

The application of the conscience clause for journalists in Spain. Problems and limitations of an incomplete model

La aplicación de la cláusula de conciencia de los periodistas en España. Problemas y limitaciones de un modelo incompleto

CARMEN FUENTE-COBO, Centro Universitario Villanueva, Madrid, España (cfuentecobo@villanueva.edu)

JOSÉ ALBERTO GARCÍA-AVILÉS, Universidad Miguel Hernández, Alicante, España (jose.garciaa@umh.es)

ABSTRACT

The *Leveson Report* on the British press, published after the phone-hacking scandal that culminated in the closure of *News of the World* and the detention of dozens of journalists, recommends the inclusion of a conscience clause in journalists' contracts to protect them if they refuse to obey unethical orders. Spain was the first country in Europe to include journalists' right to a conscience clause in the Constitution of 1978 and to develop it by an organic law in 1997. However, more than thirty years since its constitutional recognition, the balance to be made is negative. Spanish journalists feel under growing pressures coming from within their own companies, while the conscience clause is not perceived as an actual and effective remedy. In this article we explore some causes for the limited effectiveness of the journalists' conscience clause in Spain.

Keywords: Conscience clause, conscientious objection, editorial charters, collective agreements, codes of ethics, Journalism ethics.

RESUMEN

El Informe Leveson sobre la prensa británica, publicado tras el escándalo de las escuchas telefónicas que culminó con el cierre del diario News of the World y la detención de decenas de periodistas, incluye entre sus recomendaciones la incorporación de una cláusula de conciencia en los contratos de los periodistas con sus empresas, como mecanismo de protección frente a órdenes que vayan contra la ética profesional. España es el primer país europeo que constitucionalizó este derecho al incluirlo en la Constitución de 1978 y desarrollarlo en 1997 mediante una Ley Orgánica. Sin embargo, transcurridos más de treinta años desde su reconocimiento constitucional, el balance que cabe hacer es negativo. Los periodistas españoles se sienten sometidos a presiones cada vez mayores de sus empresas, sin que el derecho a la cláusula de conciencia represente una solución real y eficaz. En el artículo se exploran algunas causas que explican esta limitada eficacia.

Palabras clave: Cláusula de conciencia, objeción de conciencia, estatutos de redacción, convenios colectivos, códigos deontológicos, ética periodística.

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INTRODUCTION

The process launched by the British Government to review the behavior of the British press after the scandal of the phone hacking of hundreds of people, ended in July 2011 with the closure of the newspaper *News of the World* after 168 years of uninterrupted publications, the arrest of dozens of journalists, police and private investigators and the establishment of an investigation Commission chaired by judge Brian Leveson. This process has been described as a true “cathartic moment” in the public life of the country (Brock, 2012). However, not all the voices coincide in that the social upheaval generated by the discovery of the breadth and depth with which some practices were implemented in the heart of the newsrooms will bring as a final result a real reorganization of the popular British tabloids, not only because some of these practices are firmly rooted in them from long before the scandal of illegal wiretapping (Mair 2013), but also by the traditional resistance of the British press to accept reforms imposed from the outside, and to account for their activity (Thomas Finneman, 2013). In any case, the Leveson report, published on November 29, 2012 after nine months of deliberations, 337 appearances and nearly 300 testimonies received in writing, questions not only the activity of certain media, but mainly the existing self-regulatory system and the function of the Press Complaints Commission, replaced by the Independent Press Standards Organisation (www.ipso.co.uk). Also, among the proposals contained in the report it is recommended the inclusion of a conscience clause in the contracts of employment of journalists, as protection against possible sanctions in the event that they refuse to undertake actions that go against the professional ethics. In his report, judge Leveson explains to what extent he “was struck by the evidence of journalists who felt that they might be put under pressure to do things that were unethical or against the code” (Executive Summary, p. 16).

When the right to freedom of expression is understood primarily as a right to publish, this is, a right of publishers and media owners, it is easy that property rights extend to the publishing field, to the contents. “I have not done such a long way not to interfere,” was the harsh response from Rupert Murdoch to the director of the *News of The World* when he expressed his concern

about the direct intervention of the tycoon in the daily contents of the newspaper, which he had bought in 1969. Victor Matthews, a constructor without media experience that acquired the *Daily Express* in 1977, referred this way to the independence of journalists: “Editors will have complete freedom in so far as they conform to what I say”. And Robert Maxwell, who took ownership of the *Daily Mirror* in 1984 under the promise to respect the independence of its professionals, was until his death in 1991 a continuous interference in the work of journalists of that media, so much that he replaced the functions of the chief editor. All to mold a newspaper tailored to his interests, from which, in his own expression, the newspaper was only the “megaphone” (quoted by Hamlin, 1998, pp. 33-48). This situation, as shown by the Leveson report, generates risks for the freedom of expression and requires counterweights, among them the protection of the autonomy of the journalist by instruments as the conscience clause.

The inclusion of this clause of conscience may be requested by the Independent Press Standards Organisation (IPSO), although for now it seems that this option is still in the air¹. It is possible, therefore, that the conscience clause is finally left in the area of self-regulation of media companies (Laville, 2013), despite the activity from the unions and some academic forums in favor of the conscience clause being compulsory in contracts between publishers and journalists (Cohen-Almagor, 2014; Petley, 2012)².

In Spain, as in other countries, the Leveson report has aroused great interest and has been reviewed in journalistic forums, which have focused more on the general issues about the status, composition and functions that must have the future monitoring body of the press, than on the recommendations about the clause of conscience of journalists.³ And, however, it is a relevant issue to the extent that a high percentage of Spanish journalists declares that they feel under pressure to modify the content of their information and that such pressures come, above all, of the inside of the company where they work (Asociación de la Prensa de Madrid, 2013).

This happens despite the fact that in Spain the clause of conscience of journalists is a right protected by the Spanish Constitution of 1978 (Art. 20, 1.d) and

developed by the Organic Law 2/1997, of June 19, which defines it as “a constitutional right of the information professionals that aims to ensure independence in the performance of their professional function” (Art. 1). It is commonly accepted doctrine that the conscience clause is an element of the contract of the journalist’s work, always present in the employment relationship established between the journalist and the information firm, even if it is not explicitly mentioned in each contract (Azurmendi, 2001; Suárez Espino, 2009; Escobar de la Serna, 2003; Carrillo, 1997).

