Press freedom in the Brazilian Supreme Court: a comparative analysis with the U.S. Supreme Court

DOI: 10.1590/1809-5844201511

Carlo José Napolitano
(Universidade Estadual Paulista, Faculdade de Arquitetura, Arte e Comunicação, Programa de Pós-Graduação em Communicação. Bauru – SP, Brazil)

Abstract

This paper analyzes the understanding of the Brazilian Supreme Court and the Supreme Court of the United States about press freedom. The research aims to compare the position of the Courts about this fundamental right. Using the comparative method, it analyzes the arguments used by the courts in trials which had press freedom as its object. The paper also presents a literature review of the Brazilian theory about freedom of speech. Finally, the paper points out the possible influences of the Supreme Court of the United States in the decisions of the Brazilian Supreme Court, in particular, the primacy of press freedom in relation to other fundamental rights.

Keywords: Press freedom. Brazilian Supreme Court. Constitution. Freedom of speech. U.S. Supreme Court.

Introduction

This article is the final result of a research that aimed to investigate the constitutional legal regulation of the Communication right and for this purpose proposed to revisit the constituent process in order to verify and interpret the legal regulation longed for the National Constituent Assembly (NCA) for the Communication right. In addition, it was intended

to analyze and interpret the implementation of such right by the Supreme Court (SC), comparing the constituent intent with judicial implementation.

The research led to some assumptions: the current Brazilian Constitution dated October 05 of 1988, has substantial, programmatic, directive nature, considering that it provides countless purposes, goals and values that the State and the Brazilian society must accomplish or at least aim for. As substantive values targeted are the protection and achievement of fundamental rights. As one of these rights is the Communication right that gained status as fundamental right in the Constitution of 88, thus applying the theory of fundamental rights in its interpretation and enforcement, and finally, the Constitution of 88 gives the judiciary the role of warrantor of fundamental rights.

By assumption, the research assumed that the constituent intention was to regulate certain rights related to the Communication right and that when analyzing cases concerning the subject, the Supreme Court has systematically been expanding the application of these rights, extirpating any way or possibility of regulation.

In order to fulfill these objectives the research analyzed, at first, proposals and legislative debates that took place during the constitutional process of 87/88, regarding the regulation of the Communication right. This first stage was conducted by researching the National Congress Daily Journals (*DCN*), organized on a CD-Rom in 2008, by the Special Secretariat for Editing and Publishing of the National Congress, which contains in full the constituent debates. The methodology used in the first stage was to carry out research in the National Congress Daily Journals (*DCN*) by searching for keywords related to research theme, seeking for the following expressions: "Media"; "mass Media"; "press freedom"; "right to information"; "Media oligopoly"; "Media monopoly". Based on quantitative selection, reports, debates and proposals related to the theme were selected and read. The findings in journals were then transcribed, in chronological order, naming which constituent gave the speech, their party and

state of origin, the arguments of the parliamentary in order to verify their ideological line, and as a result, brief comments were made about the opinions of the constituent thirst for conclusions.

In a second phase of the research, some sentences of the Supreme Court that dealt directly or indirectly with Communication right were analyzed. Special attention was paid to special appeals, justifying such analysis, as this is the privileged *locus* of the confrontation between the established constitutional order and the infra-constitutional legislation produced before or after the advent of a new constitution.

The methodology used in the analysis of the court trials followed some steps: it considered who was the proponent party; what was the claim of the lawsuit, that is, what was the argument of the confrontation between the challenged law and the constitutional provision, the time when the constitutionality of the law was challenged and when the proceeding was sentenced, in order to analyze the time gap between the entry of the law into force, its claim to the Supreme and the effective decision issued by that court. Besides that, it analyzed if it was a consensual decision or not, or in legal terms, if the decision was taken unanimously or by majority vote; if the decision was by majority, that is, not unanimous, it shall analyze which Minister created an impasse in the court trial and under which argument. Special attention was given to the votes favorable to the declaration of unconstitutionality, as these represent agreement with the claim of disrespect to constitutional provisions; and, mainly, there was emphasis to the legal arguments made by the Ministers. In the analysis of the proceedings, the arguments of Ministers were reproduced in parts and in full. At the end of the presentation of the arguments of Ministers, brief comments were made about court cases. Finally, the research, as already mentioned, intended to compare the proposals of the National Constituent Assembly with the decisions of the Supreme Court to confirm or not the initial hypothesis.

