, which established the

diploma requirement and other rules for exercising the profession. Another point addressed by the complainants was that the content of Art. 13 of the American Convention on Human Rights, of 1969 (Pact of San José, Costa Rica), which deals with freedom of thought and expression, would have repealed Art. 4 Decree-Law 972/1969, which determined the registration of press professionals with the Ministry of Labor (STF. RE 511.961 / SP). It is important to remember that Brazil adhered to the Pact of San José, Costa Rica, in 1992.

The rapporteur of the RE was Minister Gilmar Mendes. In his vote, the minister pointed out that the profession of journalist is closely related to the exercise of freedom of thought and expression. Gilmar Mendes compared the journalist's education to that of a chef, pondering that a chef can be graduated from a culinary school, which does not legitimize the requirement that every meal be prepared by a professional registered with a college degree in this area (STF. RE 511.961 / SP). The rapporteur's understanding was that Decree-Law 972/1969 was not accepted by the 1988 Constitution and that the requirements contained in the decree hurt press freedom and contravene the right to free expression of thought enshrined in Article 13 of the American Convention on Human Rights, also known as The Pact of San José, Costa Rica. The rapporteur's vote was accompanied by ministers Cármen Lúcia, Ricardo Lewandowski, Eros Grau, Carlos, Ayres Britto, Cezar Peluso, Ellen Gracie and Celso de Mello. The vote of Minister Marco Aurélio Mello, the only one to defend the requirement of the diploma, was defeated.

Although not directly linked to the journalistic activity itself, the Direct Action of Unconstitutionality (ADI, *Ação Direta de Inconstitucionalidade*) 4815/DF, dealing with the waiver of prior authorization of the biographee, or the family, for publication of works, configured as an important precedent with regard to freedom of expression and deserves to be addressed. Tried in 2015, the said case confronted the fundamental rights to honor and intimacy with the freedom of expression in action proposed by the National Association of Book Publishers (*Associação Nacional de Editores de Livros*), which had as legal controversy the interpretation of Articles 20 and 21 of the Civil Code (2002):

> Art. 20. Unless authorized or necessary to the administration of justice or the maintenance of public order, the publication of writings, the transmission of words, or the publication, display or use of a person's image may be prohibited, at the person's request and without prejudice to any compensation that may be due, if the honor, good name or respectability of the person is affected, or if it is intended for commercial purposes.
> Sole paragraph. In the case of a deceased or absent person, the spouse, ascendants or descendants are the legitimate parties to request this protection.
>
> Art. 21. The private life of a natural person is inviolable, and the judge, at the request of the interested party, will adopt the necessary measures to prevent or stop an act contrary to this rule.

The ADI had as rapporteur the Minister Cármen Lúcia. In her vote, the minister stressed

that freedom of expression is upheld in all democratic constitutional systems and that the 1988 Constitution prohibits any censorship of a political, ideological, or artistic nature. The Constitution also establishes the possibility of compensation in cases of violation of privacy, intimacy, honor, and image. Therefore, in the understanding of Minister Cármen Lúcia, the Civil Code, an infra-constitutional rule, cannot abolish the right of expression and creation of literary works. "The infra-constitutional rule cannot undermine constitutional precepts, by imposing restrictions on the exercise of freedoms". The minister noted that there are risks of abuse, but the law provides for ways to address them (STF. ADI 4815/DF). The Supreme Court has unanimously determined that no prior authorization is required for the publication of so-called unauthorized biographies.

More than just judgments on the practical cases faced, these precedents endorse the scope and importance given to press freedom by the 1988 Constitution, through the qualified and official interpretation of the Brazilian constitutional court[8].

6 Final considerations

In light of the above, it is possible to perceive the importance of freedom of the press as an institute that allows the autonomous exercise of journalistic activity, disseminating information relevant to the citizens and supervising the public authority and private entities. It is an essential element of the democratic rule of law, with recognized importance since the liberal revolutions of the second half of the 18th century.

It should be noted that freedoms of the press and of expression are present in all Brazilian constitutions, even in the first Magna Carta of 1824. These institutes are addressed in the sections of the constitutions that provide for civil or fundamental rights, thus aligning with their historical origin.

However, certain Brazilian constitutions, despite defending the institute in a "first moment", have legal provisions that restrict it substantially, especially the 1937 and 1964 constitutions, also considering the institutional acts issued during the validity of this Charter. Therefore, it is evident the interest of dictatorial regimes in controlling journalistic activity and curtailing press freedom not only by practical means, but also by constitutional norms. Furthermore, although it is not the object of this work, the bibliographical research allows us to point out the influence of infra-legal provisions, such as Decree-Law 1949/1939 (which provides for measures of "supervision" of the press, including the creation of the Press and Propaganda Department) and certain provisions of Law 5250/1967 (Press Law), in the

[8] Importantly, there are also decisions made by the STF to impose limits on what could be considered freedom of the press and freedom of expression. The most representative decision in this regard is the Ellwanger case, in which the STF, in 2003, upheld the conviction of a publisher for racism due to the publication of anti-Semitic works. The Supreme Court understood that freedom of expression does not protect hate speech.

curtailment of journalistic activity.

For educational purposes, in order to make the topic clearer and more understandable, we present the following chart, which illustrates, in a generic and comparative way, the "strength" with which Freedom of the Press and Expression are protected in the Brazilian constitutions.

Comparative chart 1 – Protection of freedoms of expression and the press in the Brazilian federal constitutions

Source: The author, based on the analysis of the constitutions and the literature, 2021.

It is worth noting that the constitutions enacted soon after antidemocratic regimes, such as the Republican Constitution of 1891 and the Citizen Constitution of 1988, tended to adopt a position of non-intervention in the Freedom of the Press and of protection of the institute. About the 1988 Constitution, it is also worth mentioning the intense concern that the constituent legislator had with the theme, dedicating, for the first time in Brazilian constitutional history, an exclusive chapter to address Social Communication. This chapter, in association with the Fundamental Rights relevant to the subject, provided for in Article 5, protects press freedom and rejects censorship repeatedly. Finally, it is also worth noting that the freedom of the press is protected not only in the constitutional text of 1988, but also in jurisprudence, with the Supreme Court recognizing, in notorious decisions, the importance of the institute in a Democratic Rule of Law.

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