



**Organization for Security and Co-operation in Europe  
The Representative on Freedom of the Media  
Dunja Mijatović**

**Communiqué No. 7/2016**

**Communiqué by the OSCE Representative on Freedom of the Media on  
criminal and administrative prosecution for social media activities  
and the impact on freedom of expression and freedom of the media**

*Criminal and administrative prosecution for activities on social media platforms that involve responding to existing content (i.e. sharing, re-posting, uploading, liking, quoting and commenting) pose a threat to freedom of expression and freedom of the media. It contributes to an environment of fear and should be abandoned.*

There is a growing tendency in some OSCE participating States to extend controversial legal penalties related to anti-extremism, anti-terrorism, blasphemy, defamation, and insult to content on social media platforms, from “primary” to “secondary” social media activities.

As a result, social media users, including members of the media, are being intimidated, fined, arrested and imprisoned for interacting or reacting to content produced by third parties or for expressing their opinions on it. This is a severe threat to free expression and media freedom and can lead to censorship and self-censorship.

Freedom of expression and media freedom are fundamental human rights and, as such they must be protected, ensured and safeguarded by the OSCE participating States. It has been a consistent position and policy of the OSCE Representative on Freedom of the Media to advocate that:

- Anti-extremism laws only should restrict activities which necessarily, imminently and directly imply the use of violence (<http://www.osce.org/fom/125187>).
- Defamation, insult and blasphemy should be fully decriminalized and civil sanctions should be proportional (<http://www.osce.org/fom/133606>).
- Criminal legislation on speech may only focus on possible violent actions, harassment or other forms of unacceptable behaviour against citizens, communities or certain parts of society (<http://www.osce.org/fom/133606>).

The fundamental principle that freedom of expression also applies to the Internet has been the basis for three United Nations Human Rights Council resolutions, all adopted by consensus of the states which are all also OSCE participating States. Council resolution 20/8 of 5 July 2012 and 26/13 of 26 June 2014, on the promotion, protection, and enjoyment of human rights on the Internet were followed by the resolution on “the promotion, protection and enjoyment of human rights on the Internet” ([A/HRC/32/L.20](http://www.unhcr.org/refugees/32/L.20)), adopted on 1 July 2016.

Recalling the three United Nations Human Rights Council resolutions on Internet freedom and the above-mentioned recommendations, the Representative calls on the OSCE participating States to take action to safeguard and ensure that freedom of expression online is, indeed, protected.

The Representative recalls that the right to freedom of expression and the corollary right to media freedom extend to unpopular ideas and statements which shock, offend or disturb. The Representative also points to the International Covenant on Civil and Political Rights which states that restrictions on freedom of expression only can be subject to limitations if provided by law and are necessary for the respect of the rights or reputation of others or for the protection of national security or of public order, or of public health or morals.

The Representative also expresses concern regarding the disproportionality of sanctions that suppress independent opinions and limit free expression in social media.

This disproportionality is especially worrying when it comes to sanctions for “secondary” social media activities, which by their nature not only lack a threat of the “imminent lawless action,” but often are not explicit enough to judge the criminal intention behind a specific online action. In different circumstances and for different people, a “like” or a “share” can express a variety of attitudes: from appreciation to protest to concern.

The Representative believes that the issues related to social media activities should be addressed exclusively through self-regulation, education and literacy, not through new restrictions.

While social media activities in general should not be sanctioned, the judgment about their negative effect should be based on the principle of proportionality, taking into consideration that:

- Social media is situated both in public and private space and bear features of one or another depending on a specific case and circumstances;
- The audience in many cases is too small to warrant reputational damage claims or awards;

As the OSCE Representative on Freedom of the Media, I recommend that the participating States:

1. Recognize that no one should be penalized for social media activities that come as a reaction or interaction with existing content;
2. Recognize that no one should be penalized for the social media activities such as posting and direct messaging unless they can be directly connected to violent actions and satisfy the test of an “imminent lawless action”;
3. Recognize that no one should be held liable for content on social media platforms and on the Internet of which they are not the author, as long as they do not specifically intervene in that content or refuse to comply with court orders to remove that content, where they have the capacity to do so (“mere conduit principle”);
4. Recognize the necessity to decriminalize defamation, insult and blasphemy;
5. Recognize that any imposition of sanctions imposed by courts of law, especially regarding social media activities, should be in strict conformity with the principle of proportionality;
6. Recognize the need for education and literacy on freedom of expression and free flow of information on the Internet.

Dunja Mijatović  
OSCE Representative on Freedom of the Media  
Vienna, 23 November 2016