

Ethics, Professional Ethics and Human Rights as a Source

Michèle Ngo Yon Mekeme

Corporate Communication Department, University of Yaoundé II-Soa, Soa, Cameroon

Email: miyon11@yahoo.fr

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Abstract

In communication theory, the notion of source is defined as the individual providing data to a journalist. He is described as an informant. It is the main part (actor) allowing the journalist to provide information during his work. However, sources have a number of rights protected by professional codes of ethics. These are the rights of sources as individuals which imply the rights to image and privacy without their consent. The journalist must protect the attributes of his personality. The source also has the right to be cited in matters of copyright with faithful reproduction of the information. For respect for sources, many codes of ethics bring into play ethical principles which place the conscience and values of the journalist upstream in the exercise of his function.

Keywords

Communication Theory, Source, Deontology, Professional Ethics, Respect for Others

1. Introduction

The notion of source has evolved in communication theory since the first models of Shannon and Weaver (Shannon, 1948a) which made it the origin of information or well-being the professional who formats the information or the actor who transmits a message to the technical equipment responsible for encoding. After Shannon, the notion was further clarified to designate the individual or group of individuals who provide data to a journalist who will transform it into a message. Some studies call “informants” those who thus supply journalists with information without however this notion dissipating the ambiguity present in the Shannon an conception of “source” (Shannon, 1948b).

Cover and Mackay expanded the definition of source, going beyond the simple notion of a system that produces messages. They proposed a more encom-

passing perspective, considering the source as a dynamic system which interacts with its environment and which is influenced by external factors. According to this perspective, the source is not limited to generating messages, but also plays an active role in the selection and organization of information. It takes into account the needs and expectations of the recipient, as well as the constraints of the communication channel (Cover & Thomas, 2012).

For our part, we will call sources the people who allow journalists to supply, expand, nourish or enrich information during their collection work. Being therefore upstream of the work of journalists, they constitute the main coordinate without which the media would most of the time be empty of concrete data. Above all, they are the witnesses or the main actors of the information whose communication process has been little studied, perhaps because of the importance assumed by journalists, masters of the media and the public space.

However, like any citizen, sources have a certain number of rights as people first, then as sources, that is, in their communicative functionality, which strives to be in conformity with the rights and duties of journalists. Moreover, in most codes of professional ethics, Munich charter for example, there remains a certain complementarity between the right of journalists to free access to all sources of information and the right to freely investigate all the facts which condition public life of on the one hand, and the duty to respect people's private lives, on the other hand.

We will first examine the rights of sources as persons which fall under common law before addressing the problems raised by the rights of journalists as affirmed in certain codes of ethics and professional conduct, in their relationships with sources, the question of the rights of individuals as sources, that is to say ultimately the protection of sources having already been addressed.

2. The Rights of Sources as Persons

The work of collecting information is carried out mainly by journalists from people and on facts involving individuals who, as such, have rights whose violation falls under press offenses. A press offense involves, remember, two elements:

- An objective element, advertising; the fact of making public a word, an image, an event which involves people.
- A subjective element: guilty intent, or the desire to cause harm.

The question of the rights of sources as individuals, however, involves the element of consent of the source, which occurs when the journalist is a direct witness to facts or comments which are not voluntarily given to him by his source during a live interview or when the words of a source are reproduced entirely or partially by the journalist without the need for the latter to request authorization for reproduction.

2.1. The Right to Image and Privacy of the Source without Their Consent

The journalist must be all the more careful in his work of collecting information as the private life of his sources of information is protected as well as their im-

age. This applies even when the elements relating to it have been voluntarily provided by the source.

Thus, article 9 of the Civil Code provides that “everyone has the right to respect for their private life”. This explicit legal protection is supplemented by the general regime of civil liability which protects the other elements and attributes of the personality which are the image, the voice, the name, etc. regardless of criminal offenses. Thus, paragraph 2 of the aforementioned Article 9 provides for the possibility for the judge to “prescribe all measures (...) likely to prevent or put an end to an attack on the privacy of private life”, measures which can be ordered in summary proceedings if there is an emergency.

