



CENTRE FOR LAW
AND DEMOCRACY

BRIEFING NOTE SERIES ON FREEDOM OF EXPRESSION

Regulation of Journalists

Centre for Law and Democracy
International Media Support (IMS)

BRIEFING NOTE 5 OF 12

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Regulation of Journalists

The power of the media to influence public discourse makes journalists an attractive target for illegitimate government control. Thomas Jefferson once famously remarked that if he had to choose between “a government without newspapers, or newspapers without a government, [he] should not hesitate a moment to prefer the latter”. The media’s core role as a mechanism for government accountability and as a primary source of news and other information necessitates a light regulatory touch. In democracies, journalists are not subject to any special form of regulation although they do enjoy certain benefits and privileges.

Licensing

Licensing schemes for journalists, whereby individuals are prohibited from practising journalism unless they are licensed, violate the right to freedom of expression. General conditions on who may practise journalism, such as a requirement to hold a university degree, to have attained a certain age or to belong to a particular professional association, are similarly illegitimate. This was spelled out clearly in a 1985 case decided by the Inter-American Court of Human Rights, which stated:

It follows from what has been said that a law licensing journalists, which does not allow those who are not members of the “colegio” to practice journalism and limits access to the “colegio” to university graduates who have specialized in certain fields, is not compatible with the Convention. Such a law would ... be in violation not only the right of each individual to seek and impart information and ideas through any means of his choice, but also the right of the public at large to receive information without any interference.

The underlying rationale for this stems from the fact that the right to express oneself through the mass media belongs to everyone, not simply to a selected group who meet certain requirements (see Briefing Note 1). In this respect, journalism is different from other professions – such as being a doctor, a lawyer or an engineer – inasmuch as engaging in the subject matter of what those other professions do, unlike journalism, is not a human right.

Licensing journalists is illegitimate because it is susceptible of abuse and the power to distribute licences can become a political tool. While the purpose of licensing schemes is ostensibly to ensure that the task of informing the public is reserved for competent persons of high moral integrity, the Inter-American Court of Human Rights rejected this argument, noting that other, less restrictive means were available for enhancing the professionalism of journalists. In practice, formal conditions on journalists have not been effective in promoting more professional journalism.

Registration schemes, which formally require journalists to register themselves as journalists, are not common and they would almost certainly fail to pass the test for restrictions on freedom of expression under international law. There is no reason for imposing such a requirement and it represents a fetter on the freedom to practise journalism.

Licensing or registration requirements are even less legitimate in the digital age, as the proliferation of bloggers and other amateur newsgatherers has blurred the line between who is and is not a journalist. With the democratisation of online media, it would be highly problematic to try and restrict who can comment on events of public importance, or report on their experiences.

These standards are without prejudice to the right of private associations, including private journalists' associations, to set standards for their members.

Accreditation

Freedom of expression includes a right to be informed. As the eyes and ears of the public, journalists play a key role in making this aspect of the right a reality. As a result, it is legitimate to provide for special or privileged access for journalists to limited space venues where events of public interest are taking place, such as parliaments and courts. The rationale for this is not that journalists have special rights to freedom of expression or to access information but, rather, that such access is necessary to protect the right of the public as a whole to receive information, which is included in international guarantees of the right to freedom of expression.

The accepted method of ensuring that journalists can access these limited space venues is through accreditation. Under international law, certain principles apply to accreditation schemes. First, like all regulatory systems, and to ensure that they are not abused as a means to influence the work of journalists, accreditation schemes should be overseen by an independent body. Second, access to accreditation benefits should be based on fair and objective criteria, including the size and type of audience reached. The UN Human Rights Committee (UNHRC) has held, for example, that accreditation schemes which are biased against freelance journalists are not legitimate. Accreditation schemes should also be open to digital journalists, again based on fair and objective criteria. Finally, accreditation schemes should not be used to impose substantive reporting restrictions on journalists or be subject to withdrawal based on an assessment of the substance of a journalist's reporting.

The special international mandates on freedom of expression elaborated on these principles in their 2003 Joint Declaration, stating:

Accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events; such schemes should be overseen by an independent body and accreditation decisions should be taken pursuant to a fair and transparent process, based on clear and non-discriminatory criteria published in advance.

Sources

The right of journalists to refuse to divulge their confidential sources of information is recognised in democracies around the world and in international law. This has been recognised by the UNHRC, which stated in its 2011 General Comment No. 34:

States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources.

The basic rationale for protection of sources was set out very clearly in a case before the European Court of Human Rights, *Goodwin v. United Kingdom*, as follows:

Protection of journalistic sources is one of the basic conditions for press freedom.... Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified

by an overriding requirement in the public interest.

Once again, the jurisprudential basis for this is the right of the general public to receive information rather than a special right of journalists to disseminate or access information. As a result, although the right to preserve the confidentiality of sources is often referred to as a right of journalists, it can be validly invoked by anyone who is “regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication” (see Council of Europe Recommendation No. R(2000)7).

Safety

Physical threats and attacks against media workers which are aimed at silencing them are an extremely serious interference with the right to freedom of expression. As the special international mandates on freedom of expression noted in their 2012 Joint Declaration:

[V]iolence and other crimes against those exercising their right to freedom of expression ... represent attacks not only on the victims but on freedom of expression itself, and on the right of everyone to seek and receive information and ideas.

States’ obligations in this area can be grouped into three separate categories. First, officials should

never take part in, sanction or condone attacks against the media or media facilities. This also encompasses a positive obligation on senior authorities to publicly condemn attacks when they do occur.

Second, States should take effective action to prevent the occurrence of violent attacks. In their 2012 Joint Declaration, the special international mandates on freedom of expression noted:

States have an obligation to take measures to prevent crimes against freedom of expression in countries where there is a risk of these occurring and in specific situations where the authorities know or should have known of the existence of a real and immediate risk of such crimes, and not only in cases where those at risk request State protection.

Finally, States have an obligation to launch independent, speedy and effective investigations when attacks do take place, with a view to bringing the guilty parties to justice and to providing an effective remedy for the victim. The UN Human Rights Committee, in its 1996 Concluding Observations to Guatemala, stated that these investigation should enable victims to discover the truth about the acts committed, to learn who committed the acts and to obtain suitable compensation.

FURTHER READING

- *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, 13 November 1985, Inter-American Court of Human Rights: http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf
- Special international mandates on freedom of expression, *Joint Declaration on Crimes Against Freedom of Expression*, 2012: <http://www.law-democracy.org/live/legal-work/standard-setting/>
- UNESCO, *UN Plan of Action on the Safety of Journalists and the Issue of Impunity*, 2012: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN_plan_on_Safety_Journalists_EN.pdf