In addition to their legal regulation, the conscience clause is also integrated into the instruments of self-regulation of the Spanish journalists. In particular, is included since 1993 in the deontological code of the Federation of Associations of Journalists of Spain (FAPE, by its Spanish acronym), the biggest professional organization in the sector. It has also been included in the editorial charters adopted by some media companies, which define the professional rights and establish mechanisms to resolve potential conflicts that may arise in the relations between news editors and the publishing company. And, finally, it appears in some collective agreements of the sector, within the conditions agreed between unions and media entrepreneurs. It is, therefore, a right which enjoys explicit recognition and a certain implementation, at least on paper, in the Spanish newspaper field.

OBJECTIVES AND METHODOLOGY

This study aims to analyze the evolution of the right to the clause of conscience in Spain in more than thirty years that have passed since the constitutional recognition of this right and, specially, since that right was developed by law, a decade and a half ago. The analysis attempts to answer the question of to what extent, and under what conditions, the conscience clause is an effective mechanism for the protection of the integrity of the profession. To do so, first we did a literature review focused both on the fundamentals and the legal application of the conscience clause for journalists in Spain, from its invocation before the ordinary courts and in accordance with the procedures established by the Organic Law 2/1997.

Second, we analyzed the presence and use of the clause of conscience through the mechanisms of self-regulation existing in Spain. We have reviewed, in this sense, all claims considered by the Arbitration, Complaints and Ethics Commission of FAPE, to verify to what extent the journalists turn to this professional organization, whose code of ethics includes expressly the right to conscience clause. This study was completed with information about the visibility of the clause of conscience in the newspaper companies that have editorial charters –all of which include the clause of conscience as a professional right–and professional representation committees to ensure the protection of this and other professional rights.

Thirdly, we did an analysis of the main collective agreements in force in the Spanish media companies, to try to determine if the conscience clause is part of the union agenda in labor negotiations. For the location and management of collective agreements we accessed the database of the Register of Conventions and Collective Agreements of Work (RECGON, by its Spanish acronym), of the Ministry of Employment and Social Security⁴. The period covered comprises mainly the agreements from 1996 to 2012, ending the update of documents in the first semester of 2013⁵.

The analysis of collective agreements includes both the private agreements signed by individual companies, and the sectorial conventions, that affect all news companies that do not have particular agreements. Within the sectorial conventions, we have studied the three signed in the sector of daily newspapers; the four in the sector of non-daily newspapers, and the only agreement to date for the commercial radio broadcasting sector. There is not an equivalent agreement for the private television sector. Among the particular conventions, we included the news agencies EFE, Europa Press, Servimedia and Colpisa. Among the editing companies of daily newspapers, we have selected the agreements signed by the publishers of newspapers of wider circulation, *El País* and *El Mundo*. In the field of private television, we studied the agreements applicable to the staff of TV channel *Cuatro* –integrated firstly in Sogecable and then Mediaset– and Antena 3. In the private radio broadcasting sector we chose the radio networks with more audience, *Unión Radio* (*La*

Ser) and *Uniprex (Onda Cero)*. Finally, in the field of public service broadcasting, we analyzed the collective agreement signed by the *Corporación RTVE*.

The work was completed with results of a survey to journalists in the community of Madrid within the framework of a wider research funded by the Ministry of Science and Innovation⁶, in which the authors participated and which included questions relating to the perception of journalists about issues affecting them in their professional life and the effectiveness of the tools to solve these problems. The information was obtained from the processing of 400 questionnaires completed in various series throughout 2012⁷.

THE LEGAL APPLICATION OF THE CONSCIENCE CLAUSE

The conscience clause of journalists has a legal tradition in Europe, which dates from the early 20th century. The first country to regulate it by a specific law was France, in 1935. The French standard has served as a model to other countries and it is partially the inspiration of the legislation adopted in Spain, first European country which made this right constitutional (Segalés, 2000; Navarro Rodríguez, 2002). A differential characteristic of the French model is that the 1935 Act was incorporated into the Labour Code. In the opinion of Segalés, this indicates that the field of application of the conscience clause is the labour one (pp. 42, 43). Currently the clause of conscience of journalists appears collected in Art. 17.112-5 of the Code du travail⁸.

The emergence of the conscience clause is linked to the process of professionalization of journalism which took place in the first third of the 20th century (Aznar, 1998) and currently is regulated as a right of journalists in some European countries (Italy, Portugal, Austria) and Latin America, including Bolivia, Paraguay and Ecuador, that have incorporated it in their constitutional order (Bamba 2011).

The slow implementation of the clause of conscience of journalists is due to different reasons. Among those commonly cited appears first the opposition from publishers, media owners and even journalists themselves, who have not favored the legislation on the clause of conscience and on the right to information, on the grounds that this sort of legislation represents a limitation to the freedom of expression, identified with the freedom of the press (Petley 2012; Carpizo,

2000; Voakes, 2000). In some cases, the opposition of journalists, editors and media can be tied to political or ideological reasons, and also to real fear that the power uses the legislation to silence the media. This was the situation in Ecuador during the processing of the Communication Law passed in June 2013, which includes among its contents the right to the clause of conscience of journalists and which is described by media companies as a “silence law” (Abbot, 2010). A similar controversy arose in Chile with the Law on Freedoms of Opinion and Information and Exercise of Journalism (Contardo, 1993), which nevertheless was finally adopted in May 2001. There are also cultural and historical reasons having to do with the innovation represented by the right to a clause of conscience, which is a feature of a universalist stage of information in which this is not subjected to the authority of the State or property of news media companies or professionals, but belongs to the public (Soria, 1978, 1987). Finally, the evolution of the clause of conscience—a grandiloquent name that generates high expectations (Aznar, 1998)—may have aroused some skepticism that does not favor its further development (Carpizo, 2000: 491).

