

IS SPAIN BECOMING A MILITANT DEMOCRACY? EMPIRICAL EVIDENCE FROM FREEDOM HOUSE REPORTS¹

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ABSTRACT: Militant democracy can be seen as a useful theoretical category. Its main objective is to preserve the regime by eliminating its opponents through the legal means. They may affect fundamental civil rights and freedoms including freedom of the press. There are two objectives of the article. The first is to determine the differences between the declaratory level, based on national legislation and legal acts adopted between 2008-2017, and actual level of freedom of the press in Spain, based on press freedom status presented in reports of Freedom House. This comparison will provide an answer to the question if Spain is becoming a militant democracy or not. The second objective is to explain the reasons for these differences as well as to formulate conclusions related to the adoption of the attributes of militant democracies by Spain with special reference to freedom of the press.

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The main hypothesis reads as follows: legislative changes referring to the functioning of the media in the form of national legislation affected the indicator value of the press freedom status in Spain presented by Freedom House. This dynamic proves that elements of militant democracy are being implemented into the Spanish political system.

KEY WORDS: Militant democracy – Spain – freedom of the press– Freedom House – economic crisis

¿ESTÁ ESPAÑA CONVIRTIÉNDOSE EN UNA “DEMOCRACIA MILITANTE”? EVIDENCIAS EMPÍRICAS DEL *FREEDOM HOUSE REPORT*

RESUMEN: La democracia militante puede verse como una categoría teórica útil. Su objetivo principal es preservar el régimen eliminando a sus oponentes a través de los medios legales. Pueden afectar los derechos y libertades civiles fundamentales, incluida la libertad de prensa. Hay dos objetivos del artículo. El primero es determinar las diferencias entre el nivel declaratorio, basado en la legislación nacional y los actos jurídicos adoptados entre 2008-2017, y el nivel real de libertad de prensa en España, basado en el estado de libertad de prensa presentado en los informes de *Freedom House*. Esta comparación proporcionará una respuesta a la pregunta de si España se está convirtiendo en una democracia militante o no. El segundo objetivo es explicar las razones de estas diferencias, así como formular conclusiones relacionadas con la adopción de los atributos de las democracias militantes por parte de España con especial referencia a la libertad de prensa.

La hipótesis principal dice lo siguiente: los cambios legislativos que se refieren al funcionamiento de los medios en forma de legislación nacional afectaron el valor indicador del estado de libertad de prensa en España presentado por *Freedom House*. Esta dinámica demuestra que los elementos de la democracia militante se están implementando en el sistema político español.

PALABRAS CLAVE: Democracia militante – España – libertad de prensa – Freedom House – crisis económica

INTRODUCTION AND METHODOLOGICAL ASSUMPTIONS

The global financial crisis began in the United States, but its consequences were also devastating and felt in other regions of the world including Europe².

² To learn more about causes and consequences of the 2008 economic crisis see: Paul KRUGMAN, *The Return of Depression Economics and the Crisis of 2008*, New York: W. W. Norton & Company, 2009;

The European debt crisis, which affected primarily the European countries using euro, was the most serious financial crisis in the history of the European Union³. The member states of the Eurozone imposed socially unpopular cuts which led to the occurrence of violent social movements⁴. Their activities were viewed by state authorities as sources of threat to public order as well as the fundamentals of liberal democratic systems⁵. This crisis also resulted in the rise of populist movements and anti-system public sentiment in Western Europe⁶. These phenomena sparked a debate on a crisis of liberal democracy worldwide⁷. In view of those considerations, militant democracy can be seen as a useful theoretical category which enables scholars to analyse the above-mentioned developments. Its main objective is to preserve the regime by eliminating its opponents through the legal means. This may affect fundamental civil rights and freedoms including freedom of the press.

State authorities may attempt to limit freedom of the press for various reasons. Some of them may be justified, others not. Such restrictions are closely monitored by Freedom House, which is a non-profit organisation that publishes annual reports dedicated to research on democratic values, human

Orhan ERDEM, *After the Crash: Understanding the Social, Economic and Technological Consequences of the 2008 Crisis*, Basingstoke: Palgrave Macmillan, 2020; George K. ZESTOS, *The Global Financial Crisis: From US Subprime Mortgages to European Sovereign Debt*, Abingdon: Routledge, 2016; Joanna RAK, "Intrastate, Regional, and Colonial Contributions to Post-2008 Cultures of Political Violence", *Polish Political Science Yearbook*, 46 (1/2017); John AUTHERS, *Europe's Financial Crisis: A Short Guide to How the Euro Fell Into Crisis and the Consequences for the World*, Upper Saddle River: Pearson Education, 2013.

3 Bill LUCARELLI, "The Break-Up of the Eurozone?", *The Economic and Labour Relations Review*, 23 (4/2012).

4 More about anti-austerity movements in Europe: Joanna RAK, *Theorizing Cultures of Political Violence in Times of Austerity: Studying Social Movements in Comparative Perspective*, Abingdon: Routledge, 2018; José Luis ORELLA MARTÍNEZ, Joanna RAK, "Formation of Populism in Spain: Towards the Explanatory Framework of the 15-M Movement Mindset", *Srodkowoeuropejskie Studia Polityczne*, vol. 2 (2019); Cristina FLESHER FOMINAYA, "European anti-austerity and pro-democracy protests in the wake of the global financial crisis", *Social Movement Studies*, 16 (1/2017); Donatella DELLA PORTA, Elena PAVAN, "Repertoires of knowledge practices: social movements in times of crisis", *Qualitative Research in Organizations and Management: An International Journal*, 12 (4/2017).

5 See for instance: Joanna RAK, "Relations between the Installation of Democracy and the Anti-Austerity Protest Behavior: Spanish Indignados in Comparative Perspective", *Aportes*, vol. 34 (99/2019); Graeme HAYES, "Regimes of austerity", *Social Movement Studies*, 16 (1/2017); Paolo GERBAUDO, "The indignant citizen: anti-austerity movements in southern Europe and the anti-oligarchic reclaiming of citizenship", *Social Movement Studies*, 16 (1/2017).

6 Joanna RAK, "The Dynamics of the 15-M Movement's Culture of Political Violence" in Małgorzata MIZERSKA-WROTKOWSKA and José Luis ORELLA MARTÍNEZ (ed.), *Poland and Spain in Late Modern and Contemporary Civilisation and Culture*, Madrid: Schedas, 2018, p. 229-256.

7 Josep Maria ANTENTAS, "Spain: the indignados rebellion of 2011 in perspective", *Labor History*, 56 (2/2015); Stephen Luis VILASECA, "The 15-M movement: formed by and formative of counter-mapping and spatial activism", *Journal of Spanish Cultural Studies: Spain in Crisis: 15-M and the Culture of Indignation*, 15 (1-2/2014).

rights and political freedom⁸. The organisation focuses on almost all states in the world including Spain. There are two objectives of the article. The first is to determine the differences between the declaratory level, based on national legislation and legal acts adopted between 2008-2017, and actual level of freedom of the press in Spain, based on press freedom status presented in reports of Freedom House. This comparison will provide an answer to the question of this paper –if Spain is becoming a militant democracy or not. The second objective is to explain the reasons for these differences as well as to formulate conclusions related to the adoption of the attributes of militant democracies by Spain with special reference to freedom of the press. The analysis is based on a few research questions. (1) Which restrictions were applied to freedom of the press in Spain within the given timeframe? (2) What was the dynamic of changes regarding legislation on freedom of the press? (3) What was the dynamic of changes of the press freedom status in Spain according to the reports of Freedom House? (4) What was a correlation between the declaratory status of freedom of the press and the press freedom status presented by Freedom House? What were the reasons for these differences?

