

Public-Private Partnerships: Engaging with the Media in Countering Terrorism

Vienna, October 19, 2009

Session II: Public-private partnership initiatives with the media in preventing terrorism and promoting tolerance

Dunja Mijatovic, Director of Broadcasting, Communication Regulatory Agency,
Bosnia and Herzegovina; former Chairperson of the Council of Europe Group of
Specialists on freedom of expression and information in times of crisis (MC-S-IC)

The mass media have an influence on people's attitudes as well as our common knowledge, but not always in the expected and desired ways. The active democratic role of the mass media in society can be influenced by a number of factors. For example, the way the mass media represent, focus and give voice to different actors and incidents in society could have the unintentional result of strengthening a racist discourse instead of fighting against it. Mass media reporting is especially sensitive when it comes to ethnic, cultural and religious relations in our societies.

Since 2001, there has been a clear trend toward prohibiting speech perceived as supporting terrorism, and toward barring the dissemination of materials--including books, videos, and other forms of written and graphic communication--that are believed to be of use for terrorist activity. Restrictions of all sorts have multiplied in the heightened security environment of the last years, so it should be no surprise that, around the world, legal restrictions on speech have tightened, especially the one including the instigation of ethnic and religious tensions which can provide a basis for terrorism and one that disseminates "hate speech" and the promotion of ideologies favorable to terrorism. International protections on free expression in no way restrict governments from criminally prosecuting direct incitement to terrorism--speech that directly encourages the commission of a crime, is intended to result in criminal action, and is likely to result in criminal action--whether or not criminal action does, in fact, result. Yet the legal trend globally is not only to criminalize direct incitement to terrorist activity, but to criminalize indirect incitement--to prohibit speech perceived as justifying, defending, or "glorifying" terrorism. This, from the standpoint of free expression, is problematic.

The truth is that there are many areas around the world, particularly in terrorist or potentially terrorist zones, where it is dangerous, even life threatening, to practice journalism. These situations are clearly a source of intense public interest and it is vital that the media workers are permitted full access to the affected areas in order to act as a conduit for information to the public. Reporting from and about conflict in these zones are breeding ground for human rights abuses and it is therefore critical that objective observers are able to record events so that public bodies can scrutinize rights abuses and promote accountability. Exclusion of journalists from these areas and from reporting on terrorism is a severe restriction of freedom of expression and the public's right to know and should not be permitted unless the presence of reporters would represent a genuine risk to the safety of others.

Since 2002, the **Committee of Ministers of the Council of Europe** has adopted a number of important standard-setting texts designed to assist member States in this

respect. Any interference with the freedom of expression and information must be prescribed by law and be a proportionate response to a pressing social need related to the limited exceptions set out in **Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights**. However, concerns have been raised that, in some cases, anti-terrorism legislation restricting freedom of expression and information is too broad, fails to define clear limits to authorities' interference or lacks sufficient procedural guarantees to prevent abuse. Concerns have also been raised about undue restrictions on media professionals' access to information, interference with their rights to privacy and communications, the protection of journalistic sources and media reporting. Sometimes, restrictions have been reported to apply under anti-terrorist pretences without a legal basis and, in consequences, at variance with Council of Europe standards.

In order to pursue work in this area, and taking into account the current international context, in 2005 the Council of Europe created a specific **Group of Specialists on freedom of expression and information in times of crisis (MC-S-IC)** to address freedom of speech in crisis situations. The Council has adopted three specific documents on this issue:

Declaration on freedom of expression and information in the media in the context of the fight against terrorism In it, the Committee of Ministers of the CoE sets out clearly the roles and responsibilities of public authorities and media professionals during the media coverage of terrorism

Guidelines on protecting freedom of expression and information in times of crisis

This document is relevant as it covers all aspects of the situation: Working conditions of media professionals in crisis situations (Personal safety and Freedom of movement and access to information), protection of journalists' sources of information and journalistic material, guarantees against misuse of defamation legislation, guarantees against undue limitations on freedom of expression and information and manipulation of public opinion, responsibilities of media professionals, dialogue and co-operation.

