

Conference
«Information and public debate in 21st century consolidated democracies. Lessons from Italy: What issues and which reforms?»

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Speech
by
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[Venice Commission standards regarding media freedom and public debate](#)

*Chairman,
Your Excellences,
Ladies and Gentlemen,*

I am greatly honoured to be addressing you, on behalf of the Venice Commission here in the Senate of the Italian Republic. I thank the organizers of this important event for the generous invitation to come to Rome – the city of the soul! - as Lord Byron, the English poet called it – and what freedom is closer to the soul than that of expression.

Freedom of expression is the touchstone freedom of all other freedoms – individual self-development depends on it and democracy is unthinkable without freedom of expression, information and opinion as protected under Article 10 of the European Convention on Human Rights.

Speaking of poets; the standards regarding information and public debate emphasized by the Venice Commission in its **Compilation on Freedom of Expression and the Media** – are in a way like poetry – they reflect our objectives to make the world a better place and our belief that an **open and robust public debate** is the cornerstone of democracy – this truth has been realized for centuries, long before human rights treaties were adopted after the horrors of World War II. John Milton, the great poet, in

his famous defense of intellectual liberty and freedom of publication in the 17th century claimed that an open discussion - where the sources of information are not contaminated by powerful forces - would ultimately lead to a political unity, which is secured not by force - but by consensus that does not seek to suppress dissenting opinions.

This is why **political debate** in the view of the Venice Commission—enables the public to hold authorities (in the widest sense of the word) accountable and this is also why the press, the public watchdog is seen as vital for democracy . . . and why **there is so little scope for restricting political discussion** – why authorities must respect the rights of journalists to disseminate information and ideas on questions of public concern, including through recourse to a degree of exaggeration or provocation, provided that they act in accordance with responsible journalism.”¹

Not only must authorities respect the right of journalists to impart information and ideas, also those that offend, shock or disturb the State or sector of the population - but also the right of the public to be properly informed.²

The Venice Commission does not support absolute protection of freedom of expression. “According to the second paragraph of Article 10 and the well-established case law of the European Court of Human Rights the exercise of the right to freedom of expression may be subjected to restrictions or penalties as are ‘prescribed by law’, pursue one of the legitimate aims identified in an exhaustive manner in the second paragraph of Article 10, and as as necessary in a democratic society”. As ruled by the Court, interference by authorities must correspond to a “pressing social need”, be proportionate to the legitimate aim pursued within the meaning of Article 10(2), and be justified by judicial decisions that give relevant and sufficient reasoning. Whilst the national authorities have a certain margin of appreciation, it is not unlimited as it goes hand in hand with the Court’s European supervision.”

¹ CDL-AD(2014)040, *Amicus Curiae* Brief for the Constitutional Court of Georgia on the question of the defamation of the deceased, §§20 and 21

See also CDL-AD(2015)004, §11

² Sunday Times v United Kingdom, 26 April 1979.

An example is a recent judgment against Russia of a newspaper editor and a journalist who had published an article on the **alleged corruption of a politician**;³ referring to him as thievish man who was now in a comfortable high position. The politician brought private prosecution for **insult** against the journalist and editor. Both were found guilty by Russian courts for the words used and the editor was fined for 1,500 EUR. The editor appealed to the ECtHR which found that the conviction and fine violated the editor's right to freedom of expression. The Court noted that the article discussed corruption, an issue of public concern and that the politician had not complained about the allegations but about the choice of words used by the journalist. Moreover, the Court held an elected politician, had to tolerate a greater degree of criticism than ordinary individuals. Furthermore, that the criminal sanction was liable to have a chilling effect on the exercise of freedom of expression.

Other factors defining the level of media freedom

The media like all other human institutions is subject to risks and not only from the public authorities. The Venice Commission, which is the European Commission for Democracy through Law, recognizes that the level of media freedom is defined apart from the legal framework with political and economic factors, even indirect financial pressures, which may create a chilling effect and lead to self-censorship.⁴

The current reality is that influential actors outside the elected authorities are providing new obstacles in the way of a robust public debate.