The main hypothesis reads as follows: legislative changes referring to the functioning of the media in the form of national legislation affected the indicator value of the press freedom status in Spain presented by Freedom House. This dynamic proves that elements of militant democracy are being implemented into the Spanish political system. The research draws upon a qualitative source analysis. Among selected sources are the Freedom of the Press reports, published by Freedom House in the period between 2008-2017⁹. These reports cover various issues related to freedom of the press in selected countries including Spain. The second group of sources includes national legal acts which, directly or indirectly, refer to freedom of the press. Some of them concern exclusively regulations related to freedom of the press while others limit it either directly or indirectly.

The authors applied qualitative content analysis as the main research technique. The types of restrictions on freedom of the press, in turn, was selected as the main research tool. As far as the paper structure is concerned, the first part is dedicated to theoretical aspects of militant democracies. In this context, militant democracy is presented as a theoretical category. The analysis is based on concepts formulated by leading scholars. The second part deals with a detailed analysis of selected legal acts adopted in Spain between 2008-2017. In the third part of the article, the authors focused on the main assumptions of the Freedom of the Press reports, while the last one is dedicated to a brief summary and the final conclusions.

⁸ *Programs*, [online] <https://freedomhouse.org/programs>, [2 March 2020].

⁹ The last available report covers the year of 2017 (as of 2 March 2020).

WHAT IS A MILITANT DEMOCRACY?

Militant democracy as a theoretical category was first presented in the field of legal science in the 1930s. The main objective within this category was to find an answer to the following research question: how democracies can prevent themselves from falling? Scholars also began analysing what means could be used by state authorities in order to defend the current political system and whether such actions would be justified or not. In addition, they focused on legal instruments which could be adopted to protect democratic political systems against their enemies.

The first in-depth research studies of militant democracy were conducted by Karl Loewenstein. This German political scientist and philosopher focused primarily on constitutional classifications and political regimes. Loewenstein's main postulate was to equip democracies with means which would enable them to stand up against their enemies, especially fascist regimes. He witnessed significant political and social changes in Europe in the mid-1930s. At the time, authoritarian movements seized power in one European country after another.

In Loewenstein's opinion, the primary sources of threat from anti-democratic forces are connected with the democratic ethos. These are tolerance, freedom of speech, freedom of the press, the right to peaceful assembly, free elections and equality¹⁰. All of them could be used to weaken a democratic regime by its political enemies. According to Loewenstein, fascism was based on emotionalism which was a substitute for the rule of law and was the opposite of a rational constitutional regime¹¹. In 1937, he published an article entitled "Militant Democracy and Fundamental Rights" on the pages of *American Political Science Review*. Loewenstein suggested using legal instruments in order to protect democratic regimes and to weaken fascist movements. He argued that democratic states should not tolerate 'Trojan horses' that aimed at using election processes and procedures to transform democratic regimes into authoritarian regimes. In this context, he pointed to a catalogue of available restrictions referring to freedom of speech, freedom of the press and the right to peaceful assembly in cases of glorification of political crimes¹². In the

10 More about Loewenstein's concepts: Karl LOEWENSTEIN, "Autocracy Versus Democracy in Contemporary Europe, I", *American Political Science Review*, vol. 29 (4/1935); Karl LOEWENSTEIN, "Legislative Control of Political Extremism in European Democracies I", *Columbia Law Review*, vol. 38 (4/1939); Karl LOEWENSTEIN, "Legislation for the Defense of the State in Chile", *Columbia Law Review*, vol. 44 (3/1944); Karl LOEWENSTEIN, "Freedom Is Unsafe without Self-Government", *Annals of the American Academy of Political and Social Science*, vol. 243 (1946).

11 According to András Sajó, political emotionalism is characterized by the use of force by authoritarian regimes. Andras SAJÓ, *From Militant Democracy to the Preventive State?* [online] <http://publications.ceu.edu/publications/sajo/2006/12728>, [7 March 2020].

12 Karl LOEWENSTEIN, "Militant Democracy and Fundamental Rights", *The American Political Science Review*, vol. XXXI (3/1937), p. 423-424.

opinion of Graham Maddox, this way Loewenstein presented a concept of a liberal democracy with a strong parliament performing key control functions in the political system. Such approach was based on Max Weber's concept of democracy, understood as a rational-legal authority¹³.

A similar postulate had been presented by George van den Bergh before Loewenstein wrote his article. In 1936, van den Bergh delivered an inaugural speech at the University of Amsterdam. He argued that banning anti-democratic political parties from participation in public life was consistent with law and political philosophy¹⁴. In the opinion of Bastiaan R. Rijpkema, "van den Bergh's inaugural lecture has some important insights to offer on militant democracy. Most importantly, it presents an original and cogent political-philosophical justification for militant democracy, which is absent from Loewenstein's work and much of the literature that followed"¹⁵.

Modern scholars claim that the current renewed interest in militant democracies is caused by the renaissance of holistic political theories like institutionalisms and the growing threat from religiously motivated terrorism, especially Islamic fundamentalism¹⁶. In addition, the rise of populist movements became noticeable across Europe in the aftermath of economic crisis of 2008. The far-right political groups began promoting illiberal democracies and populist rhetoric¹⁷.

Jan Werner Müller points to the fact that some authors avoid using the term militant democracy and replace it with such names as "defensive democracy" or "fighting democracy". Yet Müller claims that whatever the name applied the main definition remains the same. He defines militant democracy as "the idea of a democratic regime which is willing to adopt pre-emptive, *prima facie* illiberal measures to prevent those aiming at subverting democracy with democratic means from destroying the democratic regime"¹⁸.

13 Graham MADDOX, *Karl Loewenstein, Max Lerner, and militant democracy: an appeal to 'strong democracy'*, [online] https://www.researchgate.net/publication/332387012_Karl_Loewenstein_Max_Lerner_and_militant_democracy_an_appeal_to_%27strong_democracy%27, [7 March 2020].

14 Afshin ELLIAN, Bastiaan RIJPKEMA, *Militant Democracy – Political Science, Law and Philosophy*, [online] <https://doi.org/10.1007/978-3-319-97004-2>, [5 March 2020].

15 Bastiaan R. RIJPKEMA, *Militant Democracy: The Limits of Democratic Tolerance*, Abingdon: Routledge, 2018, p. 25.

16 Carlo INVERNIZZI ACCETTI, Ian ZUCKERMAN, "What's Wrong with Militant Democracy?", *Democracy and Citizenship: Theory and Practice*, vol. 65 (1/2017) [online] <https://journals.sagepub.com/doi/pdf/10.1177/0032321715614849>, [6 March 2020]. See also: Markus THIEL, *The 'Militant Democracy' Principle in Modern Democracies*, London: Routledge, 2009; Ashfin ELLIAN, Geliijn MOLIER, *The State of Exception and Militant Democracy in a Time of Terror*, Surrey: Republic of Letters, 2012.

17 Afshin ELLIAN, Bastiaan RIJPKEMA, *The State of Exception...*, *op. cit.*, p. 4; Angela BOURNE, Fernando CASAL BÉRTOA, "Mapping 'Militant Democracy': Variation in party ban practices in European democracies (1945-2015)", *European Constitutional Law Review*, vol. 13 (2/2017).

18 Jan Werner MÜLLER, "Militant democracy" in Michael ROSENFELD, Andrés SAJÓ (ed.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, 2012, p. 1117.

