Media Freedom and Human Rights

Sejal Parmar

Course Title: Media Freedom and Human Rights

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Department: School of Public Policy, Central European University

Semester/Term: Winter 2020

Course level: MPA (Year One and Two Elective Course)

No of credits: 2 Pre-requisites: None

Course e-learning site: https://ceulearning.ceu.edu/course/view.php?id=10845
Office hours: consultations may be arranged by appointment requested by email

I. Course Description

This course examines media freedom in today's world. From an international human rights law perspective, the course focuses upon the scope of the rights and freedoms of a range of media actors, notably journalists, those upon whom their work depends, particularly their sources, whilst also reflecting upon the roles and responsibilities of state and private sector actors, notably Internet intermediaries, in upholding media freedom. It engages with some of the most pressing contemporary challenges to media freedom and considers various legal approaches and policy options in response. The issues covered by this course include: the safety of journalists, including the online safety of female journalists; national security and counter-terrorism policies; surveillance and the security of journalists' communications; the protection of sources and whistle-blowers; incitement and "hate speech"; disinformation and false news (often called "fake news"); and the regulation of social media platforms. The course identifies major and emerging cross-cutting themes including: the critical relationships between the media and other actors (state authorities, regulators, the private sector and NGOs); the relative importance placed on media freedom as compared to other values (such as pluralism and diversity) and rights (such as security and equality); and the opportunities and challenges of the Internet for media freedom.

II. Learning Outcomes

By the end of the course, students should be able to benefit from:

- 1. the ability to identify key contemporary challenges to media freedom and to present policy solutions to such challenges;
- 2. a critical understanding of relevant international principles, norms and standards concerning media freedom:
- 3. a critical understanding of the key international actors, institutions and processes concerning media freedom;
- 4. a critical understanding of the role of the media in international human rights advocacy and practice.

III. Course Requirements

All the classes require students to read the assigned materials and to participate in class.

The final grade will be based on the following:

- 1. class participation (15%);
- 2. one oral assignment (15%);
- 3. one written assignment (20%);
- 4. a final, take home exam (50%).

Further guidance on the assignments will be given at the beginning of the course.

Written assignments shall require individual work although students are expected to collaborate for the purposes of the oral assignments.

Students are recommended to use Times New Roman 12pt, 1.5 line spacing and with no extra-wide or extra-narrow margins. The assignment shall be submitted via the e-learning site and in hard copy. Students should use a standard method of citation (e.g. Harvard, MLA, Chicago, OSCOLA) consistently throughout their work. CEU's Policy on Plagiarism applies.

Consultations may be arranged by appointment requested via email at ParmarS@ceu.edu

1. Assessment criteria

The following assessment criteria will be applied to written assignments. The grades awarded will be translated into grade points in students' final evaluation for this course.

ASSIGNMENT GRADE	% RANGE	ASSESSMENT CRITERIA
A	75+	critical evaluation and synthesis of issues and material which includes an original and reflective approach
A-	70-74	- clear evidence of relevant Applications and/or empirical results, where applicable - comprehensive knowledge and depth of understanding of principles and concepts - extensive evidence of reading supplementary sources (including comprehensive referencing and bibliography) - excellent, well-directed presentation, logically structured, using correct grammar and spelling
B+ B	65-69 60-64	critical evaluation and synthesis of issues and material evidence of relevant Applications and/or empirical results, where applicable wide knowledge and depth of understanding of principles and concepts evidence of reading supplementary sources (including comprehensive referencing and bibliography) good presentation, logically structured, using correct grammar and spelling

В-	55-59	 description of main issues and material (but no critical evaluation) occasional use of relevant Applications and/or empirical results, where applicable reasonable knowledge and understanding of principles and concepts limited evidence of reading supplementary sources (and adequate referencing and bibliography) neat presentation, competently structured and acceptable grammar and spelling
C+	50-54	 description of main issues and material only no evidence or very limited evidence of relevant Applications and/or empirical results basic knowledge of key principles and concepts only evidence of basic reading only (and limited referencing) weak presentation and structure
Fail	<50	 omission of significant and relevant material limited and/or inconsistent knowledge of key principles and concepts evidence of minimal reading only (and inadequate referencing) poor presentation, grammar and inadequate structure

More specific assessment criteria for the oral assignment will be indicated at the beginning of the course.

