Mitigating a global health crisis while maintaining freedom of expression and information

The COVID-19 pandemic that has spread across the world since the beginning of 2020 poses a serious threat to the health, lives and future of all of us. Governments, health authorities and countless professionals are working tirelessly to contain the outbreak and to mitigate its effects. As a result, nearly every aspect of daily life of billions of people world-wide has changed. Finding an effective response to the pandemic is a shared top priority for decisionmakers around the globe. In addition to urgent health-related measures, actions are taken to offset social, economic, labour, cultural, security and other impacts of the crisis.

Importance of freedom of expression and information in times of crisis

Extraordinary measures are both needed and justified in this time of crisis. Inevitably however, questions have arisen as to how far such measures should extend and how long they should remain in place. Preserving life and health is the main objective and States must act promptly and forcefully in this situation. Yet, their response must be proportionate to the demands of the situation in respect of human rights and the rule of law, this being the very mark of democratic governance.

Freedom of expression and information and freedom of the media are crucial for the functioning of a truly democratic society and continue to be so in times of crisis. Notably, in times of crisis media play a key role, also coupled with increased responsibility, in providing accurate, reliable information to the public, but also in preventing panic and fostering people's understanding for and cooperation with necessary restriction. As reaffirmed in the Council of Europe Guidelines on protecting freedom of expression and information in times of crisis, Article 10 of the European Convention on Human Rights (ETS No. 5) and the relevant case law of the European Court of Human Rights remain the fundamental standards to be applied in the exercise of those rights.

Access to information and quality journalism

The provision of timely information about public health risks is a critical element in crisis response. Open communication and dialogue between national and international governmental and non-governmental organisations, media organisations, medical professionals and civil society must always therefore be possible.

Providing effective access to information to the public involves two distinct aspects:

- on the one hand, governments communicate pertinent information through timely press briefings, reports and public pronouncements.

- on the other hand, media coverage based on independent news sources, transparent editorial methods and accurate, fact-checked information is crucial to educate and inform the public including at regional and local level and to scrutinise the measures taken to curtail the crisis, prompting re-evaluation and regular adjustment as needs evolve.

Quality, responsible journalism, including in-depth science research by science journalists, is essential to an aware and well-informed public that is capable of critical thinking. By extension, abundance of reliable information also effectively counters rumours, misinformation and disinformation that can lead to unnecessary panic.

And while the media have the responsibility to cover the crisis as accurately and promptly as possible, journalists themselves are affected by the crisis as they continue to report from the frontlines. They should have available expert advice on covering the pandemic as well as appropriate medical protection for COVID-19 related risks.

Responses to "infodemic"

The current health emergency is accompanied by what the World Health Organization (WHO) described as a "massive infodemic". The internet has been flooded with both accurate and false sources of information about the coronavirus, which made it difficult for people to find reliable information. The situation was in some cases compounded by the authorities' inconsistent reactions to the outbreak. Faced with a challenge of identifying and urgently implementing appropriate policy responses with little authoritative advice on a novel pathogen, some governments initially downplayed the impact of the pandemic. Some others were sending mixed messages regarding appropriate social behaviour, risk minimisation, etc.

The most effective responses to the crisis have included transparent communication on the part of the governments and making credible information widely available to the public. That includes corrections and clarifications as more information becomes available about the coronavirus and its impact, prompting changes in the government responses. Such transparency improves public trust and confidence in the handling of the crisis. It also helps to reduce the impact of misinformation and disinformation by promoting responsible behaviour by the public.

By contrast, government discretion to decide what is correct and what false information can lead to censorship and suppression of legitimate concerns, and so can leaving such decisions to social media platforms in an effort to "ban" misinformation, without any independent oversight mechanisms.

The swift implementation of protective measures in health crises relies to a large extent on the cooperation and sense of responsibility of every single individual. Open communication channels and trust in the good-will of government are the main ingredients to promote this type of cooperation. Vague bans of "distorted information" or instructions to platforms of deleting "information likely to create panic" risk being counterproductive. They incentivise over-deletion, thereby prompting an information environment where questions or doubts can no longer be shared, discussed and resolved, but may lead to disengagement, obstinance and non-compliance. Also, there is hardly any justification for prior censorship of certain topics, closure of media outlets or outright blocking of access to on-line communication platforms.

While platforms should be particularly careful in times of crises to promote the sharing of credible information and facts, states must not oblige them to distribute certain opinions only. This would amount to a restriction of freedom of expression that is not only disproportionate but also clearly detrimental to the demands of the current crisis, with its uncertainties and difficult to predict dynamics.