In the opinion of Svetlana Tyulkina, a militant democracy is a form of constitutional democracy which is entitled to defend its existence through the application of restrictions on civil and political liberties¹⁹. She refers to Samuel Issacharoff, another scholar dealing with militant democracies, that all democratic systems are more or less militant²⁰. Issacharoff also suggested analyzing such a system as a kind of mobilization of democratic institutions aimed at limiting of anti-democratic political forces²¹. A similar opinion is represented by P. Harvey. He argues that a militant democracy is a political system which has the capacity to defend the constitutional order against anti-democratic groups. Such groups often attempt to abolish democratic systems using legal means²². Tyulkina therefore claims that militant democracy is the capacity of liberal democracies to apply preventive means in order to defend themselves against modern threats²³. She also referred to the Spanish case. In her opinion, although the Spanish Constitution of 1978 does not include any measures of a militant democracy character, such elements have been added gradually since it came into force. It does not mean, however, that “militant democracy in Spain is unconstitutional. The Law was later held to be compatible with constitutional principles and standards and it thereby became an element of the constitutional regime”²⁴. Yet even if the applied legal solutions and procedures are constitutional, it does not mean that they do not constitute a renunciation of the principles of liberal democracy. Tyulkina adds that the Spanish authorities “attempt to hide or mask their endorsement of the concept of militant democracy, as the idea is often seen as contrary to the very idea of a liberal democracy and can seem too aggressive to be employed in a true democracy”²⁵.

There also other approaches to the concept of militant democracy and its role in the modern political systems. In 2014, Alexander S. Kirshner published a book entitled *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism*. In his opinion, two principles apply to militant democracies. The first one is the possibility of the introduction of restrictions with reference to rights and freedoms to defend democratic values. At the same time, these restrictions should respect citizens’ right to participate in public life. The second principle provides for a possibility to ban anti-democratic political parties

19 Svetlana TYULKINA, *Militant democracy: an alien concept for Australian constitutional law?*, [online] <http://classic.austlii.edu.au/au/journals/AdelLawRw/2015/23.html>, [7 March 2020].

20 *Ibidem*, p. 526.

21 *Ibidem*, p. 520.

22 *Ibidem*, p. 520.

23 *Ibidem*, p. 521.

24 Svetlana TYULIKINA, *Militant Democracy: Undemocratic Political Parties and Beyond*, Abingdon: Routledge, 2015, p. 41-42.

25 *Ibidem*.

from the active participation in public life²⁶. According to Kirshner, “to defend democracy, societies must behave antidemocratically. (...) Societies can keep faith with democratic principle; to do so, they must steadfastly defend the rights of both democrats and antidemocrats”²⁷. The validity of such solutions was proved in the post-war Europe when militant democracy gained normative legitimacy²⁸. Giovanni Capoccia, in turn, created a three-stage model presenting the reaction of democracies to extremism. This model includes legal restrictions. The first stage requires identification of a dangerous entity and the formation of political coalition which will block its activities. The second stage is connected with the coalition stabilization. The third stage includes initiatives and decisions aimed at eliminating extremist behavior²⁹. Capoccia’s model is primarily based on legal measures as these would be essential in determining which entity poses a real threat to a liberal democracy and which does not. The legal basis would also be necessary to create a set of available solutions that would help eliminate this potential threat, for instance, a political party or any other political organization.

There are scholars who perceive militant democracies as subtle variations of authoritarian regimes. Among them are Carlo Invernizzi Accetti and Ian Zuckerman³⁰. In their opinion, the most controversial aspect of militant democracies is related to the arbitrary decisions on who is a system’s enemy and who is not. Such actions go beyond the scope of a well-functioning political community. Accetti and Zuckerman argue that the application of legal restrictions can be used both to eliminate threats to the political system and to eliminate political opponents even if they do not pose any threat to democratic standards and values. As a consequence, democratic regimes may lose their democratic nature³¹.

Although scholars have been dealing with this theoretical category for many years, there is still no single definition which would cover all relevant aspects. According to Roman Bäcker and Joanna Rak, the main reason for that are differences in the intensity of relevant attributes. They suggest, therefore, the use of subtypes of new militant democracies which should not be perceived as ideal types³². In the context of modern research on militant democracies, Joanna

26 Alexander S. KIRSHNER, *A Theory of Militant Democracy. The Ethics of Combatting Political Extremism*, New Haven: Yale University Press, 2014, p. 6.

27 *Ibidem*, p. 164.

28 Giovanni CAPOCCIA, “Militant Democracy: The Institutional Bases of Democratic Self-Preservation”, *Annual Review of Law and Social Science*, (9/2013), p. 219.

29 *Ibidem*, p. 217.

30 Carlo INVERNIZZI ACCETTI, Ian ZUCKERMAN, “What’s Wrong with Militant Democracy?...”, *op. cit.*, p. 194.

31 *Ibidem*, p. 183.

32 Roman BÄCKER, Joanna RAK, “Trajektoria trwania opancerzonych demokracji”, *Studia nad Autorytaryzmem i Totalitaryzmem*, vol. 41 (3/2019), p. 65.

Rak recommends using the adjective ‘new’ in order to keep modern regimes clearly separated from those analyzed by Loewenstein many years ago. This is especially true given that current threats to democratic systems differ from the threats rooted in the fascist and communist ideologies.

C. Invernizzi Accetti and I. Zuckerman point to the fact that modern militant democracies have more means at their disposal. In the interwar period its supporters focused mainly on banning anti-democratic parties from active participation in political life. Nowadays they propose introducing restrictions on human rights and civil liberties in order to defend democratic regimes³³. Such arbitrary decisions bring militant democracies closer to authoritarian regimes and are inconsistent with the principles of democracy³⁴. One can have serious doubts if a given state is democratic when its authorities can unilaterally eliminate selected political groups. This is contrary to the fundamental democratic values. Ruti Teitel is even more critical of such restrictions and controversial decisions. In her opinion, well-developed liberal democracies do not become militant democracies³⁵. Yet the question is if such a claim is still true given the ongoing changes and processes in some European states, for instance, in Hungary, Poland and Spain.

On the basis of definitions and other theoretical concepts, one can specify the most important elements of militant democracies. An extended catalogue of the significant features of militant democracies include:

- the use of legislative measures against subversive propaganda;
- abuse of free speech, freedom of the press, freedom of assembly, freedom of peaceful assembly;
- restrictions on freedom of religion;
- restrictions with regard to passive voting rights and active voting rights;
- legislation on counter-terrorism and anti-terrorism;
- the limitation of registration and functioning of political parties;
- control over processes related to naturalization;
- restrictions on anti-extremism;
- control over access to public employment³⁶.

Imposing restrictions on freedom of the press, as shown above, constitutes just one of the aspects related to the transformation of liberal democracies into militant democracies. Yet it is one of the fundamental elements. The power of

33 Carlo INVERNIZZI ACCETTI, Ian ZUCKERMAN, “What’s Wrong with Militant Democracy?...” , *op. cit.*, p. 183.

34 *Ibidem*, p. 190.

35 Ruti TEITEL, “Militating Democracy. Comparative Constitutional Perspective”, *Michigan Journal of International Law*, vol. 29 (1/2007), p. 49.

36 Joanna RAK, “Conceptualizing the Theoretical Category of Neo-militant Democracy: The Case of Hungary”, *Polish Political Science Yearbook*, (2/2020).

media has been known since the appearance of modern media. An intentional and effective media coverage can affect political votes and shape public opinion. Politicians are no doubt well aware of that. It should therefore come as no surprise to learn that the decision-makers attempt to limit freedom of the press in order to secure their positions. Is the same phenomenon noticeable in the contemporary Spain?

THE DECLARATORY LEVEL: THE SPANISH LEGISLATION

The Spanish constitution, in accordance with article 20, guarantees the protection of freedom of speech and provides citizens with the right of expressing opinions in writing, by means of words or in any other form. These provisions also guarantee access to public information. Any form of censorship is not allowed. The above-mentioned rights can be restricted only to safeguard the rights and freedoms of other people. At the same time, the state is endowed with a legislative monopoly over the Spanish media system including the press, radio and television (article 149)³⁷. In accordance with article 10, a two-thirds majority is required to introduce any amendments related to fundamental rights and freedoms.