From its inception to the present day, the original ideas of the clause of conscience as a mechanism to protect the ideological linkage of the journalist with its media have been overcome by its conception as a tool for the protection of professional ethics (Aznar, 1998; Suárez Villegas, 2009). Currently, the doctrine that considers the clause of conscience as a guarantee of the right of the public to receive information is common (Carrillo, 2000; Carpizo, 2000) and links it to the virtue of Justice, insofar as it allows to remove obstacles so that the informer complies with its duty to inform (Desantes, 1978). It is also a condition of the participation of the journalist in the news media undertaking and facilitates its “integrative configuration” (Nieto, 1978).

From the point of view of the employment relationship, some authors see the clause of conscience as a specification of the labour conscientious objection, which can offer greater protective intensity to the person precisely because of its specific character (Segalés, 2000; Díaz Arias, 2003). Other authors, however, insist that the clause of conscience and the conscientious objection should be treated as separate rights, since the first has a double component—private, as a subjective right of the professional, and public, as a guarantee of a free public opinion and base of the right

to information—, while conscientious objection only participates in the individual, personal and subjective dimension of who invoked it (Borgarello, 2008; Blasco Jover, 2009; Soria, 1989).

In fact, the confusion among three legal concepts that relate to different realities tends to be common (Soria, 1997): the right to the clause of conscience strictly by deviation of the editorial line of the media; the right to conscientious objection, which is a subjective, individual and personal right, although some authors use both terms synonymously (Barroso López, 2009, p. 125), and the rights of journalists about their signature based on the respect required for their work, which allow them to remove their signature if their work is deformed or altered. In the latter case, the right of resistance is confused with the faculties derived from copyright (Blasco Jover, 2009). Soria (1989) proposes that, instead of widening and “undermine” the clause of conscience, we should move towards the recognition of all the faculties inherent in copyright (p. 93). Díaz Arias (2000) understands that “many news manipulations could be resisted by invoking the sovereign and inalienable right of the journalist (...) to demand respect for their work”(p. 143)⁹.

As it is formulated in the text of the LO 2/1997, the clause of conscience of journalists translates into their right to the termination of their employment, receiving a compensation similar to what they would get in the event of unfair dismissal. This right of withdrawal could be considered in two cases: of “substantial” change in the information referral or ideological line of the media (Art. 2.1.a), and in the case of transfer of the professional to another media of the same group, provided that such transfer implies a “patent” rupture with the professional orientation of the journalist (Art. 2.1.b).

On the other hand, the law provides the right to professionals to refuse to participate, “with motives” in unethical journalistic information, without being sanctioned or cause of prejudice for it (Art. 3).

In the formulation adopted by the Spanish regulator, the conscience clause adopts a dual modality: *extinctive*—whereas, following the French model, it implies the termination of the contract in the specified cases—, and *resistant*, providing the possibility to that editor to reject orders that go against its professional integrity. The references in this case are ethical standards, which

define the obligations of the journalists before the editor and provide them with a specific ambit of autonomy (Segalés, 2000; Díaz Arias, 2003; White Jover, 2009).

Blasco Jover points out that the extinctive character of the clause of conscience as it appears in French legislation—that is, as a “right to collect unemployment “ to which is added the risk that the journalist who invokes it might be perceived as problematic by some other possible employers—has led to legislation adopted subsequently in other countries to add, along with the extinctive faculty, other rights that would allow the professional the possibility of refusing to obey certain orders, without meaning the loss of its job. This is how it has been collected in the Italian and Spanish regulations (p. 45).

Despite the apparent coverage that seems to provide, the clause of conscience is a mechanism barely used by the Spanish journalists, as shown by the little jurisprudence generated (only two sentences of the Constitutional Court in the last 15 years), to the point that, seven years after the adoption of the law, a study on it wondered whether it was actually in force (Navarro & Rodríguez 2004). The question acquires even more sense a decade later, considering its scarce invocation by Spanish professionals.

THE CONSCIENCE CLAUSE IN THE DEONTOLOGICAL CODE OF FAPE

With some significant exceptions, most countries have ethics codes of the journalistic profession and, in them, the clause of conscience has a relevant presence (González-Esteban, García-Avilés, Karmasin & Kaltenbrunner, 2011). In his work, published almost two decades ago, Tiina Laitila (1995) observed that the clause of conscience was cited by 18 of the 31 European codes analyzed. From this analysis, the author concluded that a possible code of ethics common to all European journalists should include principles shared by all and, among them, the independence guaranteed by the clause of conscience. This right is also included in many journalistic codes of Latin America. Among others, Barroso and López (2009, p. 132-134) cite the ethical codes of the Circle of Journalists from Colombia, in 1990 (updated in 2006); the Dominican Association of Journalists, in 1994; the Federation

of Journalists of Peru, in 2001; the National Press Association of Bolivia, in 2007; and the Association of Journalists of Chile, in 2008.

The code of ethics adopted in 1993 by the Federation of Associations of Journalists of Spain (FAPE), the main professional organization of the sector, includes the clause of conscience as a statutory right of journalists. The code establishes that, to ensure the necessary independence in the performance of their profession, the journalists must claim, for themselves and for those who work at their orders, “the right to invoke the clause of conscience, when the news organization they work for intends to a moral attitude that injure their professional dignity or substantially modifies its editorial line” (Art. 8, d).

FAPE has a good professional practice surveillance body called Arbitration, Complaints and Ethics Commission, launched in 1993. In 20 years of operation of this Commission, there has not been a single claim for breach of the clause of conscience. As reflected by a

recent investigation, complaints filed to this ethics body tend to have as object situations related to the protection of rights of third parties (to honor, privacy, etc.) or news production processes (accuracy, verification of sources, etc.), but under no circumstances journalists have considered that they could use it to claim the protection of the rights recognized to them by the same code of ethics that defines and requires their professional duties (Mora Saavedra, 2010).

