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Freedom of the Press and violence in the Basque Country and Colombia. A historical approach to current debates

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Abstract

Introduction. This article makes a historical comparative analysis of the conceptualisation and development of the freedom of the press in the last 50 years of conflict in Colombia and the Basque Country. **Methodology.** Through a diachronic examination, this work studies the concepts of censorship and self-censorship in both case studies. The time frame covers the period from the first liberal conceptualisation of the freedom of the press in the 19th century, up until the political transformation of the conflicts initiated in both cases in 2011. **Results.** Colombia and the Basque Country are currently going through a process of transition from violent conflict to peace. This process, in addition, is taking place at the same time as the digital transition of the Media, which is transforming journalism and the way of interacting on the Internet. **Conclusions.** This article proposes to include the memory of violations against the freedom of the press in the process of conflict transformation and it also concludes that there is a need to rethink the concept of freedom of speech on the Internet.

Keywords

Freedom of the press, Freedom of speech, Comparative history of communication, Communication and violence, Basque Country, Colombia.

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Traslate to English by the author,
supervised by the translator **Ángela Jones**.

1. Introduction

The freedom of the press is one of the most commonly violated rights during conflict. The battle surrounding information and how to influence public opinion is particularly significant in violent contexts; and censorship, the closing of newspapers, and threats and violence against journalists are part of the conflict dynamic. That is also the case in the Basque Country and Colombia, which, despite their obvious differences, are both guilty of violations against the freedom of the press in 50 years of violent conflict. In 1998, more journalists were killed in Colombia than in any other country in the world and, currently, despite the peace agreement of 2016, the violence has not ended: in 2018 three Ecuadorian journalists were killed by a FARC splinter group and in 2017 there were at least 310 attacks against the freedom of the press[1] that affected 368 journalists (FLIP report, 2017). These figures are just some examples of the difficulties the Colombian peace process is going through; the conflict and post-conflict situation is yet to be clarified. Similarly, the Basque case does not fit within the traditional peacebuilding framework: ETA ended its armed campaign in 2011, but since then the steps taken towards peace have been rather scarce. ETA handed over its weapons in 2017 and disbanded in May 2018, but about 300 prisoners are still imprisoned. Altogether, the Colombian conflict has caused 220,000 deaths (*¡Basta Ya!*, 2012) and more than 110 journalists have been killed (Barbeito, 2009). In the Basque Country, in contrast, 1,004 people lost their lives (Carmena *et. al.*, 2013), among them five journalists (three of them killed by ETA and two by the GAL). [2]

This article explores the development of these violations against the freedom of the press in the Basque Country and Colombia using a historical comparative methodology. [3] The research follows a diachronic structure. First of all, it analyses the background of the right to press freedom in the case studies and it then compares the different historical periods using a comparative perspective. Following the liberal conceptualisation of this right in the 19th century, the article focuses on the difficulties of implementing it in the different periods of the conflicts. The final section makes an analysis of the challenges in the current digital transition. The contribution of the study is two-fold: it proposes to include violations against the right to press freedom in the conflict transformation processes, and it highlights the need to rethink the right to freedom of speech in the digital space.

2. Conceptualising the freedom of the press in Spain and Colombia

The freedom of the press is part of the wider right to freedom of opinion and speech. [4] The initial steps in conceptualising this right were taken during The Enlightenment: the first amendment of the United States Constitution (1791) includes the right of freedom of speech and it prohibits the limits against the freedom of the press. The French Revolution also considered this right and included it in the Declaration of the Rights of Man and Citizen (1793). [5] The constitutional form of this liberty arrived in Spain and Colombia in the 19th century. The tensions between liberals and conservatives during that century were key in its implementation and, in Colombia, moreover, the expansion of liberal rights (among them, the right to the freedom of the press) fostered the process of independence from the Spanish monarchy, which began in 1810.

2.1 20th century: Liberal freedoms and independence

The Cádiz Cortes (the Cádiz Courts) recognised the freedom of the press for the first time in Spain. Initially, they included this right in the IX Decree, passed on the 10th November 1810, a mechanism that abolished the previous censorship established during the Ancien Régime (Marcuello Benedicto,

1999). [6] The implementation of liberal values formed part of the tensions between liberals and conservatives during the entire century, and press freedom was limited and expanded depending on the party in power. This right was highly restricted during the absolutist period led by Fernando VII (1813-1833), whilst during the liberal periods, in contrast, more mechanisms to protect it were established (during the three year liberal period 1820-1823, the two year progressive period 1834-1837 and the democratic six year period 1868-1874).

The fights between conservative and liberal parties were particularly significant in the Basque Country, where three Carlist wars occurred. In these wars the historical laws (*fueros*) of the Basque territories were at stake. In fact, the third and last Carlist War, which finished in 1876, formally ended most of the Basque historical laws. At the same time, the monarchy was restored and Alfonso XIII became the Spanish king until the establishment of the II Republic, in 1931. As in the rest of the State, the liberals in the Basque Country also promoted the freedom of the press and they created several new newspapers. The Carlist side (which defended Basque traditional laws), also created some newspapers during that period, but they were fewer in number and more conservative.