The basic legal act, regulating the functioning of media in Spain, is the act 18 March 1966³⁸. The document guarantees freedom of expression in printed media (article 1) and forbids censorship (article 3). Freedom of expression is safeguarded by public authorities which also prevent the creation of media monopolies and protect public opinion from fake news (article 5). Journalist are guaranteed access to public information unless the information is confidential (article 7). The act also stipulates the rights and obligations of journalists (article 33). In addition, the document highlights the role played by chief editors who take the final decisions on publishing articles (article 37). For this reason, they hold ultimate responsibility for violation of personal rights or for breaking the law (article 39).

According to the act of 1966, any Spanish citizen or a legal entity registered in Spain can become a publisher (article 50). Natural persons have to fully exercise civil rights in order to be granted such a status. Any violation of the right of the press can be associated with criminal, civil and administrative liability (article 63). Any offence against freedom of the press is treated as a serious administrative offence (article 67).

³⁷ Constitución Española, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>, [6 March 2020].

³⁸ España. Ley 14/1966, de 18 de marzo, de Prensa e Imprenta, *Boletín Oficial del Estado*. [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1966-3501>, [6 March 2020].

In the case of local regulations, one should pay attention to the act adopted by the Community of Madrid on 12 June 1985³⁹. Its main objectives are to regulate issues related to financial assistance for local publishers (article 1) as well as to safeguard pluralism of information and media's independence from political parties (article 2).

The royal decree of 13 February 1979, in turn, conferred a special credit system upon media companies which publish newspapers in Spain. This step aimed at improving the quality of media services and supporting media's professionalization. According to article 1, the money can be spent on the development, modernization and procurement of new technologies⁴⁰. Freedom of the press is also mentioned in the Spanish penal code⁴¹. Article 510 states that one can be sentenced to four years in prison for such offences in printed media as incitement to hatred and discrimination or violence on grounds of nationality, ethnicity, race and religion. The same rules are applied in cases related to the public promotion of the crime of genocide or to attempts of genocide denial and provocation of armed conflicts. Offences like contempt, humiliation and hatred may be subject to two years in prison. In addition, one can be punished for the promotion or any public justifications for criminal acts (article 578).

The act on transparency, access to the public information and good governance was approved on 9 December 2013⁴². On the basis of article 1, its main objectives are to improve transparency of public activities, to regulate access to public information and to introduce best practices in governance. All public officers have to comply with the above-mentioned obligations. They bear responsibility for potential consequences of omissions or of the mistakes made. The Act of 2013 also guarantees access to public information to all Spanish citizens (article 12). Restrictions on access to such information could negatively affect national security, international interests, the proper functioning of public administration, public order, the effective protection of personal data, economic interests, trade, professional secrecy, intellectual property and protection of natural environment (article 14). Any revealing of state secrets and an improper use of public information are also treated as serious misdemeanors (article 29).

39 España. Ley 3/1986, de 12 de junio, de ayudas a la prensa local y comarcal de la Comunidad de Madrid, *Boletín Oficial del Estado*. [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1986-27016>, [6 March 2020].

40 España. Real Decreto 365/1979, de 13 de febrero, sobre crédito oficial a Empresas periodísticas editoras de prensa diaria. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-1979-6487>, [7 March 2020].

41 España. Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>, [6 March 2020].

42 España. Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-2013-12887>, [5 March 2020].

Significant modifications related to freedom of the press in Spain were introduced in the amendment act on intellectual property of 2014⁴³. The amendment changed, for instance, the wording of article 138. State authorities can block any publications if their authors violated intellectual property rights. Editorial offices are not allowed to distribute such newspapers or magazines if that is the case. In addition, article 157a enables public authorities to perform control operations in order to safeguard protection of intellectual properties. All bodies dealing with such rights are obliged to cooperate with relevant state bodies. The amendment imposed substantial financial penalties for these editorial offices which would continue publishing content infringing property rights. The fines can range from 150 thousand up to 600 thousand euro (article 158b).

The most recent change within the declaratory level took place on 28 September 2015. A new act on national security was approved that day⁴⁴. In the preamble to this act one can read that security forms the basis of social welfare. It is also indispensable for ensuring stability of political institutions and freedom to all citizens. The legislator stated that national security is a new sphere of public action which requires close cooperation between state bodies, civil society and the private sector. The key elements of national security are listed in article 9. Among them are national defense, public security, external actions, intelligence services and state information services⁴⁵.

Spain is also a signatory to international conventions and agreements safeguarding freedom of speech in general and freedom of the press in particular. The most important document is the Universal Declaration of Human Rights of 10 December 1948⁴⁶. The declaration guarantees, among other things, the right to free expression including the use of media (article 19). These rights are also mentioned in the International Covenant on Civil and Political Rights of 16 December 1966. This international document states as follows:

“1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form

43 España. Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto Legislativo 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-2014-11404>, [5 March 2020].

44 España. Ley 36/2015, de 28 de septiembre, de Seguridad Nacional. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-2015-10389>, [5 March 2020].

45 *Ibidem*.

46 Universal Declaration of Human Rights, [online] https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, [6 March 2020].

of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals”⁴⁷.

These rights, however, may be restricted if they pose a threat to respect for the rights and reputation of other person or to the protection of national security and public order.

Freedom of expression was also confirmed in the text of European Convention on Human Rights. The Convention states as follows: “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises” (Article 10.1)⁴⁸. Yet point 2 introduces a possibility for the introduction of severe restrictions depending on the situation in a given member state and in order to secure public order. As it stands in article 10.2:

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”⁴⁹.

The catalogue of exemptions is therefore very vast and allows a variety of interpretations. Such circumstances can be easily exploited by public authorities if existing legal safeguards are not strong enough.

⁴⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, [online] <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765>, [6 March 2020].

⁴⁸ *Ibidem*.

⁴⁹ *Ibidem*.

Last but not least, the European Charter on Freedom of the Press was approved in 2009. Article 1 states as follows: “Freedom of the press is essential to a democratic society. To uphold and protect it, and to respect its diversity and its political, social and cultural missions, is the mandate of all governments”⁵⁰. Article 3, in turn, guarantees “the right of journalists and media to gather and disseminate information and opinions must not be threatened, restricted or made subject to punishment”. The above-mentioned provisions are very significant and necessary. The document, however, is a non-binding agreement signed by journalists and chief editors. Its importance is therefore rather symbolic, although the charter was handed to both the European Commission and the Council of Europe with the aim that it could become a benchmark for the assessment of media freedom in member states and elsewhere.

FREEDOM HOUSE REPORTS: PRESS FREEDOM STATUS

While analyzing freedom of the media, Freedom House refers to article 19 of the Universal Declaration of Human Rights which reads as follows: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media regardless of frontiers”⁵¹. The organization has been publishing annual reports on freedom of the press since 1980. Among the main assessed factors are free access to media, regulatory environment, respect for pluralism, freedom of expression, political interference in media activity and economic factors affecting financial situation of media. Freedom House describes the project on freedom of the press as “the most comprehensive data set available on global media freedom and serves as a key resource for policymakers, international institutions, journalists, activists, and scholars worldwide”⁵².

Experts of Freedom House analyze media systems in 199 countries and dependent territories⁵³. The research process includes field studies, consultations with local activists, content analysis of press articles as well as of reports published by relevant NGO’s or by public administration bodies. Among the analyzed criteria are legal environment (a scaled score from 0 to 30), political environment (a scaled score from 0 to 30) and economic environment

⁵⁰ European Charter on Freedom of the Press, [online] <http://www.pressfreedom.eu/en/index.php#charter>, [7 March 2020].

⁵¹ Universal Declaration of Human Rights, *op. cit.*

⁵² *About Freedom of the Press*, [online] <https://freedomhouse.org/report-types/freedom-press>, [3 March 2020].

⁵³ More than 90 analysts worked on the 2017 Freedom House report on freedom of the press: Freedom House, “Freedom of the Press 2017 Methodology”, [online] <https://freedomhouse.org/report/freedom-press-2017-methodology>, [3 March 2020].