The study presented here, as a result of the above research, aimed specifically to address the perspective of the Supreme Court

in relation to press freedom. For this, the study examined the Direct Lawsuit of Unconstitutionality cases 869 and 4451 which had as purpose such fundamental right and presents a comparative analysis with decisions of the Supreme Court of the United States about the investigated theme and exposes the Brazilian theory about freedom of expression, in special the press freedom.

Theoretical and legal basis around freedom of expression: press freedom

According to the classical theory of Brazilian constitutional law, freedom of expression is the fundamental right that everyone has to externalize, in any form, your opinion about any subject (SILVA 2010).

Enclosed in freedom of expression is the freedom of opinion, recognized as the primary expression, which consists in the person's prerogative to adopt the intellectual position one wants and, if one wishes, externalize such opinion by any means, through the Media, arts, sciences, religions, scientific research, also comprising freedom of information in general. The right of freedom of expression warranties even the freedom of not expressing ones own opinion.

Unfortunately, according to Simis (2010, p.59), often the freedom of expression in Brazil is intertwined "with the search for audience at any cost by TV channels". Bigliazzi (2009), in turn, supports the idea that, nowadays, freedom of expression would be inserted into a larger concept that is the Communication right and the latter would not only be related to the right to freedom, but also to equality, guaranteeing equivalence of opportunity in the expression of thought.

Still according to Silva (2010, p.246), freedom of information, a corollary of freedom of expression, "adopts modern features, which overcomes the old press freedom". The freedom of information, according to the author, is closely related to printed Media, while the freedom of expression "reaches any form of dissemination of news, comments and opinions by any media".

Silva (2010, p.247) still states that "freedom of information is

not simply freedom of the newspaper owner or of the journalist. Their freedom is reflexive in the sense that it only exists and is justified to the extent of the rights of individuals towards correct and relevant information".

However, for Comparato (2010), in the capitalist system, freedom of expression and press freedom was transformed into corporate freedom or Media freedom. Similarly, according to Kucinski (2011, p.16) "the owners of mainstream media identify freedom of expression, one of the fundamental human rights, with freedom of the media industry, which is corporate law, as if companies were the exclusive holders of the right of expression"

Note that in many provisions the Brazilian Constitution refers to freedom of expression. In Article 5, which deals with individual and collective rights and duties, two items deal with the subject. The item IV provides that the expression of thought is free, prohibiting only the anonymity and item IX provides that intellectual, artistic, scientific and Communication expression is free, regardless censorship or license.

And article 220 in the chapter of Media, disciplines that the "demonstration of thought, creation, expression and information, in any form, process or mean shall have no restriction, pursuant to the provisions of this Constitution" (BRAZIL, 1988).

Bitelli (2004, p.191) remembers that the sentence *subject to the provisions of this Constitution*, provided for in the head of article 220, underlies "the whole system of limitations to the right of the media". It is salutary to mention that in the North American constitutional law there is no similar rule to the one existing in the Brazilian law.

The new constitutional regulation, according to Jambeiro (2009, p.152/153),

> completely abolished censorship in any event., either political, ideological or artistic, currently allowing the federal government , 'to rate radio and TV programs in [...] age groups determined according to schedule of programs, making such rating, as a recommendation rather than obligation', moreover, the constitutional systematic allows the government 'to create legal means to ensure to individuals and families the possibility of protection against radio and TV programs that disobey the principles provided by the

> Constitution', and also 'must ensure the protection of the audience against commercial advertisements of goods, practices and services that are harmful to health and to the environment'.

It is also recognized that freedom of expression is closely linked to democracy. Freedom is one of the essential values of democracy "general guarantee regime for the achievement of fundamental rights of men" (Silva, 2010, p.132), from which freedom is part, and the freedom of expression is the greater expression of freedom.

Similarly, it is understood that freedom of expression is one of the principles of citizenship, here understood according to Silva (2010), in a broader sense than the simple ownership of political rights. Citizenship, for Silva, is the qualification of the individual as a participant of State life and its recognition as an integrated person in society and to enable such accomplishment, the free dissemination of beliefs, ideas, ideologies and opinions is essential.