IV. Course Materials

The e-learning site contains the essential and most of the further readings for class discussion, including the relevant cases. Some additional materials and links may also be added onto the e-learning site during the course. The most important readings will be emphasized in class.

A useful, recently published monograph on the subject is Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge: CUP, 2015).

Some useful sites are indicated below.

1. International and regional mandate-holders on freedom of expression and media freedom

- UN Special Rapporteur on Freedom of Opinion and Expression: http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx
- UN Special Rapporteur for Freedom of Opinion and Expression in collaboration with the UC Irvine School of Law International Justice Clinic https://freedex.org/
- OSCE Representative on Freedom of Media: http://www.osce.org/fom
- Inter-American Commission on Human Rights Special Rapporteur on Freedom of Expression: http://www.oas.org/en/iachr/expression/index.asp
- African Commission on Human and Peoples' Rights Commissioner on Freedom of Expression and Access to Information: http://www.achpr.org/mechanisms/freedom-of-expression/

2. International NGOs on freedom of expression and media freedom

- ARTICLE 19: http://www.article19.org/index.php?lang=en
- Media Legal Defence Initiative: http://www.mediadefence.org/
- Committee to Protect Journalists: https://www.cpj.org/
- International Press Institute: http://www.freemedia.at/
- Index on Censorship: http://www.indexoncensorship.org/
- Pen International: http://www.pen-international.org/
- Reporters without Borders (RSF): http://en.rsf.org/

- Access Info Europe: http://www.access-info.org/
- Human Rights Watch on free speech: http://www.hrw.org/topic/free-speech
- Amnesty International on freedom of expression: https://www.amnesty.org/en/what-we-do/freedom-of-expression/
- Open Society Justice Initiative on media freedom: http://www.opensocietyfoundations.org/topics/media-freedom
- Open Society Justice Initiative on freedom of information: http://www.opensocietyfoundations.org/topics/freedom-information
- Freedom House on media freedom: https://freedomhouse.org/issues/media-freedom#.VPsaLuFSJG4

3. Centres on Media Freedom and/or Freedom of Expression

- Center for Media, Data and Society at CEU: http://cmds.ceu.edu/
- Centre for Media Pluralism and Media Freedom at the European University Institute, Florence: http://cmpf.eui.eu/Home.aspx
- Global Freedom of Expression & Information at Columbia University: http://globalfreespeech.columbia.edu/
- Knight First Amendment Institute https://knightcolumbia.org/
- Programme in Comparative Media Law and Policy http://pcmlp.socleg.ox.ac.uk/

V. Course Overview and Schedule

Class	Date	Subject	
1	17.01.2020	The state of media freedom in the world today; the case for media freedom	
2	17.01.2020	Legal frameworks; mechanisms of enforcement and accountability	
3	31.01.2020	The safety of journalists; online harassment of female journalists	
4	31.01.2020	National security and counter-terrorism policies	
5	14.02.2020	Surveillance and securing journalists' communications	
6	14.02.2020	Oral assignment	
7	28.02.2020	The protection of journalists' sources and whistle-blowers	
8	28.02.2020	The protection of reputation: criminal and civil defamation	
9	13.03.2020	Incitement and "hate speech"	
10	13.03.2020	Disinformation and false news	
11	27.03.2020	Regulating social media platforms	
12	27.03.2020	Review of course	

VI. Course Readings

1. The state of media freedom in the world today; the case for media freedom

The course begins with a reflection on the state of media freedom across the world. It then focuses on the dominant theoretical arguments for freedom of expression.