(a scaled score from 0 to 30). The legal environment comprises a detailed analysis of legal acts and decisions of the executive power which may affect the media content at both declaratory and practical levels. Among the political factors, which are being taken into consideration, are political impact on media content, independence of editorial corporations, access to information and reliable sources, official censorship mechanisms and self-censorship. The economic environment, in turn, includes the ownership structure of media, transparency, the concentration of media ownership, establishment costs of media, maintenance costs and all relevant obstacles which affect the information production and the distribution of media content⁵⁴. In 2017, the questionnaire contained 23 questions. Value of the freedom of the press index always vary from 0 to 100 points. After filling in the questionnaire, the analysts formulate conclusions which are then assessed by regional experts and specialists. The score within the range between 0-30 means that the system is 'free', between 31-60 is 'partly free' and from 61 to 100 is classified as 'not free'.

According to the authors of the questionnaire, the diverse nature of questions is to guarantee that all existing means of influencing media will be taken into consideration. The most recent changes were aimed at capturing "changes in the news and information environment without altering the comparability of data since the project's inception"⁵⁵.

PRESS FREEDOM STATUS IN SPAIN: 2008-2017

The 2008 Freedom House report presented the situation related to freedom of the press in Spain just before the economic crisis outbreak. At the time more than 100 newspapers were regularly published. According to the Circulation Audit Bureau (OJD - *Oficina de Justificación de la Difusión*), the Spanish press was selling more than four million copies a day during the year 2006⁵⁶. The freedom of expression, guaranteed by the constitution, was generally respected in practice. Yet a new anti-terrorist legislation was considered a potential threat. The authors pointed to controversial actions taken by the Spanish authorities. State bodies began monitoring websites which may have expressed hate speech or have encouraged antisemitism⁵⁷. In 2008, the score of the index of freedom of the press in Spain was 23. In the years 2009-2010 its value was similar and

⁵⁴ *Ibidem*.

⁵⁵ *Ibidem*.

⁵⁶ Spain: Print, Media Landscapes, [online] <https://medialandscapes.org/country/spain/media/print>, [17 March 2020].

⁵⁷ Freedom House, "Freedom of the Press 2008", [online] <https://freedomhouse.org/sites/default/files/FOTP2008Booklet.pdf>, [5 March 2020].

increased slightly to 24⁵⁸. These two reports contained no description of the situation in Spain.

In 2011, Freedom House published its first expanded version of the Freedom of the Press report which also included the impact of economic crisis on the Spanish media system. In response to the economic recession, the Spanish authorities eased rules referring to the media ownership structure. From then on one economic entity could hold shares in more than one media entity. At the same time, incomes from advertisements felt substantially. This factor made the financial condition of media outlets even worse. Freedom House was, however, still very positive about the condition of freedom of the press in Spain. The total score in 2011 was 23.

In the following year, authors of the report pointed out to a new Spanish campaign against Google. The campaign was entitled “Right to Be Forgotten” and aimed at removing articles defaming around 90 Spanish citizens from Google. The Spanish Agency for Data Protection (AEPD) tried to exert pressure on the internet giant and force it to delete the above-mentioned content from its servers and services. Another significant issue was related to journalists complains concerning new restrictions imposed just before the 2011 Spanish general election. These restrictions included the new rules applied to asking questions during press conferences. In the Freedom House report of 2012, one could also read about instances of violence and threats that were made against journalists. The 2012 score for Spain was 24⁵⁹.

The breakthrough in the overall assessment of the Spanish press system took place in 2013 when the index of freedom of the press reached 27 points. The analysts focused their attention on the deteriorating financial condition of the Spanish media. The primary cause were the consequences of the economic crisis which significantly weakened the media outlets. As a consequence, the media system in Spain became much less diverse. Another major issue highlighted in the report were several concerns about curbs on journalists’ freedom. The analysts referred to the case of reporters who worked for the Spanish public media. Once they openly criticized the governmental austerity policy, they lost their jobs⁶⁰. In 2012, the way of election of the head of the Spanish Radio and Television Corporation (Radiotelevisión Española – RTVE) was modified to a considerable extent. Before that revisions, the election of a new RTVE pre-

58 Freedom House, “Freedom of the Press 2009”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202009%20Full%20Release%20Booklet.pdf>, [5 March 2020].

59 Freedom House, “Full 2012 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>, [5 March 2020].

60 “Spanish government accused of purging critics from national radio and TV”, The Guardian (London) (5 August 2012) [online] <https://www.theguardian.com/world/2012/aug/05/spanish-government-critics-national-tv>, [4 March 2020].

sident required a 2/3 majority vote in the Cortes Generales. Since May 2012 such a nomination has required a simple majority. The main political force responsible for the above-mentioned changes was the ruling People's Party (PP – Partido Popular). Some Spanish journalists accused state officials of the denial or the restriction of their rights. For instance, some reporters claimed that they were not allowed to ask questions during press conferences because government representatives did not feel comfortable with them. They even organized a campaign in social media. In addition, the journalistic circles paid attention to the negative consequences of the 2008 economic crisis which continued to aggravate the situation on the Spanish media market. The trend related to the limitation of freedom of the press was also noticeable in the following years⁶¹.

In the 2014 report on freedom of the press, the experts working for Freedom House continued paying attention to the negative consequences of the European economic crisis and their impact on media freedom in Spain. A lot of editorial offices were liquidated. As a consequence, there were less jobs available in the media sector and journalists felt forced to adjust to the new circumstances. For instance, they attempted to publish more articles in order to earn more money what resulted in the significant decrease of their quality. What is more, journalists began censoring or classifying their own discourses, which led to self-censorship. They were, undoubtedly, afraid of criticizing the government or any other state bodies, because they did not feel safe in the system anymore. Besides, the state authorities continued monitoring the content of some websites which, allegedly, promoted hate speech or anti-Semitic attitudes. The government began implementing the act of 2012 which allowed its bodies to block websites containing copyrighted content. Such actions met with open criticism from some journalistic groups⁶². In 2013, in turn, the government initiated a legislation process which was to result in a new legal act. This time its main objective was to enable state bodies to penalize websites for publishing content in violation of copyright⁶³. Yet one of the most dangerous changes affected RTVE. Its annual budget was reduced by 28 million euro in 2013 due to economic problems. The same year the corporation was forced to sell 29 immovables, therefore decreasing its importance and operational possibilities. Although no act of violence against journalists were mentioned in the 2014 report on freedom of the press in Spain, the index score increased to 28 points⁶⁴. It

61 Freedom House, "Full 2013 Report", [online] <https://freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>, [5 March 2020].

62 *Anti-internet piracy law adopted by Spanish government*, [online] <https://www.bbc.com/news/technology-16391727>, [4 March 2020].

63 "Spain: New draft law to increase copyright infringements penalties", *EDRi* (27 March 2013) [online] <https://edri.org/edri-gram-number-11-6-spain-new-draft-law-copyright-infringements/>, [4 March 2020].

64 Freedom House, "Spain" (2014), [online] <https://freedomhouse.org/report/freedom-press/2014/spain>, [5 March 2020].

meant that the negative trend was still noticeable and the overall situation on the Spanish media market was deteriorating.

A significant decrease in media diversity, an increase in self-censorship and the repeating attacks on independence of journalists were also shown in the 2015 report. The authors presented a police operation which was mounted to arrest 21 individuals accused of promoting acts of terrorism and defaming victims of such attacks on Twitter. The Freedom House team also referred to the new law on intellectual property protection of November 2014⁶⁵. On this basis, the state institutions could strengthen the blockade of selected websites if their content was, allegedly, violating copyright and was published without necessary permissions.