At the same time that liberal values were being promoted in the Cádiz Cortes, the independence processes began in Latin America. On the 20th July 1810, Colombia passed its first Independence Charter, which was the initial step towards the long process of full independence from the Spanish kingdom. One year later, in 1811, the first Colombian Constitution was approved – it was also the first constitution passed in the Hispanic world (Vanegas Useche, 2011). Fernando VII was still in power when the Constitution of Cundinamarca was enacted (Cundinamarca is the province where Bogotá is located) on the 4th April 1811. Article 11 of the constitution established that “printers cannot be used to limit the right to express anyone’s opinion”. [7]

The arrival of the printer to Colombia in the middle of the 18th century [8] was a critical symbol in fighting the hegemony of the Spanish (Barredo Ibáñez, 2017). New Granada and Venezuela joined together in 1819 (Panamá, Quito and Guayaquil joined later) and created Gran Colombia, the first independent republic, whose president was Simón Bolívar, El Libertador (Ospina Sánchez, 1988). The republic was dissolved in 1831 and each territory went its own way. The first Constitution of the Republic of Colombia was passed in 1886 and, although it was reformed on several occasions, it was maintained right up to the introduction of the current Constitution in 1991. Yet, even before 1886, several legislative initiatives were passed in order to extend the freedom of the press, such as the law passed on the 17th September 1921, which regulated the “freedom of the press” and “the punishments against its abuses” (Cacua Prada, 1968: 995).

Colombia’s independence led to the expansion of journalism throughout the country. The freedoms included in the first Constitutional laws fostered the implementation of liberal values and the process of independence from the Spanish monarchy. The liberal revolution in Spain in 1868 helped these processes and facilitated the peace process between Colombia and Spain; however, official peace between the two countries did not arrive until the signing of a final agreement in Paris in 1881.

2.2 The first third of the 20th century: the previous stage of the conflict

Spain had the same constitution for 55 years, from the beginning of the restoration of the monarchy in 1876 until the proclamation of the II Republic in 1931. During that period, journalism was industrialised and instead of being just a tool for political parties, the press became a business (Díaz

Noci, 2012: 105). Also at this time, Basque Nationalism and culture became stronger. The first journalistic publication in the Basque language is also from this period, with *Zeruko Argia* being created in 1919.

During the period of the restoration of the monarchy (known as la Restauración) censorship decreased. The Printing Police Law of the 26th June 1883 was in force until 1966 and it has been considered a landmark in the long road to promoting the freedom of the press (Bel Mallén, 1990: 38). Nevertheless, Primo de Rivera's dictatorship (1923-1931), which set the basis for Franco's dictatorship years later, was an obvious break in the promotion of freedom. For instance, the Royal Decree approved on 15th September 1923 suppressed Article 13 of the Constitution, that is, the article that banned prior censorship.

The political context was transformed on the 14th April 1931 when the II Republic was set up. Article 3 of the Republican Constitution included a progressive view on freedom of speech and the press: "Every person has the right to express their ideas and opinions freely and they can use any diffusion mechanism to accomplish that aim without being subject to prior censorship". However, despite these progressive values, the Press Law from 1883 was still in force during the II Republic. This law, along with the Law to defend the Republic, from 1933, and later the Public Order Law, also from 1933, allowed the Republican government to suspend and fine newspapers (Díaz Noci, 2012: 166). In February 1936, the Popular Front won the elections and on the 18th July of the same year the fascist military coup took place. By the 14th January 1937, Franco's supporters had already passed a decree to create the State Delegation for Press and Propaganda, whose aim was to "use the press (...) to spread the facts and values of the National Movement" (Díaz Noci, 2012: 187-188).

Several political changes occurred in that same decade in Colombia. The 20th century began with the so-called Thousand Days war (1899-1902) in which liberals confronted the conservative government, and hostilities between the two continued for the rest of the century. The conservative parties were hegemonic up until 1930 when the progressive sectors took power and the rotation system of these two political spheres began. The National Concentration party led the country from 1930 to 1934, a period in which Colombia suffered the consequences of the crash of 1929 and a war against Peru. In 1934, the liberal president Alfonso López Pumarejo implemented political measures in line with the New Deal policy in the United States (Sixirei Paredes, 2011).

The freedom of the press slowly expanded during this period. On the 15th December 1944, Colombia passed a law to declare that the press could be free in times of peace. This limitation, however, worked as a mechanism to restrict liberties. During the same period, a new leader from the liberal party emerged, Jorge Eliecer Gaitán. On the 9th April 1948 Gaitán was murdered by a hired assassin who was later lynched and killed. This killing is known as the Bogotazo and is one of the most important landmarks in recent Colombian history as it triggered a new war, known as La Violencia. On the 9th November 1949 prior censorship was re-established (Cacua Prada, 1968: 1034).