Lima (2011, p.215) acknowledges that

> the basic condition for the fulfillment of the political rights of citizenship in the contemporary world is the existence of a polycentric and democratic media market, that is, to guarantee that each one can fully exercise their communication right. Thus, from the point of view of the legal and formal system, there is an established relationship connecting communication, power and citizenship.

However, there is recognition that the State regulation regarding freedom of expression in the Brazilian State sets up a real taboo, especially by the memory of military dictatorship and also that any attempt of a State action, within this field is seen as censorship. (BINENBOJM; PEREIRA NETO, 2005)

In the same sense, for Lima (2010, p.21) in Brazil, in relation to any attempt of legal regulation of freedom of expression, there is "an undeclared ban over this topic, whose mere memory always leads to judgments of authoritarianism and return to censorship".

Pieranti (2008, p.129 and 139) asserts that "any attempt of regulation of content or related to it, is generally considered by the media as practices of censorship". However, the author recognizes

that "the line between both regulation and censorship is tenuous. Censorship is somehow a way of regulating content, but not all forms of regular content corresponds to censorship".

And as a result of this understanding, according to Comparato (2010, p.10 and 12), even when there is a constitutional requirement of implementation of ordinary law regulating such right, it is observed that the "Congress is systematically paralyzed by the dominant pressure of media companies", leading today in Brazil to an "absolute convergence in defense of capitalism and deregulation of the media industry".

Bolaño (2004, p.77) also comments about the lack of regulation for constitutional provisions related to freedom of expression. For the author, the legislation would establish "a new model of media regulation, which was never accomplished in the country" and that the "absence of regulation of the audience rights, empowers the ones who defend the maintenance of the wild capitalism regarding communication in the country".

Along similar lines, Brittos and Collar (2008, p.83) also recognize the lack of regulation of the Article 220 of the Federal Constitution, a fact "that could become a major pillar in the media democratization process. The interest of the constituent legislator, therefore, was lost due to the absence of law regulating the provision concerned".

Press Freedom in the perspective of the Supreme Court – Analysis of the 'ADI' (Direct Lawsuit of Unconstitutionality) 869 and 4.451

Analysis of Direct Lawsuit of Unconstitutionality case 869

The Direct Lawsuit of Unconstitutionality case 869 in the Attorney General's Office (*PGR*), after representation sent by the National Newspaper Association, aimed the statement by the Supreme Court, of unconstitutionality of the final part of paragraph 2 of Article 247 of the Law 8069/90 (Brazilian Children Act) that determined "the suspension of the broadcasting station program for up to two days, as well as the release of the journal for up to two issues" (BRAZIL, 1999, p.22), in the case of disclosure

of information without authorization, by any Media, related to the involvement of children and adolescents in practice of any delinquent act.

The main argument of the representation of the National Newspaper Association was to claim that the constitution of 88 when provided "in Article 5, IX that the expression of intellectual, artistic, scientific and Communication activities is free, regardless of license, expressly disavowed the common legislator to oppose limits to the free expression of thought" (BRAZIL, 1999, p.23). In addition, any restriction on this fundamental right can only be supported in the cases stipulated in the constitution, in the final part of Article 220, as previously mentioned.

After processing the lawsuit, the Supreme Court unanimously determined the following decision:

> ABSTRACT: Direct Lawsuit of Unconstitutionality. Federal Law 8069/90. Demonstration of freedom of thought, creation, expression and information. Inability for restriction. 1. Law 8069/90. Total or partial disclosure by any media, name, act or document of police, administrative or legal procedure relating to delinquent act of a child or adolescent. Improper disclosure. Penalty: suspension of broadcasting for up to two days as well as suspension of releasing the journal up to two issues. Unconstitutionality. The 1988 Constitution in Article 220 established that the freedom of expression of thought, creation, expression and information, in any form, process or means, shall not suffer any restriction, with due regard for its provision 2. Limitations regarding freedom of expression, in all its varied forms. Restriction that shall be explicitly or implicitly provided for in the constitution. Direct Lawsuit of Unconstitutionality upheld (BRASIL, 1999, p.21).

Therefore, ordinary law cannot determine restrictions on press freedom.