At the beginning of 2014, the new legislation on transparency and access to public information entered into force⁶⁶. The document was criticized by some experts because the access to public information was not defined as a fundamental right anymore. The analysts representing Freedom House also paid attention to the deteriorating situation of RTVE. Its role was gradually diminishing due to the governmental supervision of the public media. Spanish journalists were also complaining about the rise of self-censorship. The main reasons for this phenomenon were political interference and a threat of termination of employment. All these negative consequences still resulted from the deep economic crisis.

Violence against reporters intensified in 2014. Such acts could have been observed especially during street protests. In March, the Spanish police attacked at least five journalists who were involved in peaceful demonstrations. Freedom House's experts paid attention to the alarming statistics. They cited data collected by a Spanish press association. 364 newspaper offices were closed in the years 2008-2014. As a consequence, about 12 thousand journalists lost their jobs. Only in the year 2014, it was 2400 reporters. The subsidization by the state authorities, banks and international corporations could not improve the situation on the Spanish media market, because it only made the media more dependent on external financial sources and limited their impartiality. All these factors affected the Spanish press freedom index for 2014 which remained at the same point level –28⁶⁷.

In 2016, the key element connected with freedom of the press was the adoption of new act on public safety. Its critics pointed to serious threats the document posed to freedom of speech and the right of association. The interviewed Spanish journalists also mentioned their financial problems which affected their work. They often felt compelled to publish some texts due to the economic pressure and the lack of editorial independence. Freedom House noticed the arrests of 23 individuals who were accused of promoting hate speech

65 España. Ley 21/2014..., *op. cit.*

66 España. Ley 19/2013..., *op. cit.*

67 *Ibidem.*

and acts of terrorism. The state institutions stepped up checks of social media in order to combat such phenomena. Yet they also could have been used for political purposes and it was the most serious objection formulated in this case. The new act on public safety provided for financial penalties up to 30 thousand euro. The crimes mentioned in the document included unauthorized publication of pictures presenting civil servants or members of security forces. The legislators claimed that such a journalistic activity might put these public officials, their relatives or official operations at risk. Last but not least, the new regulations also introduced a financial penalty for insulting a member of security forces. The value of the fine could go to 600 euro.

In November 2015, *The New York Times* published an article questioning the independence of the Spanish editorial offices especially due to the financial problems of their respective owners⁶⁸. In the same period, Freedom House cited Spanish journalists who complained about the increasing level of self-censorship caused by the deteriorating financial situation and serious concerns about keeping their jobs. Some reporters established their own companies, but their social influence was rather limited. The situation on the Spanish media market did not improve, although the total number of dismissals was much lower than in 2014 (246 journalists lost their positions in editorial offices across the country). The Madrid Press Association (APM – Asociación de la Prensa de Madrid) reported in 2015 that 375 editorial offices had been closed since the beginning of the economic crisis in 2008. The Spanish score for 2015 was 28 points⁶⁹.

The last analyzed Freedom House report on freedom of the press was published in 2017. The act on national security of 2015 was again identified as the biggest threat to this freedom in Spain⁷⁰. In 2016, some provisions of this act were used in order to fine a group of Spanish journalists for not following police instructions⁷¹.

68 The authors of the article focused mainly on the case of a Spanish daily “El País”. See: “El País Columnist Says Dismissal Tied to His Criticism of Media Independence”, *The New York Times* (New York) (11 November 2015) [online] <https://www.nytimes.com/2015/11/12/world/europe/spanish-writer-says-el-pais-column-canceled-after-comments-on-media.html>, [4 March 2020].

69 Freedom House, “Spain” (2016), [online] <https://freedomhouse.org/report/freedom-press/2016/spain>, [5 March 2020].

70 España. Ley 36/2015..., *op. cit.*

71 A Spanish journalist, Axier Lopez, was fined in March 2016 for an unauthorized publication of a picture of a police operation in Eibar. He had to pay 630 euro. According to the Freedom House analysts, faces of police officers were in fact blurry and unrecognizable. Consequently, there was no reason to fine Lopez and his actions were not in breach of the Spanish law. See: “Spain: First journalist fined under controversial ‘Gag’ Law”, *PEN International* (London) (21 April 2016) [online] <https://pen-international.org/fr/nouvelles/spain-axier-lopez-becomes-first-journalist-fined-to-be-fined-under-controversial-gag-law>, [9 March 2020]. Similar charges were brought against Juan C.P. Diaz after he had published a series of pictures at the crash site in Cojóbar. The prosecutor wanted Diaz to pay 700 USD. In the end of 2016, his case was still pending. The Spanish law enforcement authorities also charged another reporter, Ana García, after she had refused to hand over her camera to the police. In her case, however, the judge dismissed the charges. See: Freedom House, “Spain” (2017), [online] <https://freedomhouse.org/report/freedom-press/2017/spain>, [5 March 2020].

Critics of this new law often refer to it as ‘gag law’⁷². In their opinion, the act seriously harms editorial independence. The Spanish reporters still identified self-censorship, financial problems and concerns about keeping their jobs as the main obstacles and threats to their professional careers. Yet the index of freedom of the press in Spain in 2016 remained at the same level, namely 28 points⁷³.

Table 1. Press Freedom Status in Spain: 2008-2017⁷⁴

Year	Implementation of neo-militant democracy measures/binding acts related to freedom of the press	Freedom House Reports Score
2008	The Printing and Press Law (1966); The Spanish Constitution (1978);	23
2009	Act on assistance to local and regional press of the Community of Madrid (1986); Civil Code (1995).	24
2010		24
2011		23
2012		24
2013		27

⁷² The act aroused a great controversy among national and foreign observers and commentators. See: “Spanish government backtracks on reforms to controversial ‘gag law’”, *El País* (Madrid) (17 October 2018) [online] https://english.elpais.com/elpais/2018/10/17/inenglish/1539770247_134351.html, [9 March 2020]. “Journalists take fight against Spanish ‘gag law’ to European court”, *The Guardian* (London) (15 December 2015) [online] <https://www.theguardian.com/world/2015/dec/15/journalists-take-fight-against-spanish-gag-law-to-european-court>, [9 March 2020]. “Spain’s Ominous Gag Law”, *The New York Times* (New York) (22 April 2015) [online] <https://www.nytimes.com/2015/04/23/opinion/spains-ominous-gag-law.html>, [9 March 2020]. “Restoring freedom of expression in Spain: end the ‘gag law’”, *EDRi* (27 June 2018) [online] <https://edri.org/restoring-freedom-of-expression-in-spain-end-the-gag-law/>, [9 March 2020].

⁷³ *Ibidem*.

⁷⁴ Source: Freedom House, “Spain” (2016), [online] <https://freedomhouse.org/report/freedom-press/2016/spain>, [5 March 2020]. Freedom House, “Spain” (2015), [online] <https://freedomhouse.org/report/freedom-press/2015/spain>, [5 March 2020]. Freedom House, “Spain” (2014), [online] <https://freedomhouse.org/report/freedom-press/2014/spain>, [5 March 2020]. Freedom House, “Full 2013 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>, [5 March 2020]. Freedom House, “Full 2012 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>, [5 March 2020]. Freedom House, “Full 2011 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202011%20Final%20Full%20Report.pdf>, [5 March 2020]. Freedom House, “2010 Country Reports”, [online] <https://freedomhouse.org/sites/default/files/Country%20Reports%202010%20final%20for%20website.pdf>, [5 March 2020]. Freedom House, “Spain” (2017), [online] <https://freedomhouse.org/report/freedom-press/2017/spain>, [5 March 2020]. Freedom House, “Freedom of the Press 2009”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202009%20Full%20Release%20Booklet.pdf>, [5 March 2020]. Freedom House, “Freedom of the Press 2008”, [online] <https://freedomhouse.org/sites/default/files/FOTP2008Booklet.pdf>, [5 March 2020].