Reading

- Jamal Khashoggi, "What the Arab World Needs Most is Free Expression", *The Washington Post*, 17 October 2018
- ARTICLE 19, "ARTICLE 19 report shows sharp decline in global freedom of expression since 2014", 5 December 2018 and skim full report, ARTICLE 19, *The Expression Agenda Report 2017/8: The State of Freedom of Expression around the World*, December 2018
- Eric Barendt, *Freedom of Speech* 2nd edition (Oxford: OUP, 2005) pp 1-38 ("Why Protect Free Speech?")

Further reading

- Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge: CUP, 2015) 24 54 ("Theory of media freedom")
- Joel Simon, The New Censorship, Inside the Global Battle for Media Freedom (New York: Columbia, 2014)
- Andrey Rikhter, "Defining media freedom in international policy debates" (2016) 12 *Global Media* and Communication 127

Questions for written assignment

- Do you agree with justifications for freedom of expression in the reading materials?
- Do you think that there are any differences or tensions between these justifications?
- Why are philosophical discussions on freedom of expression relevant to (1) the media; and (2) the advocates of media freedom?

2. Legal frameworks; mechanisms of enforcement and accountability

This class introduces the international human rights legal frameworks on media freedom, particularly Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights. It then critically surveys the broad, complex and overlapping array of mechanisms of implementation, enforcement and accountability for media freedom.

Reading

Legal frameworks

- Key provisions: Article 19 of the Universal Declaration of Human Rights, Article 19 and 20 of the International Covenant on Civil and Political Rights, Article 10 of the European Convention on Human Rights, Article 13 of the American Convention on Human Rights and Article 9 of the African Charter on Human and Peoples' Rights (read the provisions carefully)
- Human Rights Committee, General Comment No 34 on Article 19 of the ICCPR on freedoms of opinion and expression CCPR/C/GC/34 21 July 2011

International and regional mandate-holders on freedom of expression, freedom of the media (familiarise with mandates and working methods, and explore recent news)

- Special Rapporteur on Freedom of Opinion and Expression http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx
- Organisation of American States Special Rapporteur on Freedom of Expression http://www.oas.org/en/iachr/expression/index.asp
- African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information http://www.achpr.org/mechanisms/freedom-of-expression/
- Organisation for Security and Cooperation in Europe, Special Representative on Freedom of the Media http://www.osce.org/fom

NGO report

International Press Freedom Mission, Press Freedom Under Threat, May 2018

Questions

- How similar are the international and regional standards on media freedom and freedom of expression? How do they converge and diverge?
- Are international and regional human rights systems effective in their protection of media freedom?
- What is the role of NGOs in tracking violations of media freedom?

3. The safety of journalists; online harassment of female journalists

This class turns to the most serious types of assaults on media freedom: attacks on journalists and media workers, and the impunity that often ensues. It distinguishes both the range of forms of physical attacks, threats and intimidation from state and non-state actors to which journalists are exposed to around the world, on the one hand, and the range of states' duties to protect individuals from such violations, on the other. It then examines the issue of trolling and, specifically, the challenges of online abuse and harassment facing female journalists.

Reading

- Committee to Protect Journalists, Getting Away with Murder: 2018 Global Impunity Index, 29 October 2018
- *Dink v Turkey*, Application Nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 judgment of the European Court of Human Rights, 14 September 2010, Information Note in English only
- Human Rights Council resolution 39/6 on the safety of journalists, 27 September 2018, A/HRC/RES/39/6
- OSCE Representative on Freedom of the Media, Communiqué 02/2015 on the growing safety threat to female journalists online, 6 February 2015

Further reading

- Highlights of 2018 UNESCO Director-General Report on the Safety of Journalists and the Danger of Impunity, November 2018
- International Women's Media Foundation and Trollbusters, *Attacks and Harassment: The Impact on Female Journalists and Their Reporting* (IWMF, Trollbusters: 2018)

Questions

- In what ways should states protect journalists, media workers and other communicators from the physical violence and threats?
- In digital age, anyone can be journalist and anyone can be targeted for what they say. Does this affect protection measures? Whom should be protection granted?
- What kinds of distinct challenges do female journalists face?