Allow me to take a recent example from Turkey under the state of emergency. The Venice Commission recently observed how the emergency decree laws have been excessively used to clamp down on public debate in Turkey; and how authorities last February lifted sanctions of broadcasters who are not **impartial during political campaigns** – a few

³ *Nadtoka v. Russia*, application no. 38010/05, 31 May 2016

⁴ *Opinion No. 872 / 2016*

months before the 16 of April national referendum on amending the Constitution.

The reality of the situation as pointed out by human rights NGOs is that many major media outlets in Turkey are owned by business people who rely on government contracts⁵ and were hence in a position to influence the public debate in the weeks before the referendum, resulting in a drastic change of the political regime in Turkey.

Examples of corrupt relations between media owners and politics to the detriment of media credibility is far from confined to Turkey. It sheds light on the widespread practices where corporations are in a position to control the public debate through their financial ties with politics and the media.

This prevents the media from exposing wrongdoings out of fear and hence sustains corruption which continues to be a tremendous challenge for Europe according to an EU anti-corruption report (2014).

Corruption is a global epidemic making it very difficult for responsible journalists to expose it.

I will take an example from the United States of America once heralded as the greatest democracy in the world. A highly criticized decision, so-called Citizens United judgment by the United States Supreme Court in 2010 dealt with the regulation of campaign spending organizations – opening the floodgates for special interests — including foreign corporations⁶—to spend without limit in US elections where a tiny group now wield great power. The most troubling result of Citizens United judgment in a time of historic wealth inequality is that the decision has helped reinforce the growing sense that democracy primarily serves the interests of the wealthy few, and that democratic participation for the vast majority of citizens is of relatively little value. US Supreme Court Justice Ruth Bader Ginsburg has publicly declared that if she could overturn one

⁵ https://www.hrw.org/sites/default/files/report_pdf/turkey1216_web.pdf

⁶ See Ronald Dworkin discussion f.ex. <http://www.nybooks.com/articles/2010/05/13/decisionthreatens-democracy/>

decision over the past several years, Citizens United would be it – stating that “our system is being polluted by money”.⁷

According to recent information 90% of the media in the US is controlled by 6 corporations as opposed to 50 corporations some 30 years ago. The situation in Europe is also deteriorating in the same direction. The chilling effect on journalism and the public debate of the overwhelming media empires goes without saying.

A recent Council of Europe survey within the 47 Member States found high levels of self-censorship among journalists where many feel pressured to present their reports in ways agreeable to their employers; many feel the need to tone down controversial stories, withhold information or abandon stories altogether.⁸

The vital role of the press as public watchdog and the public debate in society need not only be protected from the elected authorities but also those with tremendous financial power distorting democratic processes whether financing political campaigns or buying influence in the so-called fourth estate – the media.

The Venice Commission has emphasized that the State is the ultimate guarantor of diversity of news and views in the media. The VC has also pointed out that States cannot absolve themselves from responsibility by entrusting authority to private bodies.⁹ Many member states of the Council of Europe see it as their duty to guarantee the public’s right to information with a well-funded and strong public service broadcasters.¹⁰ One thing is certain; if we want to continue on our road to protect democracy and human rights – an enlightened and well-informed public is the key to such a future.

⁷ Supreme court justice Ruth Bader Ginsburg speaking at Georgetown University Law Center’s graduating class in February 2015; <https://www.theguardian.com/law/2015/feb/04/ruth-bader-ginsburg-supreme-court-citizens-united>

⁸ <https://wcd.coe.int/ViewDoc.jsp?p=&id=2456911&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true>

⁹ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL\(2004\)012-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-EL(2004)012-e)

¹⁰ <http://www.coe.int/en/web/portal/-/public-service-broadcasting-under-threat-in-europe>

Thank you very much for your attention.