

Limits on the Legalization of Journalistic Criticism In Iraqi Journalists' Rights Law

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Abstract

Freedom of speech guaranteed by constitution is the basis that democratic regime stands on. This freedom is the mean from which light of truth emerge. Right of criticism is one of freedom of speech manifestations, which is considered the core of this truth. This right is one of the key requirements and fundamental basis of the journalistic activity. Using this right by the journalist stems from the standpoint of freedom of speech thoughts, and following such standpoint requires the journalist not to be accountable for his expression and that this should not constitute a reason to violate his security.

Keywords: Criticism, Journalist, Libel, Phrase, Good faith, Interest.

Límites a la legalización de la crítica periodística En la ley de derechos de los periodistas iraquíes

Resumen

La libertad de expresión garantizada por la constitución es la base sobre la que se apoya el régimen democrático. Esta libertad es el medio del que emerge la luz de la verdad. El derecho de crítica es uno de las manifestaciones de libertad de expresión, que se considera el núcleo de esta verdad. Este derecho es uno de los requisitos clave y base fundamental de la actividad periodística. El uso de este derecho por parte del periodista se deriva del punto de vista de la libertad de

expresión, y seguir ese punto de vista requiere que el periodista no sea responsable de su expresión y que esto no debe constituir una razón para violar su seguridad.

Palabras clave: crítica, periodista, difamación, frase, buena fe, interés.

1. INTRODUCTION

The right of press criticism is a necessity to ensure the balance of rights and duties within the society among the different groups, which is used in accordance with the general rules in the permissibility of presswork and the absence of criminal and civil responsibilities. Statements published through the media included some criminal concepts according to law, and the facts about some negative aspects, whoever is responsible for its spread in society, which allows individuals to participate in public life and face problems by publishing their views and evaluation of various works that interest the community to show the shortfalls and to work on avoided them in the future.

2. METHODOLOGY

1.2. Meaning of Journalistic Criticism

Criticism right from judicature's viewpoint is defined as expressing opinion about a matter or work without violating the rights of the owner person of that matter or work with the intention of defaming or humiliating him. If criticism exceeded this limit as to be counted abuse, insult or slander then penalty is a must, (LUDWIG, 1953). It is also defined by doctrine as showing negative opinion about an action or subject which is considered important to society for having public interest in an objective way and by using suitable expressions for that, (SCHLESINGER&TUMBER, 1992).

Other side of doctrine defined it as weighing a matter or work impartially that shows its advantages and disadvantages for finding rationality for public interest or to serve science and arts, (BEZANSON, CRANBERG&SOLOSKI, 1987).

We support the last definition because it includes basic elements that must be found in this right which is showing positivity and negativity in the criticized work or action and in an objective evaluative way far from individual disputes. What

supports us for taking the last definition is the lingual meaning of criticism as it's defined as "discussing a matter" (GLASSER, 2010).

2.2. Basis of Journalistic Criticism Right

The basis of this right is found in Journalists Right Act, where legislator discussed it in more than one topic by saying: "the journalist has the right to comment as he sees appropriate to clarify his opinion regardless the differences in opinions and intellectual endeavors and in the limits of law respect", (Paragraph (2) of Article (5) of the Iraqi Journalists' Rights Law).

Accordingly, criticism should not include opinions with no social values like these intended to revenge because of personal hatred or those include indecency or intend to distort the reputation (SIMON, 1984).

Criticism right is not limited to being decided by constitution but it is legal and social obligation that's necessary for the protection of an interest that is more important than the sacrificed interest, because the interests which the law protects are different and could be contrasted (WHITE, 1994). There is individuals' interest of not violating their honor, respect and personal life, and there is freedom of speech that realizes an important social interest represented in the development of society (COHEN, 1931).

3.2. Conditions of the Usage of Journalistic Criticism Right

If human has the freedom to use his rights, this freedom is not absolute because he lives in a society that requires each individual to waive the absolute usage of his rights to live peacefully (BARKAN, 1998). On this basis the journalist should not use criticism right absolutely, but this has to follow certain conditions that must be all available, otherwise criticism right cannot be found, these conditions are:

1.3.2. The Criticism should be based on a Constant Fact for Public

Constant fact means that there is an axiomatic matter on which criticism is applied, but if that criticized fact doesn't exist as if it was made by the critic from his imagination or was a rumor (CAREY, 1974), then the journalist will not benefit from this condition,(RYAN, 2001). Criticism right does not permit discovering

and commenting on inconstant facts, because criticism supposes the fact to be constant at first, mixing between telling the facts and criticizing them. If the critic journalist mixed between discovering the fact and commenting on it, he should not enjoy the right of criticism unless he can at first discover and prove the fact, (CRAFT, VOS & DAVID WOLFGANG, 2016). Which is impermissible according to Iraqi Penal Code unless for slander in the right of general persons if the journalist proved the truth of this fact. Here, the comment on the fact is suitable to be a subject for journalistic criticism right. Egyptian legislator has followed the same as well, Paragraph (2) of Article (433) of the Iraqi Penal Code.

