



**Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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**Communiqué by the OSCE Representative on Freedom of the Media
on free expression and the fight against terrorism**

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Terrorist attacks have shaken the OSCE region and beyond causing horror, fear, anger, grief and despair. The attacks have forcefully added to the OSCE participating States' concerns about how to prevent and fight terrorism to keep our societies safe.

The attacks and attendant national security concerns are altering and challenging our thinking about human rights and fundamental freedoms, including the right to free expression and media freedom. But unduly restricting those rights runs counter to fundamental principles of the OSCE, as stated most recently in the [Astana Declaration](#) in which participating States reiterated the commitment to comprehensive security relating the maintenance of peace to respect for human rights.

In the Belgrade Ministerial Council Decisions on Preventing and Countering Violent Radicalization that Lead to Terrorism and on Counter-terrorism adopted last year, the OSCE participating States underscored the commitment:

"..to take the measures needed to protect everyone within their jurisdiction against terrorist acts, and to take resolute action to counter terrorism and foreign terrorist fighters, (...) in support of our relevant OSCE commitments, and in compliance with applicable obligations under international law, including human rights law (...)." ¹

"..that respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing with effective counter-terrorism measures, and are an essential part of a successful counter-terrorism effort (...)." ²

Counter-terrorism measures restricting the right to free expression and free media must be in compliance with international standards, most notably Article 19 of the [UN Covenant on Civil and Political Rights](#) and strictly adhere to the principles of legality, necessity and proportionality and implemented in accordance with the rule of law. All [OSCE counter-](#)

¹ Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that lead to Terrorism, [MC.DOC/4/15](#)

² Ministerial Declaration on Reinforcing OSCE Efforts to Counter Terrorism in the Wake of Recent Terrorist Attacks, [MC.DOC/3/15](#)

[terrorism related commitments](#) promoting and protecting human rights, including media rights, must be respected.

The public's right to information is an integral part of the right to freedom of expression. Participating States must recognize that both the general public and authorities need information and insight on an urgent and compelling problem as terrorism. Freedom of expression is a prerequisite to prevent and counter violent extremism and radicalisation that leads to terrorism. It can play a critical role in promoting equality and combating intolerance. The media, the Internet and other digital technologies have an essential role in keeping society informed.³ Even in difficult times, governments must create environments conducive to the free flow of information and should take particular care not to adopt restrictive measures.

For this reason, it is of utmost importance that journalists' freedom and safety are ensured when reporting on terrorism. In many participating States, media reporting about sensitive issues, including terrorism or anti-government activities, are considered as supporting terrorism. In many States, anti-terrorist laws criminalize the disclosure of classified information, which has made reporting on terrorism a dangerous activity. This can fundamentally limit access to pluralistic information on issues directly affecting the public's right to know.

The right of journalists to maintain the confidentiality of their sources must be protected also when reporting on all terrorist-related activities. Authorities should not use criminal or national security measures as a justification to bypass journalists' rights.

Sources protection is also threatened by governments' increasing use of mass surveillance to fight terrorism. Systematic analysis of metadata can reveal patterns of networks, sources and material that may be of interest to law enforcement and intelligence services. The very existence of mass surveillance makes it difficult to report in the areas of national security and intelligence.

Terrorists are undoubtedly taking advantage of an open and free internet to spread hateful propaganda, incite acts of terrorism, recruit and radicalize new members and communicate more easily. It is acknowledged under international law that violent content and hate speech online may be restricted, but content take-down and blocking and filtering measures must be in accordance with international standards.⁴ Due process principles such as transparency, accountability and the right to reply must also be respected and content restrictions must be subject to independent judicial review.

As the OSCE Representative on Freedom of the Media, fully recognizing the legitimate right and obligation of participating States to protect and to make our societies safer, while seeking

³ [Joint Declaration on Freedom of Expression and Countering Violent Extremism, by the International Rapporteurs on Freedom of Expression](#)

⁴ [Media Freedom on the Internet: An OSCE Guidebook, Communiqué by the OSCE Representative on Freedom of the Media on the impact of laws countering extremism on freedom of expression and freedom of the media](#)

to strengthen basic human rights such as the right to free expression, I recommend the following to the OSCE participating States:

- (i) Ensure journalists' freedom and safety at all times, including while reporting on terrorism.
- (ii) Recognize that free expression and the use of new technologies are also tools to fight terrorism by creating social cohesion and expressing alternative narratives.
- (iii) Clearly and appropriately define, in line with international human rights law, the notions of violent extremism, terrorism, radicalization and other terms used in legislation, programs and initiatives aimed to prevent and counter terrorism.
- (iv) Acknowledge that the media has a right to report on terrorism. Requests for media blackouts of terrorist activities must be avoided and media should be free to consider, based on ethical standards and editorial guidelines, available information to publish in the public interest.
- (v) Fully respect the right of journalists to protect sources and provide a legal framework securing adequate judicial scrutiny before law enforcement and intelligence agencies can access journalists' material in terror investigations.
- (vi) Refrain from indiscriminate mass surveillance because of its chilling effect on free expression and journalism. Targeted surveillance should be used only when strictly necessary, with judicial authorization and independent control mechanisms in place.
- (vii) Acknowledge that anonymity and encryption technologies may be the only guarantee for safe and secure communications for journalists and therefore are a prerequisite for the right to exercise freedom of expression. Blanket prohibitions are disproportionate and therefore unacceptable, and encryption regulation introducing "backdoors" and "key escrows" to give law enforcement and intelligence access to "the dark web" should not be adopted.⁵
- (viii) Only restrict content that is considered a threat to national security if it can be demonstrated that it is intended to incite imminent violence, likely to incite such violence and there is a direct and immediate connection between the expression and the likelihood of occurrence of such violence.⁶
- (ix) Review applicable laws and policies on counter-terrorism and bring them in line with the above principles.

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⁵ [Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye \(A/HRC/29/32\), Joint Declaration on Freedom of Expression and Countering Violent Extremism, by the International Rapporteurs on Freedom of Expression,](#)

⁶ [The Johannesburg Principles on National Security, Freedom of Expression and Access to Information](#)