According to the vote of the rapporteur minister Ilmar Galvão, supported by the opinion of the Attorney's General Office, the final part of Article 247, paragraph 2 of the Brazilian Children Act (*ECA*) introduced "in our legal system prior restriction on press freedom more serious than censorship of political, ideological and artistic nature, expressly prohibited by Art. 220, § 2, of the Constitution" (BRASIL, 1999, p.28).

Similarly, the rapporteur understands that the text of the law contested in the Direct Lawsuit of Unconstitutionality empowers the judge or court to prohibit broadcasting future journalistic information, even before knowing its content, thus creating "real obstacle to full freedom of journalistic information" (BRAZIL, 1999, p.29), which is prohibited by the constitutional legal system.

The rapporteur also states, endorsing the representation of the JNA and the application of the Attorney General's Office that "all limitations that can be opposed to freedom of expression, in its various forms, before the peremptoriness of the indicated texts, shall explicitly or implicitly be established in the Constitution" (BRASIL, 1999, p.32).

These restrictions are the ones provided in the aforementioned Article 220.

Analysis of the Direct Lawsuit of Unconstitutionality case 4.451

The Direct Lawsuit of Unconstitutionality 4.451 was proposed by the Brazilian Association of Radio and Television Broadcasters (*ABERT*), with the Federal Supreme Court, to obtain recognition of the unconstitutionality of items II and III of Article 45 of the Law 9504/97 (Electoral law).

The above mentioned law provides about general standards for elections and the article questioned by the Supreme Court provides that "from July 1 of election years, it is prohibited from radio and television broadcasters in their regular schedule and news: II – to use 'trickery', assembly or other audio or video feature that, in any event, degrade or ridicule a candidate, party or coalition, or produce or broadcast program with that effect; III – to broadcast political campaign or disseminate opinion for or against a candidate, party, coalition, to their bodies or representatives" (BRASIL, 2010, p.6).

According to ABERT "such rules generate a serious silencing effect on broadcasters [...] forbid the broadcasting of satire, cartoons and comedy programs involving political issues or politicians, during the election period" (BRAZIL, 2010, p.7), thus

breaching Articles 5, IV, IX and XIV and 220 of the constitution, since they cause embarrassment to the journalistic freedom of expression, creating true censorship.

By majority, the Supreme Court recognizes the unconstitutionality of the opposed legal provisions, rendering the below decision, as follows:

> SUMMARY: [...] The state shall not, by any of its bodies, previously define what can or what cannot be said by individuals and journalists. [...] there is no half press freedom or press freedom under the strictness of previous censorship, no matter from which kind of state power it comes from. Press freedom is not a normative bubble or a hollow prescriptive formula. It has content, and such content is formed by the list of freedom that is seen on the head of art. 220 of the Federal Constitution [...] the press keeps with democracy the most intertwined relation of interdependence or feedback. [...] The press as the most advanced guardian of civil freedom, as an alternative to explanation or state version of anything that might affect within society and as guaranteed space of outbreak of critical thinking in any situation or contingency. [...] Comedy programs, cartoons and the way of releasing caricatures as ideas, opinions, and witty boards make up the activities of 'press', perfect synonym for 'journalistic information'. To that extent, enjoy the fullness of freedom that is guaranteed by the Constitution to the press. Giving that the actual exercise of that freedom in fullness ensures the journalist the right to expend criticism to anyone, even harshly, blunt, sarcastic, ironic or irreverent, especially against state authorities and appliances. [...] The journalistic criticism in general, by their inherent relationship with the public interest, is not a priori capable of censorship. [...]. Injunction granted to suspend the effectiveness of item II and the end of the item III, both articles 45 of Law 9504 / 1997, and, by extension, of paragraphs 4 and 5 of the same article (BRAZIL, 2010, p.1-5).

The same arguments of Direct Lawsuit of Unconstitutionality 869 are herewith reproduced in other words, ensuring full press freedom, which is possible of restriction only *a posteriori* in cases of offenses to other constitutionally guaranteed rights, for example the cases of privacy and intimacy.

Press freedom in the Supreme Court of the United States – Analysis of court trials: New York Times v. Sullivan, Brandeburg v. Ohio e Hulstler Magazine v. Falwell

The North American theory of freedom of expression was developed during the twentieth century, especially through decisions of the Supreme Court (SC) of the United States, which is responsible for theoretical and jurisprudential developments in relation to this fundamental right.