It may not be a topic for comment under the name of criticism, if the discovery of inconstant facts is related to ordinary persons because discover inconstant facts can't be an excuse in libel crime against anyone (COYLE, 2014). However, we find that French legislator has taken a different attitude, he permitted to stick to proving the truth of the fact in confronting ordinary persons unless the fact is related to the personal life of the victim, 10 years have passed for the fact, formed a crime that has been time-barred, amnesty, the convicted was redressed other judgment was reconsidered, Article 44 of the Egyptian Penal Code.

2.3.2. The Social Significance of the Fact

In order for journalistic criticism right to take place it's not enough that the fact be constant, it must also be important for public because criticism is a constructive social activity.

When the journalist practices his right of criticism the public can supervise over all political, economic, social, scientific, literary, artistic and professional activities and direct them the best way to achieving its interest, (HOUSE, 2009). This what the court of media and publishing issues has confirmed in one of its rulings by saying: "Press has the right to discuss the establishment and implementation of projects that concerns civilians and provides general service for them, and this is considered an image of protecting and maintaining public interest" (ANDERSON, 1974). But if the fact was not of concern to the public, then criticizing it deviates it from its constructive role. Exposure to individuals' personal life issues is impermissible in the name of criticism unless this criticism was related to general life issues as seen necessary, (LEBEL, 1995). Some of

the most prominent fields that take over people's attention are (YANCHUKOVA, 2002).

A) Criticism in the Political Field:

Political work is considered a fertile field for journalistic criticism in democratic regimes that practice discussion and opposition, where journalist can criticize politicians, leaders and others who undertake the political work be them officials or non-officials. It discusses their orientations and opinions and undertakes assessing them in terms of their authorities and qualifications without considering this to be an insult or slander. As everything and all those evolved in the political field must subject to supervision, review and criticism, (VLADECK, 2007).

French judiciary confirmed that “accusing a minister by a journalist of being forgiving and incompetent is considered assessment that enters under the right of criticism, and does not exceed the frame of criticism permitted in the political field” (RICHARDS, 1992).

Criticism during elections also goes under political criticism, because press resembles the guardian of the society that undertakes assessing and evaluating candidates by practicing its right in criticism, (BERTRAND, 2018). Electors in this aspect are just like big court that rules what it sees for its interest and denies what is unlike like, and it cannot issue this rule without dialogue or consultation and criticism, and without journalistic criticism unqualified candidate can fulfill what he wants, (LANAO, 2001).

B) Criticism in the Scientific, Artistic and Literary Fields

Freedom of speech permits judgment on artistic innovation by analyzing the work of authors and writers. Criticism in scientific, literary and artistic fields plays a great role in freedom of speech and it does not require the journalist but to be honest and objective and that he should not intend the author person in his honor and respect, (HOUSE, 2009).

Originally, journalistic criticism is permissible regarding all that related to scientific, artistic and literary works and inventions. The journalist is permitted to say his opinion about it from different sides without considering this a punishable

slander, provided that he should not cross the line or the frame of his work, (RODGERS, 2007).

French court has gone by saying that: "if a critic left the fact subject of criticism and on which the subject of the issue is based, and went to a person to demolish him, say what he doesn't know, pick up unspeakable words of defame and abuse and other things alike, then it's not criticism", (BESCHASTNA, 2013).

No doubt in case a journalist criticized musical composition like criticizing the way of playing or the presentation for the audience and a violation to the musician person occurred, then in this case trial judge will investigate whether violating musician person was necessary to using journalistic criticism right or not. If it was found that violation was unavoidable then the journalist must be exempted from responsibility as long as criticism was objective and unexaggerated, (STONE, 2007).

C) Criticism in Religious Field:

Criticism in the religious field is considered the most serious and complex one because nations along the different ages received it with acceptance, respect, reverence, obedience and homage. There are people who object criticizing religion and don't allow it even it comes to killing the critic if he criticized some belief issues. Accordingly, journalist should be careful when interfering in such field and he should build his criticism on neutrality, objectivity and value and ethics of dialogue, (LIS, 2016).

This thing can be extracted from the concept of violation for some legal provisions like what the Iraqi legislator provided for in Publications Act: "What constitutes blasphemy of religions acknowledged by the Iraqi Republic.... May not be published in periodicals", (Paragraph (i) of Article (16) of the Iraqi Publications Law).