Declaration on the protection and promotion of investigative journalism

In that context, the Council of Europe also organised two important conferences on Anti-terrorism legislation and its impact on freedom of expression and information, in Amsterdam in November 2008 and in Reykjavik in May 2009. Furthermore, at the **1st Council of Europe Conference of Ministers responsible for media and new communication services**, Ministers adopted a ***Resolution on Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information***. In this Resolution they found that governments in their legislation and its implementation not always respected CoE standard on Freedom of Expression and Freedom of Information.

Some of the most important concerns when talking about this issue include concerns that anti-terrorism legislation restricting freedom of expression and information is too broad, fails to define clear limits to authorities' interference or lacks sufficient procedural guarantees to prevent abuse. Further, concerns are raised about undue

restrictions on media professionals' access to information, interference with their rights to privacy (including home and professional premises) and communications, and the protection of journalistic sources. There have also been concerns about what may be undue limits on the media reporting, commenting and giving opinions about proscribed organisations. Such restrictions could have an adverse effect on the exercise of the right to freedom of expression and information. They resolved, inter alia, to review national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights.

Moreover, the Council of Europe has supported, and continues to support, training activities to media professionals in situations of conflict or tension. The Committee of Ministers decided to set up an Internet-based discussion space where media professionals and other interested parties can exchange views on protecting freedom of expression and information in times of crisis and discuss the challenges to freedom of expression that they experience. The forum seeks to promote debate and analysis among journalists - but also anyone concerned about freedom of expression – on how tighter security measures enforced by governments during wars, terrorist threats or political instability could affect the way journalists access information and make their reports.

Contributions may be made at <http://mediafreedom.cws.coe.int>.

Concluding remarks

Terrorism has a devastating effect on the enjoyment of human rights, not only for the right to life, but also for other fundamental rights and freedoms that Council of Europe member states have undertaken to protect. Terrorism is not only a threat to the individual but also poses considerable threats to the state, democracy and the rule of law. Freedom of expression and information risk falling victim to terrorism, due to a climate of fear that terrorism can create or as a side effect of anti-terrorism legislation or measures. The right of journalists to report on matters of public interest and to scrutinize the activities of public authorities is particularly important in situations of conflict and tension, given the impact of such situations on society. However, precisely in view of the sensitive character of public policy in situations of conflict or tension, journalists often encounter restrictions on their right to free and independent reporting and may sometimes be the victims of harassment or see their safety compromised, due for example to assaults, detention and even murder.

As it is recognized, right to freedom of expression has a very special role in democratic processes. Without this right, the public would not be able to form and define its opinion of the Government, elected officials, and other issues of public interest. There, the media has a particularly important role in offering information to the public, emphasizing corruption and inspiring political debates. The way rights and freedoms of expression are exercised depends on the regulatory framework and the media, especially the journalists. In order for the media to fulfill important “watchdog” role of media, good legal and regulatory structure must be in place and it

is an imperative that reporters are able to access information from a variety of sources in order to root out malpractice.

The positive obligation to prevent terrorism and, by extension, incitement to or glorification of terrorism also entails the obligation to take all measures in compliance with international human rights law and standards. A number of human rights may be engaged by a policy to prevent these phenomena including the right to a fair trial, the right to freedom of assembly and association, the right to liberty and, most directly, the right to freedom of speech and the prohibition on the use of rights to destroy the rights and freedoms of others. In developing policy in this area, therefore, governments must pay close attention to the impact on specific rights to ensure that the policy is human rights compliant. Without freedom of expression it may not be possible to enjoy many of the other rights protected by human rights standards.

Finally, I would like to call upon the book called «*Living together*

http://www.coe.int/t/dghl/standardsetting/media/Doc/livingtogether_en.pdf