4. National security and counter-terrorism policies

National security and counter-terrorism objectives provide a particularly compelling justification for limitations on media freedom, given the basic duties of state to protect the lives of its people. This class examines how key courts have interpreted freedom of expression in cases where the state has advanced the argument that the media's right to freedom of expression should be suppressed on the grounds of national security and counter-terrorism interests.

Reading

- New York Times v United States; United States v. Washington Post Co 403 US 713 (extracts of judgment of the US Supreme Court in the "Pentagon Papers Case")
- Guardian and Observer v the UK, Application No 13585/88, judgment of the European Court of Human Rights, 26 November 1991 paras 9-35, 39-74 and minority opinions
- Jamie Grierson, "UK counter-terrorism plans cross line on human rights, say MPs" 12 October 2018
- Open letter: 9 international organisations urge EU officials to raise Turkey's freedom of expression crisis during EU-Turkey high political dialogue, 21 November 2018

Further reading

- Open Society Foundations, *The Tshwane Principles on National Security and the Right to Information*, An Overview in 15 Points, June 2013
- Written evidence from Reporters Without Borders to House of Commons and House of Lords Joint Committee on Human Rights on impact of the Counter-Terrorism and Border Security Bill 2018, 27 June 2018
- Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, 21 June 2017, HRC/35/22/Add.3

Questions

- How do you think the assigned cases concerning the media have bearing today?
- Should the media publish information that the government wants to restrict of national security? (e.g. materials published by Wikileaks about wars in Afghanistan and Iraq or the Snowden leaks)
- Do you think that principles developed by civil society organisations in this area, such as the *Tshwane Principles*, are useful in global advocacy, even if they do not constitute legally binding standards?
- What is the significance of the Special Rapporteur's report on his mission to Turkey?

5. Surveillance and securing journalists' communications

Building on the previous session on national security, this class examines the implications of states' mass surveillance policies for media freedom. It also assesses the importance of digital security tools for journalists, particularly in situations where censorship prevails.

Reading

- *Big Brother Watch and Others v UK*, Application Nos 58170/13, 62322/14 and 24960/15, judgment of 13 September 2018 (press release and paras 469 500 of full judgment)
- Necessary and Proportionate, International Principles on the Application of Human Rights to Communications Surveillance, May 2014
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Research Paper 1/2018, Encryption and Anonymity follow-up report, June 2018
- Access Now, Digital Security helpline https://www.accessnow.org/help/ (browse site) and guides on improving digital security https://www.accessnow.org/help/?ignorelocale#community-resources (choose one)

Further reading

• Human Rights Watch and the American Civil Liberties Union, With Liberty to Monitor All: How Large-Scale US Surveillance is Harming Journalism, Law, and American Democracy, 28 July 2014 (Press release on report only)

Questions

- How do mass surveillance police engage and undermine media freedom?
- On what basis did the European Court of Human Rights find that the UK's surveillance policies violate Article 10 of the European Convention on Human Rights in *Big Brother Watch and Others v UK* in September 2018?
- What can journalists do to better protect their digital security?

6. Oral assignment

Further instructions will be given to students at the beginning of the course as to the requirements for the oral assignment.

7. The protection of journalists' sources and whistle-blowers

This class turns to examine two issues that are closely related to the protection of journalists as such, namely the protection of journalists' sources and the protection of whistle-blowers. It highlights the key policy justifications for protecting the confidentiality of journalists' sources and whistle-blowers, as well as human rights standards on these issues.