Also what the Egyptian legislator provided for: "The journalist shall avoid partiality towards racist propaganda or messages that imply contempt for or hatred towards religions, vilify other faiths or advocate discrimination against or the disparagement of the views of any confessional group, (Article 20 of the Egyptian Press Law).

And what the French legislator provided for as: Public slander against a person or group of persons because of their origin, affiliation, or non-affiliation to race, religion... is prohibited, (Paragraph (2) of Article (33) of the French Press Law).

3.3.2. The Expression should be Appropriate

If the journalist has the right to criticize the established facts related to the audience, then the condition for that is to stay in the limits of moderate transparent opinion expression, and if he crossed the lines by using abusive language then his writings will be out of the usage of criticism right frame, (MAKEEBA, 2017).

The aim behind using the right of criticism should be for correcting false opinions and situations that violate the values of society and the basis on which it stands in any aspect of life whether in art, culture, economic, literature or politics, in addition to showing their advantages through press which make all of this available for audience,(BELOUADAH, 2013).

Journalist is just like the judge when practicing his right of criticism. He evaluates each case apart and pertains each one with the appropriate criticism. He should not abuse nor defame and his expressions should be appropriate. Iraqi legislator has confirmed this by saying: "the journalist has the right to comment in what he sees suitable to clarify his opinion..." Paragraph (2) of Article (5) of the Iraqi Journalists' Rights Law.

Nevertheless, there are a few things that may expand the range of journalist criticism such as the occasion on which journalist expresses his opinion, the status of the person and the seriousness of general issues the journalist addresses. All these things may expand the range of journalistic criticism, (WADE, 1984).

The more the topic that journalist addresses was relevant to the people's interest and his responsibility was greater, the more the burden was from press concern in the supervision over public figure actions who those serious interests assigned to. Hence, criticism shown by journalist as being kind of harsh for public figures due to his concerns about these interests, he will be forgiven if that came from a good-intention. Public figure should know early that his actions subject to audience accountability and it would be severe with lots of mistrust; however, all of this should not lead to humiliation or to defame public figure with mistrust, (DIAMOND, 1995).

Journalist has the right to express his opinion even if everyone disagree with him as long as the fact subject to criticism was correct and constant, then the right of criticism removes the responsibility from the journalist even if his opinion was wrong as long as it was transparent and taking into account other terms of criticism (HODGES, 1994).

Thus, Iraqi legislator has taken this direction by saying: "journalist has the right to comment in what he sees appropriate regardless the difference in opinions and intellectual jurisprudences and in the limits of law", (Paragraph (2) of Article (5) of the Iraqi Journalists' Rights Law), There's a reference for this meaning in the applications of the Iraqi judiciary, whereas Federal Court of Cassation came to the decision that goes: "journalist's opinion is considered an expression for his viewpoint in the subject he expressed his opinion for, provided that this opinion should not include abuse for others or contrary to public order and ethics.

4.3.2. Good Will

Critic journalist's good will condition is essential for correct criticism and the focus of good will is to target public interest, in addition, the critic's belief of the properness of his opinion based on constant fact subject to criticism. Each act or behavior a rational person with free will does come from potential intention in human soul. This intention can be good or bad and reflects on the behavior. Thus, using journalistic criticism right must entail good will, as practicing this right in intention to abuse others entails bad intention, what puts this act away from the range of approved permission.

3. RESULTS

Journalistic criticism right is the mean for the journalist to express himself, and it's considered a mean of reform and an instrument to reaching the best in a work that seeks the interest of society though discovering shortfalls and working on correcting them. And it shows the good aspects to follow them away from legal accountability as long as the journalist's opinion didn't violate law, provided that he should target public interest and that his belief should be based on certainty.

3. METHODS

I followed in the research a course I tried to continue and not to go out as much as possible as follows:

1. Collecting the scientific material that is being pursued by tracking the issues that fall within the subject of the limits of the permissibility of the journalistic criticism in the criminal law, collecting them and classifying them as a framework for the research topic.
2. Focus on the subject of research as much as possible and avoid the elaboration and the importation of information on the subject of research.
3. Examine the evidence for each legal opinion with a clear indication and document the information from the original sources considered within the scope of the criminal law.

4. CONCLUSION

1. The right of the journalist to write in the press and make observations and opinions on the various subjects according to certain conditions and conditions.
2. The freedom of press criticism is not absolute, but decided for the public interest and not to exploit it in a way that departs from the desired purpose.
3. The freedom of press criticism is aimed at the actions and actions of public people, not their honor and personal consideration.
4. The inadmissibility of the abuse of the right of criticism and the inadmissibility of departing from the limits of its requirements, the critic should adhere to the limits of public order and public morals.

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