THE CONSCIENCE CLAUSE IN EDITORIAL CHARTERS

Editorial charters are expressly recommended by the Parliamentary Assembly of the Council of Europe in its resolution 1003 on Journalism Ethics, approved on July 1, 1993, as a tool for management of the journalists' professional relations with media owners and executives, regardless of the job duties. Editorial charters recognize a series of professional rights and incorporate participatory

Table 1. Information companies that have writing statutes in Spain

MEDIA	TYPE OF MEDIA	SCOPE OF BROADCASTING	DATE OF APPROVAL	PROFESSIONAL REPRESENTATIVE BODY
El País	General information newspaper	National	June 1980	YES
La Voz de Galicia	General information newspaper	Autonomous community of Galicia	March 1988	YES
El Mundo	General information newspaper	National	December 1990	YES
El Periódico de Cataluña	General information newspaper	Autonomous community of Catalonia	November 1993	YES
Radiotelevisión Valenciana	Public broadcasting	Autonomous community of Valencia	September 1996	YES
La Vanguardia	General information newspaper	Autonomous community of Catalonia	June 2001	YES
Corporación de Medios Audiovisuales de Cataluña	Public broadcasting	Autonomous community of Catalonia	July 2002	YES (one for each media)
Radio Televisión Andaluza (RTVA)	Public broadcasting	Autonomous community of Andalusia	January 2005	YES (one for each media)
EFE	State news agency	National	May 2006	YES
Corporación RTVE	Public broadcasting	National	April 2008	YES (one for each media)
EiTB (Euskal Irrati Telebista)	Public broadcasting	Autonomous community of the Basque country	October 2012	YES (one for each media)

Source: Sánchez de la Nieta, Monfort, Fuente-Cobo (2013).

mechanisms that take the form of committees or councils elected by the newsroom members. Carrillo (2000, p. 410) states that these self-regulation tools allow to fill gaps that the regulation can present in terms of the clause of conscience of journalists, insofar as the charters delimits who are the owners of this right.

Initiatives to introduce editorial charters at the heart of the Spanish media have been scarce so far, although, no doubt, notable (table 1)¹⁰. All the charters provide for putting up of professional representative bodies, whose tasks include, in all cases, to mediate between the professionals and the news media organization in cases of invocation of the clause of conscience (Fuente-Cobo, 2009).

The right to the clause of conscience in editorial charters is reflected in different ways. Blanco Jover differentiates between the “first generation” charters, approved before the LO 2/1997 and the “second generation”, that reproduce in a more or less extended way the content of the legal standard of reference (p. 136).

In short, rights that are usually reflected in the editorial charters are as follow:

- Right of a news editor/journalist to request the termination of his/her employment obtaining compensation if there is a verifiable and permanent diversion on the ideological line of the news medium
- Right of a news editor/journalist to refuse to carry out work involving infringing the founding principles of the news medium.
- Right of a news editor/journalist to refuse to carry out a work that involves the violation of principles of professional ethics.

- Right of a news editor/journalist to refuse to carry out a work if he considers that it disturbs his/her conscience or personal convictions.
- Right of a news editor/journalist to remove his/her signature (or to not appearing on screen) of information deemed to have been substantially altered without his/her consent.
- Right of the newsroom as a whole to expose its discrepancy through the same news outlet if by majority (usually two-thirds) it is considered that said news medium has violated its founding principles or the principles of journalistic ethics.

It is not easy to determine the efficacy that can be attributed to the editorial charters, and more specifically to the newsroom councils¹¹ considered in them, in defending the autonomy of journalists against the impositions of the company, since the only information available is from the inside of newsrooms and is very scarce.

In fact, most of the news media that have adopted editorial charters not even provide information on them on their corporate websites (table 2), which could be an indicator of the low value accorded to these instruments intended to manage industrial and professional relations within news media companies. Nor is it easy to access information on the activity of professional representative bodies, since not all of them have their own web or space on the media website. In some cases they have been losing strength and leadership in newsrooms, or they have even disappeared as it is shown in table 3, based on a recent analysis on the visibility of the newsroom professional committees and editorial charters in the companies that have them.

Table 2. Information on the editorial charter offered by the media themselves or the owning company

	Efe	CRTVE	El País	La Vanguardia	RTVA	El Mundo	El Periódico	La Voz de Galicia	RTVV	CCMA	EITB
Can the editorial charter be accessed from the website homepage of the media or the media corporate?	YES	YES	NO	NO	NO	NO	NO	NO	NO	YES	NO
Is the editorial charter of the media cited in the information provided by the media itself?	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO

Source: Sánchez de la Nieta, Monfort, Fuente-Cobo (2013).

Table 3. Information about the activity of the newsroom council provided by the media or by its owner

	Efe	CRTVE	El País	La Vanguardia	RTVA	El Mundo	El Periódico	La Voz de Galicia	RTVV	CCMA	EITB
Does the newsroom council have a space in the corporate website of the media?	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Has the newsroom council a site outside the corporate website of the media?	NO	YES	NO	NO	YES	NO	NO	NO	NO	NO	NO
Is the activity of the newsroom council reflected in the information of the media?	NO	YES	YES	NO	YES	NO	NO	NO	NO	NO	NO

Source: Sánchez de la Nieta, Monfort, Fuente-Cobo (2013).

In the light of these data, it seems obvious that the activity of newsroom councils, if any, has hardly transcended, with very few exceptions. It is symptomatic in this respect that only the extraordinary circumstances of the blackout and closure of *Radiotelevisión Valenciana* has allowed to know the misadventures and disappearance of the newsroom council due in large part, according to some sources, to the harassment of the media direction¹², as well as attempts to revive it when the closure of the television and radio services dependent of that autonomous public body was already an immediate reality¹³.

Instead, it has had some significant activity of the News Councils of *Corporación RTVE* regarding especially notable cases of change of the informational line and alleged manipulation of the news content¹⁴ of the media belonging to CRTVE. In some of these cases, the public television News Council adopted a position on situations of violation of the professional conscience of journalists, as when it publicly denounced an alleged case of sanction to some editors of the program *Informe Semanal* for refusing to sign news pieces that they considered were manipulated by the media direction¹⁵.

In any case, as we have seen, the more or less intense activity of the News Council of TVE has an almost testimonial value in a scenario marked by the economic crisis that is shaking the newsrooms and leaving little room for other defense than of the own jobs and working conditions.