3. Violent confrontation and Media control

Following the progressive experiences of the 1930s, in both Colombia and Spain a new period began in which the promotion of civil rights suffered serious setbacks: the Spanish Civil war ended in 1939 leading to a 40 year dictatorship and Colombia lived a long period of war during La Violencia. In these contexts, during the 1960s the armed group ETA and the Colombian guerrillas began their activity

following the path initiated by national liberation movements in other parts of the world. The modern violent conflicts in Colombia and the Basque Country also began in that decade.

3.1 *Censorship during Franco's regime (1936-1975) and La Violencia (1948-1957)*

The Franco movement created prior censorship mechanisms during the Civil War. On the 22nd April 1938 a law was passed banning all Republican propaganda and setting up the structure for prior censorship. Along these lines some years later, the Franco movement completed its legal repressive structure in the 'Fuero de los Españoles' (1945), "the constitutional Shell for General Franco's regime", which "included and limited the right to freedom of speech at the same time". Article 12 of the Fuero de los Españoles stated that "every Spaniard can express their ideas freely as long as they do not go against the fundamental principles of the State". Similar to other dictatorial systems, censorship was one of the bases on which to sustain the Franco regime.

This press related legal framework continued until 1966, when the Press and Printer law 14/1966 was passed on the 18th March, commonly known as the *Fraga law*. This legislative initiative was connected to the slow process of liberalising dictatorial policies, which was promoted by the Minister of Information and Tourism back then, Manuel Fraga. According to Barrera, this law "was a significant landmark in the liberalisation process of the regime" (Barrera, 1997). The new law, however, did not abolish the system of prior censorship but established "fresh control mechanisms" (Sinova, 2006: 8). In any case, this law did introduce some limited liberalisation that allowed some newspapers, such as *Madrid*, the possibility of writing about some topics that had been censored in previous years. Ruiz Romero (2003) argues that "the demands by the international community forced the control mechanisms of the press to become subtler", but, nevertheless, those demands did not suppress said control mechanisms.

Colombia also suffered a similar type of censorship at the time of La Violencia (1948-1958), which caused between 200,000 and 300,000 killings and the forced displacement of more than two million people. Acuña Rodríguez (2013: 243) explains that during this period, censorship was used as a government strategy to hide the serious situation of public order on the streets. Furthermore, Gustavo Rojas Pinilla, a member of the military, took power in 1953 and established new control mechanisms, creating a State body, the ODIPE (the State Office for Information and Propaganda). Through this agency, Rojas Pinillas attempted to make himself more popular, and managed to become an "omnipresent figure in Colombian people's official and everyday activities" (García-Villamarín, 2017). This army leader legislated censorship through decrees to establish a state of emergency, and he closed two liberal newspapers, *El Tiempo* and *El Espectador* [9] (Sixirei Paredes, 2011: 56). La Violencia concluded with a rotation agreement in 1958 between liberal and conservative parties. [10]

3.2 *The creation of armed groups: the FARC and ETA*

As pointed out above, the beginning of the modern conflicts in Colombia and the Basque Country is usually set in the 1960s, when the most prominent non-state armed groups were created. Euskadi eta Askatasuna (ETA) was formed during Franco's dictatorship by a group of students who wanted to establish some political distance from the moderate nationalism promoted by the PNV (Partido Nacionalista Vasco). In 1959 ETA organised its first assembly and the first killing was carried out in 1968. In the last years of the dictatorship and during the transition to democracy, several armed groups that opposed the dictatorship were active; apart from ETA, there were the Comandos Autónomos

Anticapitalistas (CCA or CCAA) and, on a Spanish level, the Grupos de Resistencia Antifascista Primero de Octubre (Grapo). During the same period, there were also right wing armed groups, such as the Triple A and the Batallón Vasco Español. Moreover, in the 1980s the GAL (Grupos de Antiterroristas de Liberación) was created - a death squad connected to the PSOE (Partido Socialista Obrero Español), back then led by the former Prime Minister Felipe González.

The origin of the Colombian guerrillas is linked to the violent groups created by the *campesinos* during La Violencia. The killing of Gaitán triggered the creation of most of these groups. In 1964 there were at least 100 of these groups and many of their members joined the revolutionary cause, following the Cuban example. In 1964 they created the Ejército de Liberación Nacional (ELN), and in 1966 the FARC-EP (Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo).

The violent confrontation between the guerrillas and the Colombian military was completed with right wing paramilitary armed groups. The president of Colombia Guillermo León Valencia passed two decrees in 1965 and 1968 legalising “civil defence” paramilitary groups. There are two different branches to the armed struggle in Colombia: the direct confrontation between the guerrilla movement and the government, and the links between drug trafficking, the guerrillas and paramilitary groups (Calderón Rojas, 2016: 62). State groups, in addition, had connections with paramilitary groups and drug dealers.

In Colombia and the Basque Country, the violence produced by state and non-state armed groups created a threat to journalists and, consequently, to the freedom of the press and freedom of speech. These threats led to both censorship and self-censorship (Barbeito, FLIP, 2009: 47; Roldán *et al.*, 2008:).