Articles 226.1 to 226.9 of the new Penal Code criminalize in particular the act of violating the privacy of another’s private life:

- By capturing, recording, transmitting without the consent of their author words spoken in a confidential private capacity;
- By fixing, recording or transmitting without their consent, the image of a person in a private place.

Also covered:

- The act of retaining, bringing or allowing it to be made known to the public or a third party or using in any way any recording or document.
- To publish by any means whatsoever the montage made with the words or image of a person without their consent, if it is not obvious that it is a montage.

Article 12 of the Universal Declaration of Human Rights provides for “the right to the protection of the law against interference with private life”.

Jurisprudence considers that private life is different from public life because it includes: family life (birth, marriage, divorce, death), work life, leisure, images, sentimental and medical life as well as wealth. To which must be added the right to the image of an unknown person even with regard to the use of his image in such a way as to make it understandable (photomontage), or the place (public or private) where he is located.

In France, there is an attack on the image from the taking of the image and even before its reproduction or distribution, except when the person whose image was captured is a public person, or participates in current events.

The Right to respect the presumption of innocence (Law No. 93-2 of January 4, 1993) based on the principles of article 9-1 of the Civil Code falls within the same field of protection which provides that there is an attack on the presumption of innocence “when a person placed in police custody, indicted or subject to a summons to appear in court, an indictment from the Public Prosecutor or a complaint with the constitution of a civil party is, before any conviction, presented as guilty of facts which are the subject of an investigation or judicial investigation.” The journalist is not prohibited from talking about it, but only from presenting a person as guilty.

But the law also protects certain people because of the functions they occupy, by defining the offenses:

- Offense to the President of the Republic and in the event of a vacancy, to the person who holds all or part of his prerogatives;
- Offense against Heads of State and foreign governments;
- Contempt against Ambassadors, Ministers Plenipotentiary or other accredited diplomatic agents.

In addition, people and public or private institutions are protected against information and comments that have harmed them, provided that they seek compensation; these attacks may take the form of insult, defamation or blackmail; a new incrimination called spreading false news (article 113 of the new Penal Code) allows the Public Prosecutor to hold a journalist accountable without a victim having formally filed a complaint.

- Insult is defined as “any outrageous expression, term of contempt or invective which does not contain the imputation of any fact.”
- Defamation is, on the contrary, “any allegation or imputation of a fact which harms the honor or consideration of the person or body to which the fact is attributed”. The offense can be established even if the allegation is made in doubtful, interrogative or even negative form, by antiphrase or if it is limited to reproducing an allegation made by a third party or even already published elsewhere, without the person or institution being expressly named.

2.2. The Only Exceptions to this Are those Resulting

- Either reports of debates and publications of court and tribunal judgments if they are faithful and made in good faith;
- Either criticism or controversy in the press whatever their subject, if they are made in good faith, without personal animosity and without intention to cause harm by distorting, amplifying, distorting the facts or giving them a spectacular twist.

Proof of good faith rests with the publishing director and the author of the article.

Finally, remember that the dissemination of information, even accurate, is prohibited if it relates to the following facts:

- Military information;
- Information classified as defense secret;
- Information constituting outrages against public order or good morals;
- False information or misleading statements, particularly with a view to damaging the credit of the nation;
- Information relating to the work of parliamentary inquiry committees, their deliberations or other acts carried out by them and not authorized by these committees;
- Publication of lists of taxpayers subject to various taxes;
- Publication concealing financial advertising for interested parties;
- Disclosure of the original filiation of a person who has been the subject of a full adoption.

Consent of sources and related rights

It is true that a source can give consent and later retract, which places the journalist in an uncomfortable position. But sometimes, the law provides for situations where a source must be cited, particularly in matters of copyright. Here, the law provides for reproduction without authorization and without reservation that this reproduction is faithful and that the name of the author and the source are clearly indicated, short quotations from published works, or the reproduction and distribution even in full, at news headlines, speeches given in public.