THE CONSCIENCE CLAUSE IN COLLECTIVE AGREEMENTS

In this scenario of professional deactivation the role of unions becomes more important, if possible, as the only organizations with legal capacity of representation and negotiation in the workplace. However, the analysis made by the authors on nearly 30 collective agreements in the sector of news media companies, signed between 1996 and 2013, and that affects news companies operating in the whole territory of Spain or whose business affect more than one autonomous community, show that there are very few texts reflecting the right to the clause of conscience of journalists.

The first nation-wide collective agreement affecting daily newspapers was approved in 2000 and urged the companies in the sector to incorporate editorial charters. This claim has been maintained in the two later agreements, including the one currently in force. In the sector of non-daily newspapers (magazines), in 2008 the article dedicated to the clause of conscience, which had been included in the first Convention of the sector, signed in 1996, was deleted.

The only texts in which the conscience clause is expressly reflected are the collective agreements of the news agencies Europa Press and Servimedia, as well as in those of the State news agency EFE and the private Colpisa, although in these last two cases it is formulated in relation to the rights of journalists over their signature.

Table 4. The clause of conscience in collective agreements of news agencies

Europa Press	"The direction of the company cannot oblige the staff to elaborate, for publishing, information that goes against their moral or ideological principles". (Art. 13) ¹⁶
Servimedia	"The direction of the company cannot oblige its staff to carry out information pieces that go against their moral or ideological principles. When it is needed to produce information that is subject to invocation of the clause of conscience by a worker, the responsibility for its dissemination will be of the one who ordered it. The invocation of the clause of conscience or professional secrecy will never be reason for transferring, punishment or dismissal of the professional who excercises this right". (Art. 12) ¹⁷
EFE	"The company cannot force its staff to sign information that go against their moral or ideological principles. When, for reasons of urgency, a worker shall prepare information that can be subject to invocation of this clause, the responsibility will be of the one who asks for it". (Art. 32,2) ¹⁸
Colpisa	"[...]In the event that any creation were modified in its content or extension, the author is entitled to eliminate its signature from the article". (Art. 26) ¹⁹

Source: Own elaboration.

Thus, we see that the clause of conscience does not appear as a significant claim on the collective negotiation agenda, except in the notable case of news agencies, since all of them have private agreements that address, in one way or another, the right of editors to refuse to perform—or sign—, information that go against their moral, professional or ideological principles.

PERCEPTION OF THE SPANISH JOURNALISTS ABOUT THEIR INDEPENDENCE

The limited invocation of the clause of conscience could lead to the conclusion that the Spanish journalists maintain a high level of professional autonomy in the media in which they provide their services, which would justify this limited use of a law formulated and developed precisely to protect this independence.

In the Spanish case, the surveys annually carried out by the Press Association of Madrid , reveal that the pressures to which journalists in the exercise of their work are subjected not only increase every year, but also come increasingly more forcefully from the internal scope of news companies.

Thus, in the last published survey, almost 80% of surveyed journalists²¹ indicate that they have been pushed to modify the content or orientation of some information (table 5) and 76% indicates that these pressures come from within their own company or boss (table 6). On a scale of 1 to 10, the Spanish journalists placed the degree of independence they have in a 4.0.

Table 5. Have you received any kind of pressure to modify the content or orientation of some information?

(Base: 455)	2012 %	2013 %
Yes, on many occasions	14.1	14.3
Yes, on several occasions	15.6	17.8
Yes, occasionally	23.2	23.9
Yes, but in few occasions	21.9	23.3
Never	25.1	20.7

Source: Asociación de la Prensa de Madrid, Informe Anual de la Profesión Periodística, 2013. Professional survey.

Table 6. From whom did these pressures come?

(Base: 455)	2013 %
Your company or boss	76.1
Political entities	23.1
External business instances	14.7
Representatives of public institutions	13.9
Media advertisers	16.9
Other pressure groups	4.5
Others	4

Fuente: Asociación de la Prensa de Madrid, Informe Anual de la Profesión Periodística, 2013. Professional survey.

Table 7. From your point of view, what is the most important problem which has the journalistic profession nowadays?

(Base: 1.340)	2013 %
The increase in unemployment and job insecurity that it causes	49.6
The lack of political or economic independence of the media in which we work	12.6
The poor remuneration of journalistic work	12.2
The lack of rigor and neutrality in the practice	7.3
Increasing of the workload and lack of time to develop the information	5.7
The poor level of training of journalism professionals	3.2
The bad social and professional image of journalists	3.0
Wage differences between managers and journalists in the companies	2.9
Media concentration	1.1
The competition between the news media and the corporate communication of institutions and companies	0.5
The difficulty of access to sources of information	0.1
Others	1.7

Fuente: Asociación de la Prensa de Madrid, Informe Anual de la Profesión Periodística, 2013. Professional survey.

Table 8. What is your perception about the following problems that supposedly affect the profession?

(Base: 400)	Very important %	Fairly important %
Precariousness and job insecurity	79.0	18.9
Predominance of the economic and political interests over the journalistic interests	60.6	30.8
Lack of respect for the autonomy of professionals	40.3	43.2
Low awareness of social responsibility of the journalist	39.6	44.4
Lack of professional ethics	39.0	47.0
Media concentration	28.6	45.6
Influence of ratings	26.8	51.5
Professional intrusion	26.4	31.0

Source: Own elaboration.

These results coincide with those obtained in the survey carried out by the authors among Madrid journalists (table 8), according to which precariousness and job insecurity is the most important problem of the profession today (97.9% indicate it As very important or quite important), followed closely by the predominance of economic and political interests over journalistic interests (91.4% indicate that it is very / quite important).

In this context it is not surprising that Spanish journalists bring to attention the lack of political or economic independence of the media as the second most

important problem which nowadays has journalistic activity, although at great distance from the number one problem: the impact of the economic crisis on employment (table 7).

These results are coincident with those obtained in the survey applied by the authors to journalists from Madrid (table 8), according to which precariousness and job insecurity are the most important problem of the profession nowadays (97.9% pointed it out as very important or fairly important), followed closely by the predominance of the economic and political interests on the journalistic interests (91.4% indicated that it is very/fairly important).