2014	The Printing and Press Law (1966); The Spanish Constitution (1978); Act on assistance to local and regional press of the Community of Madrid (1986); Civil Code (1995); Act on Transparency, Access to Public Information and Good Governance (2013).	28
2015	The Printing and Press Law (1966); The Spanish Constitution (1978); Act on assistance to local and regional press of the Community of Madrid (1986); Civil Code (1995); Act on Transparency, Access to Public Information and Good Governance (2013); The Amendment to the Spanish Intellectual Property Act (2014).	28
2016	The Printing and Press Law (1966); The Spanish Constitution (1978); Act on assistance to local and regional press of the Community of Madrid (1986); Civil Code (1995); Act on Transparency, Access to Public Information and Good Governance (2013); The Amendment to the Spanish Intellectual Property Act (2014); National Security Law (2015).	28
2017		28

CONCLUSIONS

The presented analysis allows the formulation of final conclusions. First, Spain meets liberal democracy standards and fulfils the criteria for freedom of the press at the declaratory level. The constitutional provisions related to freedom of speech and freedom of expression are also mentioned in legal acts of the lower level. Any change regarding fundamental rights and freedoms requires a qualified majority. The dynamic of changes within legislation concerning media activities indirectly or directly is low. The Spanish legislative bodies introduced only three major acts affecting freedom of the press between 2008-2017. Consequently, the main legal acts are anachronistic. The main document comes from 1966 and does not meet modern standards. In addition, the act overlooks new forms of journalism, especially the new media. In addition, it focuses more on the structural and organizational aspects of the media system rather than on rights of journalists and media workers.

Between 2008-2017, however, the state institutions approved legal acts which limited rights of journalists and introduced a catalogue of situations when such restrictions are justified. The main reasons for the above-mentioned modifications –at least officially– were the need to maintain public order and the effective protection of intellectual property rights. The Spanish law, including the Penal Code, provides for penalties for crimes committed in the press.

All analyzed reports of Freedom House prove that the 2008 economic crisis affected the Spanish media market to a considerable extent. The financial reces-

sion resulted in liquidation of a number of editorial offices, job cuts in the media sector, the significant decrease in advertising revenue, the increase of self-censorship and the increased media dependency on state subsidies. The 2008 report pointed to pluralism and media diversity in Spain. The main sources of potential threats stemmed from national legislation especially the anti-terrorism act, the act on the protection of intellectual property and the act on national security. The reports prove that the state bodies monitored websites' content and introduced temporary restrictions during the election campaigns. Freedom House's experts also criticized dismissals of journalist working for the Spanish public media in response to their criticism of various public officials or state bodies.

The significant change took place in 2013 when the index score increased with four points. The main reasons for that were further job cuts, reduction of editorial offices and the growing RTVE's dependency on the governmental bodies. As a consequence, freedom of speech was weakened. There were also numerous examples of its violations during public demonstrations. In some cases, policemen allegedly attacked reporters carrying out their professional duties. One of the major symptoms of the deteriorating situation was the steady growth of self-censorship.

On this basis, one can point to discrepancies between the declaratory level and the practice. The main reasons for these differences were determined by the economic crisis as well as by the internal political developments including governmental crises and the process of politicization of public media. According to the reports of Freedom House, Spain is approaching the group of states with 'partly free' media systems. The introduced limitations on freedom of the press prove that Spain is gradually becoming an example of militant democracy. In other words, freedom of the press in Spain is guaranteed to a less extent than it was in 2008. New legal measures enabled the state authorities to exert more pressure on journalists and media outlets. One can conclude that the Spanish state institutions have more control over the content of printed media than before the economic crisis.

REFERENCES

- About Freedom of the Press*, [online] <https://freedomhouse.org/report-types/freedom-press>, [3 March 2020].
- Josep Maria ANTENTAS, "Spain: the indignados rebellion of 2011 in perspective", *Labor History*, 56 (2/2015), p. 136-160.
- Anti-internet piracy law adopted by Spanish government*, [online] <https://www.bbc.com/news/technology-16391727>, [4 March 2020].
- John AUTHERS, *Europe's Financial Crisis: A Short Guide to How the Euro Fell Into Crisis and the Consequences for the World*, Upper Saddle River: Pearson Education, 2013.

- Roman BÄCKER, Joanna RAK, “Trajektorja trwania opancerzonych demokracji”, *Studia nad Autorytaryzmem i Totalitaryzmem*, vol. 41 (3/2019).
- Angela BOURNE, Fernando CASAL BÉRTOA, “Mapping ‘Militant Democracy’: Variation in party ban practices in European democracies (1945-2015)”, *European Constitutional Law Review*, vol. 13 (2/2017), p. 221-247.
- Giovanni CAPOCCIA, “Militant Democracy: The Institutional Bases of Democratic Self-Preservation”, *Annual Review of Law and Social Science*, (9/2013), p. 207-226.
- Constitución Española, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229>, [6 March 2020].
- Convention for the Protection of Human Rights and Fundamental Freedoms, [online] <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765>, [6 March 2020].
- Donatella DELLA PORTA, Elena PAVAN, “Repertoires of knowledge practices: social movements in times of crisis”, *Qualitative Research in Organizations and Management: An International Journal*, 12 (4/2017), p. 297-314.
- “El País Columnist Says Dismissal Tied to His Criticism of Media Independence”, *The New York Times* (New York) (11 November 2015) [online] <https://www.nytimes.com/2015/11/12/world/europe/spanish-writer-says-el-pais-column-canceled-after-comments-on-media.html>, [4 March 2020].
- Ashfin ELLIAN, Geliijn MOLIER, *The State of Exception and Militant Democracy in a Time of Terror*, Surrey: Republic of Letters, 2012.
- Afshin ELLIAN, Bastiaan RIJPKEMA, *Militant Democracy – Political Science, Law and Philosophy*, [online] <https://doi.org/10.1007/978-3-319-97004-2>, [5 March 2020].
- Orhan ERDEM, *After the Crash: Understanding the Social, Economic and Technological Consequences of the 2008 Crisis*, Basingstoke: Palgrave Macmillan, 2020.
- España. Real Decreto 365/1979, de 13 de febrero, sobre crédito oficial a Empresas periodísticas editoras de prensa diaria. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-1979-6487>, [7 March 2020].
- España. Ley 14/1966, de 18 de marzo, de Prensa e Imprenta, *Boletín Oficial del Estado*. [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1966-3501>, [6 March 2020].
- España. Ley 3/1986, de 12 de junio, de ayudas a la prensa local y comarcal de la Comunidad de Madrid, *Boletín Oficial del Estado*. [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1986-27016>, [6 March 2020].
- España. Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>, [6 March 2020].

- España. Ley 19/2013, de 9 de diciembre, de transparencia, acceso a la información pública y buen gobierno. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-2013-12887>, [5 March 2020].
- España. Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por Real Decreto Legislativo 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/doc.php?id=BOE-A-2014-11404>, [5 March 2020].
- España. Ley 36/2015, de 28 de septiembre, de Seguridad Nacional. *Boletín Oficial del Estado*, [online] <https://www.boe.es/buscar/act.php?id=BOE-A-2015-10389>, [5 March 2020].
- European Charter on Freedom of the Press, [online] <http://www.pressfreedom.eu/en/index.php#charter>, [7 March 2020].
- Cristina FLESHER FOMINAYA, “European anti-austerity and pro-democracy protests in the wake of the global financial crisis”, *Social Movement Studies*, 16 (1/2017), p. 1-20.
- Freedom House, “Freedom of the Press 2008”, [online] <https://freedomhouse.org/sites/default/files/FOTP2008Booklet.pdf>, [5 March 2020].
- Freedom House, “Freedom of the Press 2009”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202009%20Full%20Release%20Booklet.pdf>, [5 March 2020].
- Freedom House, “2010 Country Reports”, [online] <https://freedomhouse.org/sites/default/files/Country%20Reports%202010%20final%20for%20website.pdf>, [5 March 2020].
- Freedom House, “Full 2011 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202011%20Final%20Full%20Report.pdf>, [5 March 2020].
- Freedom House, “Full 2012 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202012%20Final%20Full%20Report.pdf>, [5 March 2020].
- Freedom House, “Full 2013 Report”, [online] <https://freedomhouse.org/sites/default/files/FOTP%202013%20Full%20Report.pdf>, [5 March 2020].
- Freedom House, “Spain” (2014), [online] <https://freedomhouse.org/report/freedom-press/2014/spain>, [5 March 2020].
- Freedom House, “Spain” (2015), [online] <https://freedomhouse.org/report/freedom-press/2015/spain>, [5 March 2020].
- Freedom House, “Spain” (2016), [online] <https://freedomhouse.org/report/freedom-press/2016/spain>, [5 March 2020].
- Freedom House, “Spain” (2017), [online] <https://freedomhouse.org/report/freedom-press/2017/spain>, [5 March 2020].
- Freedom House, “Freedom of the Press 2017 Methodology”, [online] <https://freedomhouse.org/report/freedom-press-2017-methodology>, [3 March 2020].