4. Constitutional rights and freedoms: 1978 and 1991

The current legal concept of press freedom in Spain and Colombia was included in the Constitutions passed in 1978 and 1991, respectively. Furthermore, both constitutional texts have similarities since the Colombian Constitution used the Spanish one as a model. The right to freedom of speech, which includes the freedom of the press, is included in both legal texts in a clear and unambiguous manner. This right, however, was violated before and after the approval of the two Constitutions.

The Spanish Constitution was passed in 1978, in the context of the transition from dictatorship to democracy. After the dictator Francisco Franco died in 1975, several legal measures were adopted in order to progressively reform the system and move towards a more democratic state. The best known legal measures passed in the 1975-1978 period are the amnesty laws and the law for political reform, which permitted the liberation of most political prisoners and the legalisation of some political parties (primarily the Spanish Communist Party). Another measure adopted along these lines was the Royal Law-Decree 24/1977, of the 1st April, that annulled the Press Law of 1966. The aim of the decree was to recognise freedom of speech and freedom of the press. [11] At the same time, the Ministry of Information and Tourism, a typical body in dictatorial regimes, was suppressed.

In its wording, the Spanish Constitution is in line with international standards of Human Rights and, in fact, it systematically includes the International legal order. The right to freedom of speech and the press are included in the section about fundamental rights and public liberties: Article 20 recognises the right to “express and spread thoughts, ideas and opinions using oral and written words or by any

other means” (Point 1.a). The Constitution also eliminates all forms of prior censorship (Point 2) and states that the only limits to this right are the protection of “honour, intimacy, the right to self-image and the protection of children and young people (Point 4). [12]

Political violence and social agitation were common during the Spanish transition. These were also the darkest years for the Basque conflict.[13] During this period, the first journalist was killed: on 28th June 1978, ETA killed José María Portell, director of *Hoja del Lunes*, based in Bilbao, and editor of the newspaper *Gaceta del Norte*..[14] Five years later, in 1985, the GAL killed Xabier Galdeano, correspondent of Egin (30th March 1985) and four years later the same group killed the journalist and Herri Batasuna representative in the Spanish Congress, Josu Muguruza (20th November 1989).

In contrast to the Spanish Constitution, the one passed in Colombia did not transform the political regime of the country, as the system was democratic before and after the approval of the Constitution. In any case, the constitutional text in Colombia also had the objective of creating a deeper democracy in a country that was in the middle of a violent conflict and had failed in its first attempt to promote a peace process. In addition, the Constitution was passed in a difficult moment for Colombia: the country had the highest homicide rates in the world, due to the internal armed conflict and the spread of drug related cartels. Among the drug cartels, the most powerful were the ones in Medellin and Cali. In 1986, hired killers following the orders of Pablo Escobar, killed the director of *El Espectador*, [Guillermo Cano Isaza](#) (17th December 1986).

The decade of the 1980s was very intense. [15] Colombia suffered from the violence of the guerrillas, the army, the paramilitaries and the drug cartels, and in 1985 it also lived one of the biggest crises of its history: the Palace of Justice siege. The left wing guerrillas of the M19 group entered the Palace of Justice and took more than 350 people hostage - visitors, judiciary members and workers. The crisis was managed disastrously by the army and the government, ending 27 hours later with 98 people dead and 11 disappeared. The massacre was carried out within the context of peace talks between the president, Belisario Bencurt and M19 and FARC. During that peace negotiation, an agreement was reached with M19, leading to the group disbanding in 1990. Yet, the peace talks between the FARC and the government in 1984-85 – in which the guerrillas had for the first time “a significant visibility on television” (de la Roche, 2005:4) - did not end well. In fact, the political party created by the FARC in that context, Unión Patriótica, was exterminated in the 1980s and 1990s: more than 3,500 members of the party were killed by the military, paramilitary and drug cartels in a series of massacres that have been recognised as political genocide (Cepeda Castro, 2006).

The political Constitution passed in 1991 was designed in this context. Article 20 of the Constitution recognises the right “of every person to express and spread their thoughts and opinions; to inform and receive true and impartial information and to create Media”. The same article also includes that the Media is “free and has a social responsibility”, it gives guarantees to “the right to rectify” and states that “there will not be prior censorship”. [16] Nevertheless, the darkest years of the armed conflict were yet to arrive and the attacks on freedom of speech and freedom of the press, as in Spain, did not end with the approval of the Constitution.

5. The conflicts continue

The bloodiest years of both conflicts took place after their respective constitutions were passed. Along with the escalation of violence, fresh attempts for peace also arrived, but most of these attempts failed,

up until recently. In both Colombia and the Basque Country there were peace talks in the late 1990s, but, also in both cases, violence escalated after their failed end: the post 9/11 era was violent in both places. During this period, journalism became professionalised and the Media began its digitalisation process.