In the SC there are the legal arguments developed by Justice Oliver Wendell Holmes, who performed his duties at court from 1902 to 1932 (MORO, 2004).

For Holmes (apud MORO, 2004, p.46-47), freedom of expression

> cannot be restricted even when it involves inciting or apologia to illegal actions: there is also the need that from the species can effectively result in illegal action. This is the so-called *clear and present danger.*

However, according to Pereira (2002), the theory developed by Holmes does not consider freedom of speech absolutely, and it may be restricted when illegal acts are effectively practiced, leaving the freedom of expression unprotected in certain cases.

The classic example given by Holmes to illustrate the possibility of restricting freedom of expression and that would be in accordance with his theory would occur "when someone falsely shouts the word 'fire' in a crowded theater, the danger caused by the cry is immediate, palpable, serious and has a high probability of actually cause damage" (SANKIEVICZ, 2011, p.28).

Yet for Holmes (MORO cited, 2004, p.49-50), it is always necessary to preserve freedom of expression even

> when the speech is unpleasant or offensive to the majority of the community. That is, first, because nothing hinders more significantly the development of human personality than the imposition of silence; secondly, because freedom of expression is essential to the proper functioning of democracy, to allow broad discussion of ideas

The thesis developed by Holmes, in the early twentieth century, only started having shape in the court trial of the SC, in the 60s, during the so-called Warren Court (1953/1969).

According to Moro (2004), the Supreme Court of the United States during this period, gave two decisions which became reference on the subject, which are the decisions of the cases New York Times v. Sullivan and Brandenburg v. Ohio.

In the first case,

> The facts giving rise to the appeal with the Supreme Court were the followings: in 1960, period filled by racial conflict and the fight for civil freedom, there was a student demonstration for U.S. Civil rights in Montgomery, Alabama, dispersed by local police. On March 29 of the same year, the New York Times carried a full-page advertisement titled: 'Heed Their Rising Voices'. The text began stating that the civil rights movement in the South, a non-violent action, was being attacked by an outbreak of terror. It stated afterwards that the 'Montgomery police improperly surrounded the campus of a black school to dismantle a peaceful demonstration in favor of human rights and that certain 'Southern violators', not named, exploded bombs in Martin Luther King's house, physically attacked him and arrested him seven times', on various charges. It ended with an appeal for funds to sponsor the student march, universal suffrage and the defense of Martin Luther King. And in addition to the signatures of 64 prominent figures of the United States, it was stated that 16 southern pastors endorsed the advertisement. Some of the above statements were misleading in whole or in part. L B. Sullivan, Montgomery Police Commissioner filed a defamation lawsuit against the newspaper. Despite not being mentioned in the ad, the claim was enforced, since the police chief at the time could be responsible for all those abuses, and in fact he was identified as the one responsible. Sullivan was sentenced on a court trial to pay US$ 500,000, confirmed by the Supreme Court of Alabama. The company New York Times Company appealed to the Supreme Court, which reversed the sentence (PEREIRA, 2002, p.198).

In relation to this legal proceeding, the Supreme Court of the United States

> held that the freedom of expression in public affairs should in any case be preserved. It established that the conduct of the newspaper was protected by freedom of expression, unless proven that the false ad was published maliciously or with reckless disregard for the truth (MORO, 2004, p.48).

According to Pereira (2002, p.197),

> the novelty introduced by Sullivan's decision consisted of the new standard to establish guilt of the media when the defamatory news had as protagonists public figures in the exercise of public activities. [...] The Supreme Court determined that public figures could only be awarded with legal compensation for defamation on issues that addressed their public conduct, unless there is proof with sufficient explicitness, that the statements were made with actual malice, that is, with 'knowledge of falsity 'or notorious contempt or disregard for their truth or falsity.

The decision of the SC, in some way, protected false statements reported in the Media, once these statements involve government agents, since "the public man must be strong enough to deal with criticism" (PEREIRA, 2002, p.199).

The SC also guided its decision supported by the rule that guarantees to governors "absolute immunity, when making statements, if their statements are done" 'within the perimeter' of their obligations (PEREIRA, 2002, p.200), using the analogy in the mentioned case, since

> Just as a man from the government could be inhibited from acting in awareness of the risk of a conviction, so the press should enjoy privileges that minimize the risk of self-censorship for fear of condemnation, as it were critical to the rulers (PEREIRA, 2002, p.200).