Reading

- Goodwin v the UK, Application No 17488/90 Judgment of the Grand Chamber of the European Court of Human Rights, 7 March 1996, paras 11-22, 27-46
- Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye (on the protection of sources of information and whistle-blowers), 8 September 2015, A/70/361
- Catherine Tunney, "'Dark day for press freedom': Vice must give ISIS notes to police, top court rules", CBC News, 30 November 2018

Further reading

- *Guja v Moldova*, Application No 14277/04, judgment of the European Court of Human Rights of 12 February 2008, paras 8-29, 69-97
- Sanoma Uitgevers BV v Netherlands, Application No 38224/03 judgment of the Grand Chamber of the European Court of Human Rights of 14 September 2010, paras 9-29, 49-100
- Sandra Coliver, "National Security Whistleblowers: The U.S. Response to Manning and Snowden Examined" Open Society Foundations Voices, 12 June 2013
- ARTICLE 19, "Canada: Supreme Court must uphold freedom of the press in VICE News case" 23
 May 2018 and legal submissions of coalition of NGOs in Vice Media Canada and Ben Makuch v
 Her Majesty in the Right of Canada S.C.C. Court File No. 37574

Questions

- Why should journalists be able to refuse to disclose the identity of their sources?
- In what circumstances should journalists be compelled to reveal their sources?
- What considerations should be taken into account in determining whether a whistle-blower should be prosecuted for disclosing classified information?
- Do you agree with the recent ruling of the Supreme Court of Canada in the case of Ben Makuch?

8. The protection of reputation: criminal and civil defamation

This class examines the appropriate scope of defamation laws, restrictions which may be imposed upon media freedom for the protection of reputation. Besides considering the circumstances in which freedom of expression may be properly restricted to protect someone's reputation, this class will also distinguish and consider the suitability of sanctions for defamation (i.e. damages, fines, prison sentences). Moreover, it will discuss the importance of who is criticising or who or what is being criticised for the determination of whether restrictions on freedom of expression are "necessary in a democratic society".

Reading

- New York Times v. Sullivan 376 (1964) 254 (including "Note: The Central Meaning of New York Times v. Sullivan")
- *Lingens v Austria*, Application No 9815/82, judgment of the European Court of Human Rights of 8 July 1986, also paras 8-47
- Open Society Foundations, "Court Clears the Way for Greater Press Freedom in Africa", 11 December 11, 2014

Further reading

- Scott Griffen (author) Barbara Trionfi, Steven M Ellis, Scott Griffen (editors), Defamation Law in the European Union: A Comparative Overview for Journalists, Civil Society and Policymakers, June 2015
- Media Legal Defence Initiative and International Press Institute, Freedom of Expression, Media Law and Defamation, training manual, February 2015
- ARTICLE 19, Defining Defamation, Principles on Freedom of Expression and the Protection of Reputation, July 2017

Questions

- What are the limits of acceptable criticism of a public official?
- Why are criminal sanctions for defamation problematic from a media freedom perspective?
- What should courts consider when awarding damages in defamation cases?

• How can media freedom advocacy groups use data and statistics on defamation issues to advance their arguments?

9. Incitement and "hate speech"

This class looks at the media's responsibilities vis-à-vis incitement and "hate speech". It focuses upon the circumstances in which restrictions may be legitimately imposed the media's freedom of expression in order to protect the dignity and equality of individuals based on their status (e.g. race, religion, nationality).

Reading

- Key provisions: Articles 19 and 20 of the ICCPR; Human Rights Committee, General Comment No 34 on Article 19 of the ICCPR on freedoms of opinion and expression CCPR/C/GC/34 21 July 2011, para 48
- Other relevant provisions: Article 4 International Convention on the Elimination of Racial Discrimination; Article 3 of Convention on the Prevention and Punishment of the Crime of Genocide; Article 25(3)(e) Rome Statute of International Criminal Court
- *Jersild v Denmark*, Application no 15890/89, judgment of the European Court of Human Rights, of 23 December 1994, paras 9-18, 25-37
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence; Appendix to an Addendum to an Annual report of the High Commissioner for Human Rights. Appendix in the Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013
- ARTICLE 19, "Should "hate speech" be free?", 29 August 2017