5.1 *Failed peace processes in the late 1990s*

The fall of the Berlin Wall led to several conflicts and also peace processes during the 1990s. Colombia and the Basque Country followed the path initiated by South Africa and Northern Ireland and, although unsuccessful, they also made an attempt for peace in the same decade. Those were not the first steps taken towards peace. Colombia had had peace talks in the 1980s and, in a similar vein, the first peace negotiations between ETA and the Spanish government took place between 1987 and 1989 in Algiers.

Although journalists were attacked by drug dealers in Colombia in the 1980s, it was not until the late 1990s that the country became the world's most violent place for journalists due to violence carried out by guerrillas, paramilitaries and drug dealers (CNMH, 2015: 95). In 1997, Colombia hosted a new pacification attempt with fresh talks between the FARC and the Colombian president at the time, Andrés Pastrana. The peace negotiations were carried out in the demilitarised area of El Caguán, which was one of the peace zones under the control of the FARC. [17] The FARC and the government reached an initial peace agreement in 1999 (the text was named *Agenda Común por el Cambio hacia una Nueva Colombia*), and in the year 2000 they brought their conversations to Europe. Also at this time, the government implemented the Plan Colombia, a key initiative for the later strategy of military conflict management and US intervention. In 2002, however, the peace talks fell into deep crisis - the process broke up and a new phase of violence began. The kidnappings carried out by the FARC, and the military operations of president Álvaro Uribe were the primary elements in this new stage. Uribe's presidency lasted from 2002 to 2010, when Juan Manuel Santos took over. [18]

The Basque Country also had a failed peace process during those years. The so-called Lizarra-Garazi process began in 1998 with an agreement between Basque nationalist parties, some trade unions and other left-wing parties. This process was modelled on the Northern Ireland Peace Process of the 1990s (Mess, 2003). ETA announced a ceasefire on the 16th September 1998 and the president of the Spanish government at the time, the conservative José María Aznar, initiated a series of peace talks with ETA in Zürich. The process did not last long, however, and finally broke down in December 1999.

Before the Lizarra Garazi process, ETA had put forward a fresh strategy commonly known as the *socialisation of suffering*, by which they expanded their attacks to sectors not only connected to the police or the military. The strategy was included in the reports *Oldartzen* (1994) and *Txinaurriak* (1995), and the latter included a direct threat against journalists. On the 7th May, 2000, ETA killed José Luis López de Lacalle, a columnist on *El Mundo* and a member of the Ermua Forum, created to oppose ETA. A year later, ETA killed the financial director of *Diario Vasco*, Santiago Oleaga on the 5th May, 2001.

In the same year that the Lizarra-Garazi process took its first steps, one of the first attacks against the freedom of the press also occurred: the Spanish Courts ordered the closure of the Basque newspaper *Egin* and the radio *Egin Irratia*. In 1998, without a firm court decision and as a precautionary measure, the Guardia Civil closed *Egin* and *Egin Irratia*, two Media sources with Basque pro-independence ideology. This was followed in 2002 by the closure of the magazine *Ardi Beltza*, and in 2003 the only

daily newspaper in the Basque language, *Euskaldunon Egunkaria* met a similar fate. All these measures were carried out within a precautionary framework that went against the Constitution (De la Cuesta y Muñagorri, 2008). In fact, the journalists of *Euskaldunon Egunkaria* who had been arrested and tortured were later acquitted in the absence of evidence of them having links with ETA. Similarly, a resolution of the Supreme Court in 2009 recognised that the decision to close *Egin* was not lawful.

5.2 Post 9/11 violence

The Basque and Colombian conflicts escalated at a point in which journalism was in a clear process of professionalization. Censorship and self-censorship were increasing in these two case studies as the new millennium brought more violence. According to the figures published by the Victims Unit, the highest number of victims in Colombia were produced in the years 2000 to 2003 and, despite the worst years in the Basque Country being during the Spanish transition to democracy (1970s), after the year 2000 a fresh spike of violence occurred. In that year, for instance, 23 people were killed by ETA.

During Uribe's presidency (2002-2010) two elements were particularly prominent: the implementation of the Plan Colombia (a military and economic agreement between the US and Colombia) and the process to demobilise paramilitary groups through the law Justicia y Paz (Peace and Justice), which was presented, rather euphemistically, as a process of transitional justice. The Plan Colombia (Plan para la Paz y el Fortalecimiento del Estado) was an agreement designed in 1999 during the peace process in El Caguán and initially signed to promote peace and the fight against drug trafficking. After 9/11 and the arrival of Uribe, however, the Plan was left in the hands of Uribe and George W. Bush, and was implemented as a national security doctrine of the US. The plan had a strong military focus and opposed any possibility of a dialogue to promote the end of the conflict. On the other hand, the Justicia y Paz law (Law 975, passed in 2005) was designed by Uribe to demobilise around 30,000 paramilitaries and was based on an agreement made in 2003 between the AUB and the government. Yet this agreement was used in the end merely as an amnesty, not as recognition of crimes committed: there were no proper truth mechanisms and victims' rights were not recognised. Furthermore, after the process most of the paramilitaries reorganised into new groups, commonly known as BACRIM or criminal gangs.