The impact of the economic crisis is adding a new source of pressure on journalists, because of the reduction of resources and especially of employment, which affects the quality of information production processes. APM estimates that between 2008 and 2013 around 20% of the jobs that existed in the media sector have been destroyed while the number of existing media has not been reduced in the same proportion, which means that the burden of work is now shared by fewer professionals, who also have fewer resources (APM, Informe Anual, 2013). According to results from the same survey, 89.7% of journalists perceive that the economic crisis is affecting the normal development of their work as journalists: 69.1% points out that they are forced to perform more functions than before, 68% says that they have less economic resources in their work, 48% points that they have less time to carry out their work and 28.7% feel less autonomous in their professional activity.

On the other hand, journalists perceive that problems and shortcomings seen in media companies and that act as impediments to ethical behavior, will hardly be resolved by the exclusive way of self-regulation. It is significant, in this regard, that only 16% of the Madrid journalists surveyed consider self-regulation to be sufficient, while 27% is in favor of a new legal regulation, 21% considers that the existing rules should develop steadily and 29% trusts self-regulation but linked to increased oversight through an organ of external control (table 9).

When identifying which mechanisms from the implemented by media companies are more effective to promote a more ethical performance (table 10), it is significant that professionals placed first the existence of professional representative bodies (newsroom councils), despite the fact that these councils or editorial boards have a reduced deployment and, so far, the attempts to generalize them by legal requirement have failed, such as happened with the Professional Journalist Statute presented in the Parliament for its legal procedures in 2004²².

SOME EXPLANATIONS

In the light of what we have seen so far, it can be concluded that the conscience clause is a right recognized on paper but very limitedly invoked by the Spanish journalists. Aznar (2010) attributes to the social and cultural context; i.e., to democratic and civic lacks, the limited application of the clause of conscience in Spain. However, some structural reasons can help to explain this little operation. The first of them is the absence, in Spain, of a legal status of the journalist profession that identifies and establishes rights and duties and serves as a

Table 9. Do you think that self-regulation is sufficient to ensure the media companies to behave in an ethical manner? (multiple choice)

(Base: 400)	
It is sufficient	16%
It should be supplemented by appropriate regulatory developments of current legislation	21%
It should be supplemented by adopting new legislation	27%
It should be supplemented through a external control body	29%

Source: Own elaboration.

Table 10. How do you rate the effectiveness of the following mechanisms to promote a more ethical journalistic performance?

(Base: 400)	(escala 1 a 10)
Newsroom councils	6.8
Defender of the reader, the viewer or audience	6.5
Ethics code	6.3
Style book	6.2
Ethics committees of professional associations	6.1
Social responsibility policies (RSE/ RSC)	6.0
Audiovisual Council	5.7
Social Media Policies	5.2

Source: Own elaboration.

legal reference not only for professionals, but also for the labour field, as in France. Despite efforts and attempts made especially since 2000 by different organizations representing journalists, these have not been able to agree on the content of a possible legal delimitation of the journalist's figure and, consequently, of the rights and duties contained in laws already in force, such as the clause of conscience. In this context, in the absence of a specific labour legislation on the journalist-worker, common labour legislation is applied. This facilitates the company almost total control over the information by the director of the media in which these journalists-workers provide their services.

Escobar Roca (2003), who has studied this situation specifically, argues that, despite the rights that theoretically protect them, the autonomy of journalists is very limited in

the heart of newsrooms. The author reaches this conclusion after analyzing three typical scenarios of conflict at the bosom of the news company. Firstly, the obligation to address an issue in a certain sense; the journalist is protected from this imposition by a clause of conscience that, as we have seen, is barely used. Secondly, the right of veto of the director on the work of the journalist, against which the professional lacks any legal remedy. And third, the alteration of the journalistic work by the company, a situation in which the power of the company remains absolute and the journalist is only protected in the event of alterations of a certain significance. Another author puts it in a graphic way: "Still today much courage is needed to invoke the clause" (Díaz Arias, 2003, p. 328).

A second reason that could explain why Spanish journalists do not claim most loudly the respect for their professional rights points to a certain inability by the organizations that represent them to assume the effective protection of these rights. In this regard, Segalés (2000) points out that the low presence of the clause of conscience in collective agreements can be derived, on the one hand, of the "professional" nature intended for this mechanism, distinguishing its scope from the own labour collective negotiation and, on the other, of the peculiar configuration of professional associations in Spain, developed aside from unions. For this author, the incorporation of the clause of conscience within the scope of collective negotiation would improve the overall legal framework (for example, avoiding as far as possible the extinction of the contract between the journalist and the company), but this would require unity of efforts since the negotiating capacity decreases as the territorial and personal scope in which agreements operate is atomized (pp. 177-179).

Spanish associative model is configured by organizations that defend only professional rights and have no power to act in the workplace and at the same time, by union organizations which, in the current regulatory framework, are the only ones capable of negotiation in the workplace. To the first group belong the press associations, of local level and coordinated through FAPE, majority among the Spanish journalists and professional colleges existing in some autonomous communities²³. Regarding union representation, the organizations with higher weight are the unions *Comisiones Obreras* (CC.OO.) and the *Unión General de Trabajadores* (UGT). There are also unions of journalists, at a local and minority level, acting coordinated through the Spanish Federation of Unions of Journalists (FESP).

In this regard, data on mobilization and associationism of Spanish journalists are scarce and partially

contradictory. According to the survey conducted by the authors in 2012, 65% of journalists in Madrid belongs to some professional organization or union and 21% even belongs to more than one (for example, a professional association and a union). The 62.3% of affiliated journalists is part of professional associations or organizations, as press associations and the associations of journalists, and 17.7% of unions of journalists.

The problem of labor and professional representation of journalists in Spain, in short, is not so much a matter of membership but, rather, of operational capacities of these organizations to adequately represent professional and labour rights of those represented by them. The diagnosis of Aznar (2005) remains valid: "The problem of Spain is not a particularly low index of associations, but rather that existing organizations do not seem able to unite the whole of the profession or of promoting the desirable unity of action. The result is a strong imbalance between the power of the companies and the journalists"(p. 159).

To this lack of unity of action among organizations of different origin, composition and objectives, adds a certain specific disability of the majority unions in collective negotiations to take demands of journalists, a collective which appears diluted in the whole of the labour forces that integrate media companies.