Guidance provided by the Council of Europe instruments

> (a) *Case-law of the European Court of Human Rights on emergency measures restricting freedom of expression and information*

Crisis situations require special caution in introducing restrictions on freedom of expression. Measures taken by governments in a state of emergency can involve derogations from the States' obligations to secure certain rights and freedoms under the European Convention on Human Rights, including freedom of expression.

However, such measures should undergo a form of democratic review in order to ensure that they are not only "strictly required by the exigencies of the situation", as laid down in Article 15 of the Convention, but also "an appropriate response to the state of emergency", as established by the Court (*Alparslan Altan v. Turkey*, 12778/17, 16 April 2019, § 118). Also, in the context of emergency measures the Court has emphasised that democracy thrives on freedom of expression and that the existence of

a "public emergency threatening the life of the nation" should not serve as a pretext for limiting freedom of political debate.

Further information can be found in the [Guide on Article 15 of the European Convention on Human Rights](#).

(b) Instruments of the Committee of Ministers on freedom of expression and information in times of crisis

The Council of Europe *Guidelines on protecting freedom of expression and information in times of crisis* respond to the concern that governments, focusing on the survival of society, may be tempted to impose undue restrictions on the exercise of the right to freedom of expression and information (e.g. on security grounds) in situations encompassing, among others, wars, terrorist attacks, natural and man-made disasters. The Guidelines provide a helpful tool for States and media stakeholders in developing human rights-compliant information and communication strategies in times of crisis.

Additional pertinent guidance can be found in several Committee of Ministers recommendations including [CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors](#), [CM/Rec(2016)5 on Internet freedom](#) and the upcoming [Recommendation on promoting a favourable environment for quality journalism in the digital age](#).

In line with the abovementioned instruments States should, in relation to journalists and other media professionals:

- Ensure the safety of media professionals, including medical protection for any work-related risks, and investigate promptly and thoroughly all attacks on them;

- Strive to maintain a favourable environment for the functioning of independent and professional media, including by continued support for investigative journalism and pluralist media as well as for public service media as a reliable source of information;

- Guarantee freedom of movement and access to information to media professionals, including by allowing the professionals accredited by their media organisations access to crisis areas;

- Provide regular information to all media professionals covering the events, on equal basis and without discrimination, through briefings, press conferences or other appropriate means;

- Refrain from misusing defamation and other legislation to limit freedom of expression, including by using otherwise legitimate aims as a pretext to bring libel and defamation suits against media professionals.

In relation to the public, States should:

- Refrain from restricting the public's access to information beyond the limitations allowed by Article 10 of the European Convention on Human Rights and interpreted in the case law of the European Court of Human Rights, including by ensuring free access to information through the media;

- Ensure a minimum level of information including to people with low income to people with low income, those in remote areas and those with special needs or facing disadvantage or obstacles when accessing media content, such as persons with disabilities;

- Refrain from using vague terms when imposing restrictions on freedom of expression and information (such as, for example, prohibiting the dissemination of "distorted information" or "information likely to create panic") without a detailed definition of terms.

For their part, media professionals should:

- Adhere to the highest professional and ethical standards, having regard to their special responsibility in crisis situations to make available to the public timely, factual, accurate and comprehensive information while being attentive to the rights of other people, their special sensitivities and their possible feeling of uncertainty and fear;

- Give priority and prominence to authoritative messages regarding the crisis and exercise vigilance to prevent amplifying unverified stories (notably those from anonymous private forums, messaging apps or social media) and spreading misinformation and disinformation;

- Ensure co-operation between self-regulatory bodies as the most appropriate mechanism for ensuring that media professionals perform in a responsible and professional way;

- Apply the professional practices promoted by Council of Europe instruments such as [Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance](#) and the upcoming [Recommendation on promoting a favourable environment for quality journalism in the digital age](#).

Through dialogue and co-operation:

- States and media stakeholders should strive to ensure the protection of freedom of expression and information in times of crisis, including by creating forums or mechanisms for dialogue;

- States, internet intermediaries and media stakeholders should work together to prevent the use of their networks as conduits for disinformation and manipulation of public opinion, as well as to give greater prominence to generally trusted sources of news and information, notably those communicated by public health authorities;

- States, relevant media stakeholders, academia and civil society organisations should work together to develop and apply strategies for helping the public to recognise and develop resilience to health-related misinformation and disinformation, as well as for fostering a culture of solidarity, tolerance and understanding between different groups in society.