The same year the Justicia y Paz law was passed, in 2005, secret peace talks were taking place in the Basque Country. The Loyola process had two levels: on the one hand, the Spanish government, then led by José Luis Rodríguez Zapatero (PSOE), made several contacts with ETA in Geneva and, on the other hand, political representatives of the PSE (the PSOE wing in the Basque Autonomous Community), the PNV and the former Batsuna (the pro-independence left wing party) secretly met in the Sanctuary of Loyola, in the Basque Country (Murua, 2010). ETA declared a ceasefire in 2005 which lasted until December 2006, when they planted a bomb in the airport of Madrid, killing two people. In a fresh period of violence, ETA attacked several Media sources: in 2008 the offices of *El Correo* and *EiTB*, the Basque public radio and television body. From a journalistic perspective, this period has been defined as the era of highest Media polarisation regarding the Basque conflict (Piscina *et al.*, 2016).

Peace processes failed while the Media continued a process of permanent digitalisation and change. The rights and freedoms traditionally associated with the printed press started to be regulated in legislation related to the digital world within the framework of the ICT, Information and Communication Technology. [19]

6. Peace, digitalisation and freedom of speech

The final periods in the Colombian and Basque Conflicts have two primary elements: the process of conflict transformation (the transition to peace) and the Media digital transition. In this context, the rights to freedom of the press and freedom of speech faced new challenges as the digital space brought new opportunities for developing these rights, but also new control mechanisms. Social media have become one of the most significant tools for participating in politics, whereas the traditional Media is struggling to find its voice on the Internet, where they share space with their audiences (García-Perdomo, 2017). The lack of regulation on the Internet, and the difficulties and challenges in doing so, relate to the current debates on the freedom of the press and freedom of speech.

The final stage of the Colombian conflict commenced in 2011 when the Law for Victims and Land Restitution was passed, which recognised the armed conflict (Uribe did not recognise this when he was president). From 2010, the new president, Juan Manuel Santos, demonstrated that he wished to turn around Uribe's approach to the conflict and that he was willing to find a negotiated solution to the problem. Thus, peace talks began in 2012 and following several years of negotiations in Habana, the Colombian government and the FARC signed a peace agreement in Cartagena (Colombia) on the 26th September 2016. [20] However, not long after, and against all political prognostics, the result of the plebiscite celebrated on the 2nd October showed that the majority of voters were against the peace agreement. Consequently, the government and the FARC were forced to modify several parts of the accord and they signed a fresh version of it on the 28th November 2016. The new text changed several aspects designed by the Special Jurisdiction for Peace, but it did not modify the small parts in the agreement that referred to the media: the peace agreement acknowledges the existing lack of democracy and diversity in the Media space and includes measures to change that situation through new regulation regarding institutional advertising, the delivery of new licenses for community radios, media training for community Media and the opening of new media spaces to promote the work of social movements and peacebuilding culture. [21]

In the Basque Country the final stage of the conflict also began in 2011, when ETA announced the end of its armed campaign. Since then few steps have been taken towards a peacebuilding framework: the pro-independence political party Sortu was legalised in 2011, ETA disarmed in 2017 and dissolved in May 2018, and the Basque Autonomous government and the government in Navarre have taken several steps towards acknowledging different types of victims of the conflict (Álvarez Berastegi, 2017). The Spanish Government, in contrast, has so far maintained the counter-terrorism campaign from the pre 2011 era. [22] There is also still an absence of a solution in terms of Basque political prisoners (in 2018 there were 287 prisoners connected to the Basque conflict). Considering there is no official peace process in the Basque case, there is no peace agreement either. There are, nevertheless, several agreements and initiatives (some of them institutional and others led by civil groups) that aim at promoting peace. On a social level, the Social Forum to Promote a Peace Process is leading this type of initiative whilst on an institutional level the regional governments in the Basque Autonomous Community and Navarre are adopting a peacebuilding approach. In terms of the Media, the government in the Basque Autonomous Community and the public body *EiTB* signed a collaboration agreement in 2014 in order to share, design and develop the key areas included in the Peace Plan, approved in 2013.

In this final stage of the conflict a paradoxical phenomenon is also taking place in Colombia and the Spanish State: while obvious progress has been made regarding transparency legislation about public information, [23] there has also been a significant setback in terms of freedom of speech because of new forms of censorship, mainly on the Internet. The new control mechanisms were regulated in Spanish legislation in 2015 through a reform in the Penal Code and a new law of Citizen Security, better known as the *Gag Law*. These initiatives have given legal support to censorship, and even jail sentences, for making certain Twitter comments, song lyrics and even t-shirt slogans. [24] There is no similar legislation in Colombia, but new forms of censorship and control are taking on a variety of forms. One of the most controversial cases in 2018 referred to the threats received by the cartoonist Matador during the Colombian electoral campaign. [25] Even though the new forms of censorship have an effect on diverse themes, in both Colombia and the Basque Country most of the controversial cases are related to the conflict: censorship is applied in cases considered offensive to certain victims or actors in the conflict. Therefore, the current debates on freedom of speech are connected with the new forms of institutional censorship and new forms of threat in social media. In a context of digital and political transition, *what* and *how* to tell the violent past is managed through new mechanisms to control freedom of speech.