This lack of specific approach can be observed within the structure of the major trade unions, CC.OO. and UGT, comprising 73.7% of delegates in Spain²⁴ and that tend to integrate journalists within very broad and diverse areas as culture, sport or art, which include from professional athletes to bullfighting, zoos and amusement parks. This is the case of CC.OO., where journalists are integrated within the sector of Communication Media, Arts, Culture and Sport, majority in its scope (44% of the total of union delegates, according to information from the union)²⁵. It is also the case of the Federation of Services of UGT, which includes the Secretariat of Social Communication, Culture and Sports, in which there are professionals in all these areas²⁶ and, within them, are also integrated journalists. In this context, it should be understood that journalists who vote and elect union delegates belonging to these centrals or even forming part of them as affiliates, have the feeling that they lack specific weight within the mainstream unions, as pointed out by the official publication of the Association of Journalists of Catalonia (Sánchez, 2010).

To this limited visibility and apparent low specific weight of journalists within the unions that represent them, adds a negative perception by journalists about the performance of these unions, crystallized above all from the economic crisis affecting the sector. As

the survey of the Press Association of 2012 shows, the assessment that journalists make of the action of unions in negotiations (agreements, records of regulation of employment, etc.) that affect them is significantly negative (table 11). Looking for an alternative, journalists turn to professional organizations and associations, demanding from them a more active participation in the processes of collective negotiation (table 12). This represents an important challenge because some of the major organizations are associations, without power to act in the workplace and their landing in this area will require transformation processes which are yet to materialize.

Finally, in search of reasons that help to explain the paradox of a clause of conscience constitutionally protected and legally developed but scarcely applied, it is required much more sociological analysis of newsrooms, of their production processes and routines, the real way that journalists have to face the existence of dilemmatic situations and deal with them. These types of approaches, which have proved extremely useful to determine the distance between concepts and practice, have been used to identify models of ethical socialization and influence in newsrooms (Borden, 2000, Pritchard, 2014; Harcup, 2014; Wilkins, 2014).

A CHALLENGE FOR THE FUTURE

Considering the evolution of the conscience clause in Spain, we can conclude that its legal recognition is not enough, even though it has constitutionally mandated level. Nor its inclusion in codes of conduct as a right allowing journalists to deal properly with their professional duties is enough for this right to become an operational reality. As shown by the Spanish case, in addition to the legal and moral enforceability, it is important that the right to the conscience clause is assumed and defended both at the heart of the newsrooms and out of them by the whole of the journalistic profession. This requires a suitable representation and defense of the interests of journalists, both of labour and strictly professionals, and both within the general scope of collective negotiations and in the more specific of daily activity at the heart of newsrooms²⁷.

The Spanish case also highlights the existence of a set of regulatory factors contributing to the low efficiency of the conscience clause, both in its extinctive dimension and, above all, in the resistant:

- Non-existence of a general legal framework (professional statute) allowing delimiting the journalistic professional field.

Table 11. Perception of the Spanish journalists about the actions of unions and professional organizations

	Approve	Disapprove	Average mark
Performances by the journalists organizations in the treatment of professional issues	51.2%	48.8%	4.53
Performance of unions in negotiations (agreements, ERES, working conditions of journalists)	27.5%	72.5%	3.16

Source: Asociación de la Prensa de Madrid, Informe Anual de la Profesión Periodística, 2012.

Table 12. Opinion of the Spanish journalists on the role of professional organizations in the negotiations of working conditions

	YES	NO
They must take a more active role	97.4%	2.6%
They must participate even in business councils to negotiate collective agreements and working conditions	85.4%	14.6%

Source: Asociación de la Prensa de Madrid, Informe Anual de la Profesión Periodística, 2012.

- Decoupling between the legal norm that regulates the clause of conscience (LO 2/1997) and labour legislation.
 - Absence of the major professional organizations (professional associations) in collective negotiation processes, led by general unions.
 - Scarce implementation of professional representative bodies (newsroom councils or committees) at the heart of media companies.
- Insufficient development of regulation on copyright regarding the rights of the journalist about his work.
- It could therefore be concluded that the Spanish model is an incomplete model, which requires putting up additional mechanisms as indicated, to fully deploy its effectiveness.

FOOTNOTES

1. On October 10, 2013, the National Union of Journalists claimed that the conscience clause was required by law and included in the text of the Royal Chart, which will create the new regulator of the press, since in the versions circulated so far that clause did not appear included. Release of NUJ. In <http://www.nuj.org.uk/news/conscience-clause-remains-essential-for-journalists/>
2. The conscience clause has not been incorporated into the code of ethics of the Press Complaints Commission (PCC). According to some observers, the reason is that the PCC has not estimated that there was evidence enough of pressure on journalists by their companies to justify the adoption of this mechanism of protection. As a result, it has been understood that potential conflicts should be settled directly between employees and employers (Harcup, 2008).
3. See, in this regard, "*Los riesgos de regular por ley la prensa*" [The risks of regulating the press by law], number 26 of the magazine *Cuadernos de Periodistas* (2012), devoted to this topic, edited by the Press Association of Madrid. In http://www.cuadernosdeperiodistas.com/pdf/Cuadernos_de_Periodistas_26.pdf
4. <http://explotacion.mtin.gob.es/wregcon/>
5. The electronic registration of collective agreements signed in Spain is compulsory since the entry into force of the Royal Decree 713/2010, of May 28. This registration obligation extends to the agreements signed under cover of the text revised the Law on Workers' Statute, adopted by Royal Legislative Decree 1/1995, of March 24. In the case of the State level conventions or that affect more than one autonomous community, the management of the registration of collective agreements (REGCON) is entrusted to the Ministry of Employment and Social Security. The conventions here studied therefore correspond to the registered in the database of the Ministry of Employment and Social Security and subscribed since the entry into force of the revised text of the Law on Workers' Statute.
6. National project of R&D+i, financed by the Ministry of Economy and Competitiveness, *Deontología y excelencia informativa: implantación y consolidación de prácticas éticas en la empresa periodística* [Ethics and informative excellence: implementation and consolidation of ethical practices in the journalistic enterprise (Ref. CS02010-15575COMU), 2011-2014. Main researcher: Carlos Maciá-Barber (Universidad Carlos III de Madrid).
7. The field work was completed in three phases. In the first, a survey of 1,383 records of journalists who were contacted and from which we obtained a total of 229 completed questionnaires was generated (response rate: 16.5). Records were included in the second phase through the prospecting of websites and blogs of journalists and we contacted all the associations of professionals and communication companies in Madrid (53 total). In a third phase, the data gathering was extended through phone (565 valid calls) and social networks LinkedIn and Twitter (2.146 sent tweets).
8. *Code du travail. Version consolidée du code au 22 janvier 2014*. Recovered from <http://codes.droi.org/co/travail.pdf>
9. In its report, judge Leveson rejects the possibility of adding additional protection for journalists through the recognition of their moral rights over the signature, option to which the Telegraph Media Group (TMG) and News