3. Ethical Rights and Respect for Sources

Even if they do not explicitly refer to sources, many codes of ethics still establish ethical principles which lead to respect for others, in particular for their private lives; in doing so, the ethics of journalists appear to be complementary to the law of the press and the means of information.

3.1. Respect for Others

“We truly enter into ethics when, to the affirmation of freedom by oneself, we add the desire for the freedom of the other to exist. I want freedom to exist” writes Paul Ricoeur (Ricoeur, 1984). This condition of equity is present in most international codes of ethics and professional conduct. Thus, the code of the Sigma Chi Association (association of professional journalists in the United States) mentions that journalists “will respect the dignity and rights, the secrecy of private life and the tranquility of the people with whom they will be put in contact circumstances of their profession, in the collection or presentation of news. We find a similar wording in the declaration of principle on the conduct of journalists of the International Federation of Journalists, which orders journalists to “prohibit plagiarism, slander, defamation, slander and baseless accusations, as well as to receive any gratification as a result of the publication of information or its deletion.”

Likewise, the rectification of errors can also be linked to respect for others, the norm commanding information media not to wait for legal action to be taken but to strive to rectify it themselves errors that they may have made in good faith under the pressure of deadlines, or due to erroneous information reaching them.

Alongside these international instruments, many countries have adopted national professional charters which aim to guarantee the quality of information, particularly through respect for sources. This is the case of Congo, Gabon, Ivory Coast, Mali, Burkina Faso and even Cameroon (Decree No. 92.313 PM of September 24, 1992).

Finally, it happens that the members of an editorial staff set rules of conduct in the form of a charter, an appendix to the employment contract or a guide given to a starting journalist. The Union of Journalists of Cameroon thus adopted a code of ethics on October 1996 which in certain of its provisions (Art.

11.2; conscience clause) is in contradiction with the law.

3.2. The Complementarity of Ethics-Responsibility

Moral obligation and legal norm therefore coexist in the profession of journalists. Laurent-Charles Boyomo Assala (Boyomo-Assala, 2021) also notes that “although positive law is a degraded form of ethical law, the latter maintains fairly close relationships with it in modern society.” This is why most of the principles set out in the codes of ethics are also ethical rules expressed negatively in the Civil Code or Penal Code, the rules of conduct of journalists and those which concern the profession as a whole must be read often in relation to the rules relating to respect for others and for society which are both criminal offenses and civil violations of private life.

The right of reply and the right of rectification in most legislations around the world constitute one of the most complete forms of complementarity between ethics and professional conduct on the one hand, and the social responsibility of journalists with regard to respect for others on the other hand.

The right of reply states that any person named or designated in an organ of social communication (written press, radio, television, etc.) can demand the insertion or broadcast of a response, even if the quotation which concerns them has no unfavorable character. This gratuitous response must cover the same amount of time or space, as the case may be, as the allegations that provoked it. This right of reply concerns both natural persons and legal entities for whom it is sufficient that they are simply designated, that is to say unambiguously identifiable. Any response partially published or distributed or accompanied by editorial comments is considered a refusal of insertion.

The right of rectification provides for its part that any depositary of public authority implicated in a publication (or information) concerning the acts of his function, can demand the publication (or dissemination) of a rectification (at the head of the next number with regard to the written press in French law) if he considers that these acts have been inaccurately reported; similarly, the defamation of a civil servant in the acts of his office is subject to the right of reply or an action for defamation.

4. Conclusion

Defined as the origin of information, the source, whether it takes the form of a natural or legal person, is subject to legal and ethical protection which is imposed on the journalist on both moral and social levels.

On a moral level, it is a matter of both governing the contributions of professionals with their sources (ethics) and maintaining a high level of conscience and values in the work of journalists (ethics).

On a social level, the journalist must be able to respond in court if necessary, for his writings, his information, opinions or comments when these infringe on the private life of his sources or their image rights.

Often these various texts come together when state law formalizes them. So, the terms value and conscience become synonymous with justice, equality, fairness, temperance, principles which must govern the work of every journalist.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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