The second case, Brandenburg v. Ohio, was the review of the punishment imposed for the leader of Ku Klux Klan for defending the "violation of public order through violence" (MORO, 2004, p.49). In this trial, according to Live (2004), despite the unquestionable immorality of the discourse, what prevailed was Holmes thesis formulated at the beginning of the last century.

Moreover, with these decisions the SC raised the freedom of expression "to a preferred position in relation to other interests" (MORO, 2004, p.50) of the same constitutional importance.

It is extracted from the literary work of Moro (2004) that in the U.S.A. the theoretical framework of the prevalence of freedom of expression in relation to other fundamental rights is based on its close relationship with democracy, since "without freedom of

expression and right to information and without extensive rights of participation there is no true democracy" (MORO, 2004, p.263).

However, Moro warns (2004, p.264) that "the theory of preferential position does not make aforementioned freedom and rights unrestricted. Even the US Supreme Court admits some restrictions, such as those relating to obscene material".

Nevertheless, this theory places the freedom of expression "in advantageous position in case of collision with other rights" (MORO, 2004, p.265). However, it is recognized that there is no hierarchy among fundamental rights.

In the specific case of press freedom, treated in the case New York Times v. Sullivan, such primacy

> is restricted to issues of public nature, although they may be defined broadly. The debate of public issues should be broad and robust, uninhibited, and it could be seriously affected if the press was a required to check truthfulness of facts related to the news to be released (MORO, 2004, p.266).

Also according to Moro, this thesis was applied in other cases by the SC, as in Hustler Magazine v. Falwell, 1988.

In this case, specifically the primacy was extended to cartoonists and satirists, ruling the Court

> that public figures could not obtain compensation for outrage to honor without showing that the publishing would release false statements done with 'evil intent', that is, with knowledge that would be false or with reckless disregard as to its falsehood or not (MORO, 2004, p.267).

The thesis of Holmes, however, is not immune to criticism, considering that the main argument is the fact that the free flow of ideas or the marketplace of ideas would lead to the truth.

This assumption is refutable given that in the practice of some discourse modalities the truth will never be achieved, as for example, in the arts, literature and religious discourse (SANKIEVICZ, 2011).

Pereira (2002) adds that the marketplace of ideas would be the transplantation of liberal economic thought, from *laissez-faire*, *laissez-passer*, to the field of freedom of expression, defined by

him as the liberalism of ideas. Also criticizes the transference of Holmes' thesis to our reality, despite the fact that they disappeared from American courts. According to the author, the North American ideas underlie Brazilian thesis that "rise against some restrictions to freedom of expression of thought" (PEREIRA, 2002, p.260).

Also according to Pereira (. 2002, p.261) those who defend the marketplace of ideas do it for two reasons "either because it is not deemed that the theoretical exposition, while it has any real potential harm to society; or because they believe that truth and common sense always prevail in the confrontation between opposing thesis", being considered naive to the author, these two premises.

Conclusions

Based on the foregoing, it is observed that, in particular, in the court trial of Direct Lawsuit of Unconstitutionality case 4451 apparently the ideas of Holmes and the Supreme Court of the United States are present in the decision of the Supreme Court establishing primacy to information if compared to other fundamental rights, particularly when the information involves the performance of public figures, government agents, considering that for the Brazilian court of law, the rights of intimacy and privacy, for example, can only be put in practice after the damage actually caused.

In relation to the decision of Direct Lawsuit of Unconstitutionality 869, it is not possible to establish a comparison with decisions of the Supreme Court. However, it is possible to extract from the arguments presented that the Brazilian constitutional law allows the restriction of rights related to freedom of expression, although such restriction is not explicitly provided by the U.S. Constitution.

It is finally considered that the transference of ideas is not always positive, in particular, when these transpositions are made without any consideration in relation to different realities of the countries involved, especially regarding legal matters.

References

BIGLIAZZI, Renato. A memória do direito à comunicação. **Revista de Economía Política de las Tecnologías de la Información y Comunicación**, UFS, Sergipe, v. 11, n. 1, p.1-6, jan/abr, 2009.