- Paolo GERBAUDO, “The indignant citizen: anti-austerity movements in southern Europe and the anti-oligarchic reclaiming of citizenship”, *Social Movement Studies*, 16 (1/2017), p. 36-50
- Graeme HAYES, “Regimes of austerity”, *Social Movement Studies*, 16 (1/2017), p. 21-35.
- Carlo INVERNIZZI ACCETTI, Ian ZUCKERMAN, “What’s Wrong with Militant Democracy?”, *Democracy and Citizenship: Theory and Practice*, vol. 65 (1/2017) [online] <https://journals.sagepub.com/doi/pdf/10.1177/0032321715614849>, [6 March 2020].
- “Journalists take fight against Spanish ‘gag law’ to European court”, *The Guardian* (London) (15 December 2015) [online] <https://www.theguardian.com/world/2015/dec/15/journalists-take-fight-against-spanish-gag-law-to-european-court>, [9 March 2020].
- Paul KRUGMAN, *The Return of Depression Economics and the Crisis of 2008*, New York: W. W. Norton & Company, 2009.
- Karl LOEWENSTEIN, “Militant Democracy and Fundamental Rights”, *The American Political Science Review*, vol. XXXI (3/1937), p. 417-432.
- Karl LOEWENSTEIN, “Autocracy Versus Democracy in Contemporary Europe, I”, *American Political Science Review*, vol. 29 (4/1935), p. 571-593.
- Karl LOEWENSTEIN, “Legislative Control of Political Extremism in European Democracies I”, *Columbia Law Review*, vol. 38 (4/1939), p. 591-622.
- Karl LOEWENSTEIN, “Legislation for the Defense of the State in Chile”, *Columbia Law Review*, vol. 44 (3/1944), p. 366-407.
- Karl LOEWENSTEIN, “Freedom Is Unsafe without Self-Government”, *Annals of the American Academy of Political and Social Science*, vol. 243 (1946), p. 47-49
- Bill LUCARELLI, “The Break-Up of the Eurozone?”, *The Economic and Labour Relations Review*, 23 (4/2012), p. 25-38.
- Graham MADDUX, *Karl Loewenstein, Max Lerner, and militant democracy: an appeal to ‘strong democracy’*, [online] https://www.researchgate.net/publication/332387012_Karl_Loewenstein_Max_Lerner_and_militant_democracy_an_appeal_to_%27strong_democracy%27, [7 March 2020].
- Jan Werner MÜLLER, “Militant democracy” in Michael ROSENFELD, Andrés SAJÓ (ed.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford: Oxford University Press, 2012.
- José Luis ORELLA MARTÍNEZ, Joanna RAK, “Formation of Populism in Spain: Towards the Explanatory Framework of the 15-M Movement Mindset”, *Środkowoeuropejskie Studia Polityczne*, vol. 2 (2019), p. 195-211.
- Joanna RAK, “Conceptualizing the Theoretical Category of Neo-militant Democracy: The Case of Hungary”, *Polish Political Science Yearbook*, (2/2020)

- Joanna RAK, "Intrastate, Regional, and Colonial Contributions to Post-2008 Cultures of Political Violence", *Polish Political Science Yearbook*, 46 (1/2017), p. 281-293.
- Joanna RAK, "Relations between the Installation of Democracy and the Anti-Austerity Protest Behavior: Spanish Indignados in Comparative Perspective", *Aportes*, vol. 34 (99/2019), p. 219-254.
- Joanna RAK, "The Dynamics of the 15-M Movement's Culture of Political Violence" in Małgorzata MIZERSKA-WROTKOWSKA and José Luis ORELLA MARTÍNEZ (ed.), *Poland and Spain in Late Modern and Contemporary Civilisation and Culture*, Madrid: Schedas, 2018, p. 229-256.
- Joanna RAK, *Theorizing Cultures of Political Violence in Times of Austerity: Studying Social Movements in Comparative Perspective*, Abingdon: Routledge, 2018.
- "Restoring freedom of expression in Spain: end the 'gag law'", *EDRi* (27 June 2018) [online] <https://edri.org/restoring-freedom-of-expression-in-spain-end-the-gag-law/>, [9 March 2020].
- Bastiaan R. RIJPKEMA, *Militant Democracy: The Limits of Democratic Tolerance*, Abingdon: Routledge, 2018.
- Andras SAJÓ, *From Militant Democracy to the Preventive State?* [online] <http://publications.ceu.edu/publications/sajo/2006/12728>, [7 March 2020].
- "Spain: First journalist fined under controversial 'Gag' Law", *PEN International* (London) (21 April 2016) [online] <https://pen-international.org/fr/nouvelles/spain-axier-lopez-becomes-first-journalist-fined-to-be-fined-under-controversial-gag-law>, [9 March 2020].
- "Spain: New draft law to increase copyright infringements penalties", *EDRi* (27 March 2013) [online] <https://edri.org/edriagramnumber11-6spain-new-draft-law-copyright-infringements/>, [4 March 2020].
- "Spain's Ominous Gag Law", *The New York Times* (New York) (22 April 2015) [online] <https://www.nytimes.com/2015/04/23/opinion/spains-ominous-gag-law.html>, [9 March 2020].
- Spain: Print, Media Landscapes, [online] <https://medialandscapes.org/country/spain/media/print>, [17 March 2020].
- "Spanish government backtracks on reforms to controversial 'gag law'", *El País* (Madrid) (17 October 2018) [online] https://english.elpais.com/elpais/2018/10/17/inenglish/1539770247_134351.html, [9 March 2020].
- "Spanish government accused of purging critics from national radio and TV", *The Guardian* (London) (5 August 2012) [online] <https://www.theguardian.com/world/2012/aug/05/spanish-government-critics-national-tv>, [4 March 2020].
- Ruti TEITEL, "Militating Democracy. Comparative Constitutional Perspective", *Michigan Journal of International Law*, vol. 29 (1/2007), p. 49-70

- Markus THIEL, *The 'Militant Democracy' Principle in Modern Democracies*, London: Routledge, 2009.
- Svetlana TYULKINA, *Militant democracy: an alien concept for Australian constitutional law?*, [online] <http://classic.austlii.edu.au/au/journals/AdeLLawRw/2015/23.html>, [7 March 2020].
- Svetlana TYULIKINA, *Militant Democracy: Undemocratic Political Parties and Beyond*, Abingdon: Routledge, 2015.
- Universal Declaration of Human Rights, [online] https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, [6 March 2020].
- Stephen Luis VILASECA, "The 15-M movement: formed by and formative of counter-mapping and spatial activism", *Journal of Spanish Cultural Studies: Spain in Crisis: 15-M and the Culture of Indignation*, 15 (1-2/2014), p. 119-139.
- George K. ZESTOS, *The Global Financial Crisis: From US Subprime Mortgages to European Sovereign Debt*, Abingdon: Routledge, 2016.

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