International (NI) opposed emphatically. However, he urges the Government to consider a possible change in the copyright legislation to extend to journalists the rights on the integrity of their works enjoyed by other authors (Report, 4, Regulatory Models for the Future, pp. 1706-1707).

10. Of a total of 102 publishers of daily newspapers of general information existing in Spain according to the Media Map 2014 published by Ymedia (www.ymedia.esmapa-de-medios), only five have editorial charter. And if we look at public radio/televisions of the 13 agencies that manage TV channels and radio stations in Spain, only three have editorial charters.
11. Also known as newsroom committees, professional committees, professional councils or news councils, depending on each media.
12. Los protagonistas del fiasco en RTVV. La liquidación y el cierre previsto de Ràdio Televisió Televisión Valenciana tiene nombres y apellidos. *El País*, November 7, 2013. Recovered from http://ccaa.elpais.com/ccaa/2013/11/06/valencia/1383760094_866544.html
13. Trabajadores de RTVV impulsan la recuperación del Comité de Redacción contra 'cualquier tipo de injerencia'. Europa Press, November 15, 2013. Recovered from <http://www.europapress.es/comunitat-valenciana/noticia-trabajadores-rtvv-impulsan-recuperacion-comite-redaccion-contra-cualquier-tipo-injerencia-20131115121653.html>
14. Los periodistas de TVE instan a corregir las 'malas prácticas' de la corporación. *El País*, January 30, 2013. Recovered from http://sociedad.elpais.com/sociedad/2013/01/30/actualidad/1359557373_972534.html
15. Grave ataque a la libertad de información. Comunicado del Consejo de Informativos de TVE, November 23, 2012. Recovered from <http://www.consejoinformativostve.es/comunicados/comunicados/75-grave-ataque-a-la-libertad-de-informacion.html>
16. *Boletín Oficial de la Comunidad de Madrid*, number 62, March 15, 2010.
17. *Boletín Oficial de la Comunidad de Madrid*, number 139, June 12, 2010.
18. *Boletín Oficial del Estado*, number 250, October 15, 2010.
19. *Boletín Oficial de la Comunidad de Madrid*, number 281, November 26, 2011
20. <http://www.apmadrid.es/publicaciones/informe-anual-de-la-profesion-periodistica>.
21. According to estimates made by the end of 2011, the number of journalists in Spain ranges from 20,500 to 24,600. Until 2011, the Faculties of Communication have graduated 74,923 journalists, even though many of them do not work in the profession (Asociación de la Prensa de Madrid, *Informe Anual de la Profesión Periodística*, 2012).
22. Proposition for a Professional Journalists Statute Law. Presented by the parliamentary group of Izquierda Unida-Los Verdes-Iniciativa per Catalunya.. *Boletín Oficial de las Cortes Generales*. Congreso de los Diputados. April 23, 2004, Art. 22.
23. Currently, there are official colleges of journalists in Catalonia, Murcia, Galicia, Basque country and Andalusia, and are in the process of constitution in other autonomous communities such as Castilla y León, Extremadura, Rioja and Castilla - La Mancha. The regulation of professionals colleges is autonomous.
24. Source: *Anuario de Estadística del Ministerio de Empleo y Seguridad Social*, 2011.
25. www.fesc.ccoo.es/webfscmedios/
26. www.fesugt.es
27. In the British case, the defense of the clause of conscience has been the workhorse of the National Union of Journalists (NUJ), as highlighted by the Leveson report (p. 1705). Also in the case of France, the first country in which a law regulating the clause of conscience was approved, this came from the hand of the National Union of Journalists. Such regulation has been equally ineffective since although journalists are sometimes opposed to the owners of the media, they cannot really modify the situation at its heart (Rieffel, 2008). In spite of this, the information professionals seem to have found in collective agreements, the editorial representation or simple agreements between partners, alternatives more usual than the clause of conscience to defend their professional integrity (Azurmendi, 2003).

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ABOUT THE AUTHORS

Carmen Fuente-Cobo, is a Tenured Professor of Journalism at the Villanueva University Center (affiliated to the Universidad Complutense de Madrid) and joint professor to the Department of Communication Studies. She has a degree in Journalism from the University of Navarra and a Ph.D. in Information Sciences from the Universidad Complutense de Madrid. Her publications include *The Cultural Obligations of Broadcasting. National and transnational legislation concerning cultural duties of television broadcasters in Europe* (1990), *Infancia y Televisión. Políticas de protección de los menores ante los contenidos audiovisuales* [Children and Television. Policies for the protection of minors against audiovisual content] (2009), and *Ética periodística esencial* [Essential journalistic ethics] (2014).

José Alberto García Avilés, is a Tenured Professor of Journalism at the Miguel Hernández University of Elche (Spain). He has a Bachelor of Arts in Liberal Arts from the University of Ireland, a degree in Journalism and a Ph.D. in Communication from the University of Navarra. He participates in a research group on the convergence of media in Spain (www.infotendencias.com) and in the International Project of Convergence of Newsrooms in Europe "Konvergenz in Newsrooms". He is author of *Comunicar en la Sociedad Red* [Communicate in the Network Society] (in press), *Globalization and Pluralism. Reshaping Public TV in Europe* (2010), *El periodismo audiovisual ante la convergencia digital* [Audiovisual journalism in the era of digital convergence] (2006) and *El periodismo en la televisión digital* [Journalism in digital televisión] (2000).