BINENBOJM, Gustavo; PEREIRA NETO, Caio M. da S. Prefácio de FISS, Owen. M. **A ironia da liberdade de expressão:** estado, regulação e diversidade na esfera pública. Rio de Janeiro: Renovar, 2005. p.1-24.

BITELLI, Marcos A. S. **O direito da comunicação e da comunicação social**. São Paulo: Revista dos Tribunais, 2004. 472p.

BOLAÑO, César R. S. A reforma do modelo brasileiro de regulação das comunicações em perspectiva histórica. **Estudos de Sociologia**, Araraquara, v. 9, n. 17, p.67-95, 2004.

BRASIL. **Constituição da República Federativa do Brasil**. Brasília: Senado, 1988. Available in: < http://www.presidencia.gov.br >. Accessed on: several dates, 2014.

BRASIL. **Ação direta de inconstitucionalidade n. 869.** Brasília: Supremo Tribunal Federal, 1999. Available in: <http://www.stf.gov.br>. Accessed on: several dates, 2014.

_____. **Ação direta de inconstitucionalidade n. 4.451.** Brasília: Supremo Tribunal Federal, 2010. Available in: <http://www.stf.gov.br>. Accessed on: several dates, 2014.

BRITTOS, Valério C.; COLLAR, Marcelo S. Direito à comunicação e democratização no Brasil. In: SARAIVA, Enrique; MARTINS, Paulo E. M.; PIERANTI, Otávio P. (Orgs.). **Democracia e regulação dos meios de comunicação de massa**. Rio de Janeiro: Editora FGV, 2008. p.71-90.

COMPARATO, Fábio. K.. Prefácio de: LIMA, Venício A. de. **Liberdade de expressão versus liberdade de imprensa:** direito à comunicação e democracia. São Paulo: Publisher, 2010. p.8-15.

JAMBEIRO, Othon. A comunicação na Constituição de 1988. In: GOULART, Jefferson O.(Org.) **As múltiplas faces da constituição cidadã**. São Paulo: Cultura Acadêmica, 2009. p.133-154.

KUCINSKI, Bernardo. Prefácio de: LIMA, Venício A. de. **Regulação das comunicações:** história, poder e direitos. São Paulo: Paulus, 2011. p.9-17.

LIMA, Venício A. de. **Liberdade de expressão versus liberdade de imprensa:** direito à comunicação e democracia. São Paulo: Publisher, 2010. 159p.

_____. **Regulação das comunicações:** história, poder e direitos. São Paulo: Paulus, 2011. 252p.

MORO, Sérgio. F. **Jurisdição constitucional como democracia**. São Paulo: Revista dos Tribunais, 2004. 336p.

PEREIRA, Guilherme. D. C. **Liberdade e responsabilidade dos meios de comunicação**. São Paulo: Revista dos Tribunais, 2002. 283p.

PIERANTI, Otávio. P. Censura versus regulação de conteúdo: em busca de uma definição conceitual. In: SARAIVA, Enrique; MARTINS, Paulo E. M.; PIERANTI, Otávio P.(Orgs.). **Democracia e regulação dos meios de comunicação de massa**. Rio de Janeiro: Editora FGV, 2008. p.129-142.

SANKIEVICZ, Alexandre. **Liberdade de expressão e pluralismo:** perspectivas de regulação. São Paulo: Saraiva, 2011. 225p.

SIMIS, Anita. Conselho de Comunicação Social. Uma válvula para o diálogo ou para o silencia. **Revista Brasileira de Ciências Sociais**, São Paulo, v. 25, n. 72, p.59-71, 2010.

SILVA, José. A. **Curso de direito constitucional positivo**. 33 ed. São Paulo: Malheiros, 2010. 926p.

Carlo José Napolitano
PhD in Sociology from Faculdade de Ciências e Letras, of UNESP/Araraquara/SP and master's degree in Law from Instituição Toledo de Ensino de Bauru/SP. Professor of Department of Human Science and of the Graduate Program in Communication of the Faculdade de Arquitetura, Artes e Comunicação, Universidade Estadual Paulista – FAAC/UNESP. Email: carlonapolitano@faac.unesp.br

Received on: 05.07.2014
Accepted on: 12.05.2014