Consequently, these days more than ever, the public sphere is connected to the digital Media space. It is becoming more and more difficult to distinguish the voice of journalists from that of citizens, and the censorship against freedom of the press and freedom of speech is intertwined. In conclusion, in the final period of peace and digitalisation in Colombia and the Basque Country, new opportunities to tell stories and the “visualisation of attacks against civilians and silenced voices” (Juárez Rodríguez, 2014: 264) have been created, but, at the same time, we also find new forms of control to silence certain narratives and discourses about violence.

7. Conclusions

There are obvious differences between the Colombian and the Basque conflicts. The dimension of the conflicts, the socio-political elements of each society and the design to solve the conflicts differ, yet the comparative perspective used in this article could be useful to have a better understanding of historical developments and current debates in conflicted areas. A key aspect the case studies examined in this article share refers to the battles between narratives on the past; that is, the meta-conflict or the conflict about how to define the conflict (O’Leary and MacGarry, 1995). In both Colombia and the Basque Country we find two broad groups in this respect: the political sectors that deny the political origin of the conflict and, therefore, also deny any political or negotiated solution to it, and on the other hand, the political and social actors who believe that the best framework in which to transform the conflict should be based on a political negotiation (Batista, 1999; Whitfield, 2014; Murua, 2015).

The historical analysis of the right to freedom of the press in Colombia and the Basque Country illustrates the irregular development of this right since its early constitutional formulation in the 19th century. In the 20th century, wars and dictatorships promoted censorship and Media control. Later, with the emergence of modern violent conflicts, censorship measures spread significantly. In addition, the historical comparative view shows how the mere inclusion of a right in a constitution is not enough to accomplish it; legal texts require further political development. This work also gives examples of how freedom of the press and freedom of speech are two of the most violated rights in violent conflicts.

The contribution of the article lies in the connections found between the right to freedom of the press and the process of conflict transformation. Firstly, recent censorship mechanisms demonstrate that new forms of control require a re-think of the concept of freedom of speech in order to accomplish this right on the Internet. In this respect, we need to pay attention to recent setbacks, particularly in terms of the Spanish case and the gag law, but also in Colombia regarding some of the decisions of the Constitutional Court to regulate the Internet (FLIP Report, 2017: 12-15). These challenges are not unique to conflicted places or post-conflict countries; however, they are very significant in places where freedom of the press has been especially violated and there are current attempts to promote democratization and peace.

Political transition should consider specific measures concerning the communication space. Although the Peace Agreement in Colombia includes some aspects to promote democracy in this sense, it does not include specific measures about freedom of the press and freedom of speech. In 2017 the Colombian government rejected a decree to guarantee freedom of speech which it had previously announced in 2012. Yet, the necessary debate on these rights within the digital framework should be added to the debates about political transition, particularly considering that most censorship concerns conflict-related issues and narratives on the past. The freedom of the press and democracy “feed each other” (Idoiaga and Ramírez de la Piscina, 2002: 286) and, therefore, the level of press freedom will always reflect the level of democracy established during a process of conflict transformation (Bock Ruiz *et al.* 2016:4).

Together with the debate on freedom of speech, the political transition in Colombia and the Basque Country should consider past violations of this right. As an example of this, in 2013 Colombia celebrated an initial commemorative event of symbolic reparation to remember the journalist killings during the conflict. However, the programme designed to implement specific reparations in this respect was later halted (FLIP Report, 2017: 9).

In conclusion, there are two interconnected elements in the conflict and press freedom arena: 1) the debate about freedom of speech in the post-conflict context and the digital age, and 2) the need to remember the consequences of censorship and violence against journalists. In addition, codes of conduct for journalists covering the news on conflict and about the conflicted past (testimony gathering, exhumations, etc.) are equally needed in these contexts (Newman *et al.*, 2018). The analysis of the development of press freedom shows the difficulties in implementing this right in democratic societies and it also demonstrates the gap between the legal framework and reality. The digital transformation has created new challenges in this respect and the violations of the past and the present should be included in the current debates on the promotion of peace, democracy and rights.

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Notes

[1] Among these attacks, we find killings, injuries, threats and the obstacles imposed on access to information.

[2] In the context of the Basque conflict, pro-independence or/and left wing armed groups were responsible for 837 killings, State forces caused 94 deaths and paramilitary and right wing groups killed 73 people (Carmena et al., 2013). In addition, 4,113 cases of torture of prisoners have been documented (Etxeberria et al. 2017). The figures are higher in Colombia. The Single Register for Victims (Registro Único de Víctimas) calculates there are 8.6 million victims, and the majority of them are victims of forced displacement, around 7.7 million in total. The number killed is 220,000, 170,000 people are missing and 36,000 people have been kidnapped. According to the data collected by the National Historical Memory Centre, during the period of 1958 to 2012, 81% of the dead were civilians and approximately 60% of the killings were caused by armed groups. The total population in Colombia is 48 million and in the Basque Country, in contrast, 3 million (including the population from the two administrations within the Spanish State and the French Basque Country).

