



EUROPEAN UNION

OSCE Human Dimension Seminar Media Freedom Legal Framework

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Speaking Points

Working Group 1 – International Framework

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FREEDOM OF EXPRESSION, INCLUDING MEDIA FREEDOM, AND RESTRICTIONS

Freedom of expression and freedom of the media are intimately linked fundamental freedoms, that constitute two sides of the same coin. While freedom of the media is a collective embodiment of freedom of expression, it must be recalled that freedom of expression pertains to each human being and not just selected groups. Similarly, and as enshrined in article 19 of the ICCPR, restrictions to the right of freedom of expression pertains to individuals and not the media as such.

Freedom of expression under international Human Rights law is not "absolute." It may be limited, BUT (and this is a huge "but") only exceptionally, only for strictly prescribed reasons and only as determined through strictly prescribed, independent, and transparent procedures. For example, one cannot freely say things that are both intended to and can reasonably incite violence. But any measure taken against such speech must be absolutely necessary (not just "useful") to legitimately prevent a larger harm, and proportionate to the offense committed, and clearly prescribed by law.

Who makes these delicate determinations described above? The answer is that these decisions must be made by an independent judiciary or other equivalent independent authority, and certainly not by the government or the police. The government cannot be both the accuser and the judge. Which is why, in a democracy, it is of paramount importance to have a judiciary that is independent, well trained, of high quality and integrity, and free from political influence. If such a judiciary does not exist, then even the most well-drafted laws can become subject to abuse. Besides, any decision must also be in accordance with international human right law and other relevant standards, such as our common OSCE commitments.

This danger is even greater when the laws in questions are poorly drafted, broad, or ambiguous, and thus particularly subject to arbitrary interpretation. Because then, something as bad as outright suppression of speech can occur, and that is the "chilling" of free speech -- the making of individuals, out of fear of arbitrary prosecution, to remain voluntarily silent, to remain voluntarily at home instead of

participating freely in the democratic life of a country. To go from fear to voluntary “submissiveness.”

ACCESS TO INFORMATION

In a democracy, it is the citizens that can monitor, observe, and judge the thoughts and actions of their governments; not the governments that can monitor, observe, and judge the thoughts and actions of their citizens. If the latter prevails instead of the former, democracy is at risk.

In order to fulfill their function of monitoring and judging, citizens must have free access to all information and debate on any topic, including to different opinions that might exist in society. They must also have the right to participate in and to formulate those debates, by freely assembling, associating, and expressing their views.

In a democracy, having access to all information and opinions available has as a prerequisite a free and independent press and a free and uncensored internet. Therefore, it is a fundamental obligation of a democratic State protect journalists from harm and ensuring accountability and the punishment of all those who try to stifle free speech by intimidating journalists or other citizens, by threatening them, arbitrarily jailing them, or even killing them.

SAFETY OF JOURNALISTS

The safety of journalists is key to free and independent media - and an open and democratic society. This was internationally affirmed by the Human Rights Council Resolution last year, which acknowledged the particular role played by journalists in matters of public interest, including by raising awareness of human rights. The resolution called upon States to promote a safe and enabling environment for journalists to perform their work independently and without undue interference and, moreover, it recognized the importance of all forms of the media, including the printed media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression.

We also welcome the attention devoted to this important topic by UNESCO and note with great interest the outcome of a process that began in 2010 and that has resulted in the UN Plan of Action on the Safety of Journalists.

We pay tribute to civil society organisations and journalist networks for their work of fundamental importance, including by highlighting and exposing the killings, detention of and attacks on journalists and press premises.

The EU has already taken a number of concrete actions to promote freedom of expression and Internet freedom. For instance, we provide financial support to civil society organisations, through the European Instrument for Democracy and Human Rights. Such projects aim at helping increase the professional capacities of journalists, provide urgent protection and promote freedom of expression in law and in practice.