Safety of online media actors as a precondition for media pluralism and freedom of expression

Address by Nils Muižnieks
Council of Europe Commissioner for Human Rights

Joint Open Forum organised by the European Broadcasting Union, Council of Europe, OSCE and UNESCO

Internet Governance Forum
Baku, 7 November 2012

In recent years, several online media actors (Tawakkol Karman, Asmaa Mahfouz, Eynulla Fatullayev) have been laureates of the most prestigious prizes awarding human rights defenders and peace promoters: the Nobel Peace Prize, the Sakharov Prize or the UNESCO/Guillermo Cano World Press Freedom Prize.

This is obviously not by chance. It reflects the irresistible rise of the online world as a factor determining social and political realities. Clearly, the Internet is not a "virtual space" anymore; not only is it "real", but it increasingly coincides with "the" public space within which democracy develops.

The formation of this new public space, with its still blurred contours, brings new opportunities, as well as new challenges and risks. This is particularly true for human rights.

On the one hand, the Internet increasingly contributes to the free expression and transmission of information and ideas without which there is no democratic society. In recent years, social media have played a major role in promoting democratic values and mobilizing human rights activists. New public watchdogs appeared online. During the World Forum for Democracy that took place in Strasbourg a few weeks ago, Mikhail Zygar, the Editor-in-chief of an independent Russian TV channel, argued that social media was "building" civil society in Russia.

But, at the same time, the openness of the Internet has been increasingly manipulated and obstructed through blocking, filtering, monitoring and other means. Moreover, many journalists and bloggers have been threatened or prosecuted for using their freedom of expression online.

This contrasted reality highlights the need to rethink the governance of this new public space in order to ensure the full enjoyment of human rights of Internet users in general and the safety of journalists and online media actors in particular.

The Council of Europe is a European-wide forum whose primary aim is to create a common democratic and legal area throughout the whole of the old continent. It is particularly well-placed to take up this challenge, together with other International Organizations such as the UN and the OSCE, for at least two reasons:

First of all because its emblematic treaty, the European Convention on Human Rights, protects the physical integrity of online media actors through the prohibition of torture and inhuman or degrading treatment, as well as through the rights to life, liberty and security. It also protects the exercise of the freedoms of expression, communication, and association through the Internet. Indeed, the European Court of Human Rights has recognized the role of the Internet in enhancing the public's access to news and facilitating the dissemination of information generally. It has also determined that States have a positive obligation to create an appropriate regulatory framework to ensure effective protection of journalist's freedom of expression on the Internet[1].

Secondly, because several specific standards applying to the Internet have been adopted under its auspices. Building on these standards, in March 2012 the Council of Europe Committee of Ministers adopted the Council of Europe Internet Governance Strategy to protect and promote human rights, the rule of law and democracy online. It will be implemented over a period of four years, from 2012 to 2015, in close co-operation with partners from all sectors of society, including the private sector and civil society.

In my independent capacity as Commissioner for Human Rights of the Council of Europe, I have identified Internet and human rights (with a special focus on social media) as one of the themes on which I will target special efforts during my mandate. When monitoring the human rights situation in the 47 member states of the Council of Europe, it is my intention to pay particular attention to the openness and safety of the Internet. As regards safety of online media actors more specifically, I want to assist member states in making progress towards full compliance with their relevant obligations under the ECHR, including: to refrain from violating the rights of online media actors; to protect the physical integrity and right to liberty and security by preventive measures and an adequate legal framework; and to investigate and provide an effective remedy in response to cases of ill-treatment of journalists, bloggers, and other online media actors. It will also be crucial to raise awareness among governments of the need to pay particular attention to journalists, who have a special role in a democratic society. As purveyors of information, they are an essential cog of the democratic functioning. Acts of violence against and intimidation of media actors threaten the democratic society as well as the European public order and thus merit a particularly firm response from states.

Various existing standards can contribute to ensure the safety of online media actors. Nevertheless, it has become commonplace to note that one cannot always simply apply traditional approaches, including regulatory approaches, to the Internet. We need to work towards a human rights-compliant approach to the Internet that requires to define

---

[1] ECtHR, *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 5 May 2011, no. 33014/05.

how these standards need to be adapted to specific online realities. One first question is therefore whether, and to what extent, this issue is relevant when it comes to safety of journalists and online media actors. If so, what role can international organisations play in adapting /updating guidance, *etc.*?

A particularly important aspect of this is the extent to which the protection granted to journalists should apply to other media actors who operate online, for instance as bloggers. To the extent that these actors work in the public interest by stimulating debate, exposing maladministration, etc. just like journalists (in the traditional and formal sense) do -- how can they be denied protection?

Another issue that I hope we can discuss relates to the intimate link between safety of journalists and online media actors on the one hand, and the protection of the Internet itself as an open space for the exercise of the right to receive and impart information, on the other. Doesn't safety of online media actors depend, at least in part, on our ability to fully protect (their) privacy on the Internet? Can safety be achieved without subjecting control activities such as surveillance, tracking etc. to strict requirements, notably of proportionality and judicial oversight? Does anonymity play a role in securing the safety of online media actors?

These are some of the questions which I hope we will be able to discuss further during this open forum.