[3] Very few academic studies have compared Colombia and the Basque Country and most of them have focused on the connections between the FARC and ETA (in 2010 the National Court in Spain - Audiencia Nacional - initiated a case focusing on this link) and on the peace framework both cases studies share (Fisas, 2015; Ugalde Zubiri and Freyter-Florián, 2014).

[4] Article 19 of the Universal Declaration of Human Rights states that “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 and regardless of frontiers”.

[5] This declaration was included in the Constitution from 1793, which referred to the freedom of the press, concluding that “the French people” had “the right to manifest their ideas and opinions using the press and any other means”.

[6] Later, the Constitution from Cádiz included in article 371 that “all the Spanish people have the right to write, print and publish their political ideas without asking for a licence, without revision or confirmation whatsoever before publication, always under the restrictions and responsibilities established by the law”.

[7] The Constitution from Antioquia, from the 3rd May 1812, was closer to the French conceptualisation of press freedom. It recognised the freedom of the press in Article 3: “The right to print is the strongest backing of a wise and liberal government”.

[8] Printing began in the Basque Country in the 16th century.

[9] An article written by Gabriel García Márquez in 1955 caused the close of *El Espectador*.

[10] In spite of severe Media control and prior censorship, during this period of 20th century there was significant technological progress in the Media in both Colombia and the Spanish State. Public television, one of the biggest revolutions on the Media scene, arrived in Spain during Franco’s regime and during the years of Rojas Pinillas in Colombia. On the 28th October 1956 the Spanish public television was established (Televisión Española, TVE) and the public television in Colombia arrived in 1954.

[11] Article 1 of the Law-Decree 24/1977: “The freedom of speech and the right to spread information using printed or sound media will not have more limitations than the ones stated by the general legal order”.

[12] Along the same lines, Article 55 of the Constitution states that when states of alarm or states of emergency are declared, some rights can be derogated, among these we find the rights recognised in Article 20. Moreover, Article 184 of the Constitution says that the Autonomous Communities of the Spanish State have direct and

non-direct powers regarding information. Based on this article, some Autonomous Communities, among them the Basque Autonomous Community, created in 1982 the television and radio public body Euskal Irrati Telebista (EITB).

[13] The referendum to ratify the Spanish Constitution took place in 1978 in a very tense political moment. Despite the final result being yes, in the Basque Autonomous Community the level of abstention was 55.34% and 33.37% in Navarre. Basque nationalist parties had called for abstention or a negative vote in the referendum.

[14] Two years later, in 1980, ETA planted a bomb against the director of *Diario de Navarra*, José Javier Uranga.

[15] Apart from violence linked to politics and drugs, that year Colombia suffered the tragedy of the eruption of the volcano Nevado del Ruiz, in Armero. The catastrophe is still remembered because of the footage of the 13-year-old girl Omayra Sánchez Garzón, who died after being stuck in mud for three days. 25,000 people lost their lives.

[16] Similarly to the Spanish Constitution, the limitations to freedom of speech are the right to honour and intimacy (Article 15).

[17] During the peace talks in El Caguán, the right wing paramilitary groups AUB (Autodefensas Unidas de Colombia) increased their activity.

[18] Iván Duque, the pro-Uribe candidate won the presidential elections celebrated the 17th June 2018.

[19] In 2009 Colombia passed the Law 1341, which regulates Technologies of Information and Communications. A similar law was passed in Spain in 2002 (law 34/2002, 11th June), which regulated the services for the information society and electronic sectors. These initiatives illustrate the level of technological development and communications in that decade.

[20] Apart from the FARC, Santos (who received the Nobel Peace Prize in 2016) also began peace talks in Quito with the ELN. These talks suffered several setbacks in 2018 and had to be moved them to Habana.

[21] The Final Agreement includes these in section 2.2.3.

[22] Since May 2018 Pedro Sánchez, from the PSOE, is the Spanish Prime Minister and it is yet to clarify if his government transforms this strategy.

[23] On the 9th December 2013, Spain passed Law 19/2013, to regulate transparency, access to public information and good governance. In 2014, the Colombian Congress passed a similar initiative: Law 1712. The Basque Parliament also began on a similar path in 2017 with the debate of a Law Proposal to promote transparency and citizen participation. In any case, the legislation referring to classified documents and State secrets establishes significant limits to these initiatives.

[24] This law includes 44 very serious, serious and minor attitudes, which are subject to sanctions that go from 100 up to 600,000 Euros. Some cases are, moreover, punished with a jail sentence. For instance, the fact of using social media to organise a protest can result in a fine.

[25] The judicial custody proposed against the cartoonist was finally rejected.

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