Further reading

- Human Rights Council resolution 16/18 on combating intolerance, negative stereotyping and stigmatization of, discrimination, incitement to violence and violence against, persons based on religion or belief, 24 March 2011
- ARTICLE 19, "'Hate Speech' Explained: A Toolkit", 23 December 2015
- ARTICLE 19, "Responding to 'hate speech': Comparative overview of six EU countries", March 2018

Questions

- What counts as "hate speech" from the perspective of international human rights law on freedom of expression?
- What are the rights and responsibilities of the media with respect to "hate speech"? How can the media report on issues of intolerance and hatred without fear of being prosecuted?
- How far should media organisations engage in offensive speech following the murder of journalists and cartoonists of Charlie Hebdo in January 2015?
- Are blasphemy laws (and others on religious insult) ever acceptable under international law on freedom of expression?

10. Disinformation and false news

This class engages with the very topical subject of disinformation and false news – often and problematically called "fake news" – by examining the rise of the phenomenon, the challenges it poses to the media and possible solutions.

Reading

- Joint declaration on freedom of expression and "fake news", disinformation and propaganda, 3 March 2017
- Executive Summary of report, Clare Wardle and Hossein Derakhshan, Information Disorder, Towards an interdisciplinary framework for research and policymaking DGI(2017)09 (Strasbourg: Council of Europe, 2018), 31 October 2017
- House of Commons Digital, Culture, Media and Sport Committee, "Disinformation and 'fake news': Interim Report" (especially Conclusions and Recommendations)
- "Trump attacks on media violate basic norms of press freedom, human rights experts say", OHCHR press release, 2 August 2018

Further reading

- Tarlach McGonagle, "Fake News': False fears or real concerns", (2017) 35 Netherlands Quarterly of Human Rights 203–209
- Nic Newman with Richard Fletcher, Antonis Kalogeropoulos, David A L Levy and Rasmus Kleis Nielsen, *Reuters Institute Digital News Report 2018*, 32 44

Questions

- How does the dissemination of disinformation undermine media freedom?
- Why is the term "fake news" so problematic?
- What are some of the proposed solutions to the challenges of disinformation?

11. Regulating social media platforms

Against a backdrop of claims concerning the responsibilities of Internet companies for online content that is harmful, this class takes a concentrated look at the impact of such companies on the realisation of media freedom. It examines the question of whether such companies, particularly social media platforms, ought to be considered as media companies and also the responsibilities of such companies as drawn from international human rights principles.

Reading

- Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, A/HRC/38/35
- Alex Abdo, "Facebook is shaping public discourse. We need to understand how.", *Guardian*, 15 September 2018
- Jim Waterston, "UK newspaper industry demands levy on tech firms", *Guardian*, 25 September 2018
- Editorial, "The Guardian view on Zuckerberg's Facebook: regulate it as a media firm", *Guardian*, 28 November 2018

Further reading

- Aja Romano, "Don't ask whether Facebook can be regulated. Ask which Facebook to regulate."
 Vox, 12 April 2018
- Ranking Digital Rights, Corporate Social Responsibility Index 2018 (4-page highlights), April 2018

- ARTICLE 19, "Side-stepping rights: Regulating speech by contract", Policy Brief, June 2018
- ARTICLE 19, "Facebook Community Standards", Legal Analysis, 30 July 2018
- ARTICLE 19, "Twitter Rules and Practices", Legal Analysis, 5 September 2018

Questions

- What are the arguments for and against considering social media platforms, such as Facebook and Twitter, as media companies?
- How should these social media platforms be regulated?

12. Review of course and Q&A

There is no assigned reading material for this class, as such. The class will be devoted to a Q&A about the course in advance of the exam.

SP 19.11.2019