



Responsibility on the web and freedom of academic institutions in EU Member States: a judicial precedent in Greece.

Dr. Maria Alvanou
Criminologist-Terrorism Expert

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A very important, landmark decision was taken recently by a Greek court. It can serve as an example and precedent of how courts in European countries deal with the phenomenon of criminal liability of Web Providers and hosts regarding the webpages that use their service. This is of special interest, when the webpages are considered to upload material regarded as dangerous to security and public order, a very hot topic for many European states today.

High rank academics formerly serving in top university administrative positions were accused, because inside the Internet space of a major Academic Institution functions a certain website that is considered to belong to the antiestablishment or even anarchist ideological stream and promotes relevant activity¹. It was argued that the group website uses the University network outside any educational or research scope.

The Greek Court decided in favour of academic freedom and the absence of any obligation to check the content of the websites. The suggested the acquittal of the defendants doubting whether they have the duty to control the legality or illegality of the website and search or its carrier in Internet. Unanimously the judges decided that the academics are innocent.

The decision must be viewed in the context that Internet is a space of freedom. Those providing the Net cannot be held responsible and be forced to check on what is transmitted. Also, Academic Institutions are considered an asylum of ideas. In Greece, University and its premises are considered an asylum, where even the authorities and law enforcement have no right to enter and pursue arrests (unless very specific conditions apply and with the Senate's permission). If the material premises and space of the University are protected as an asylum, where anyone can say and argue whatever he wishes and believes without fear of arrest, then the web network of the University is the equivalent virtual premises and space, where people must enjoy the same freedom. In other words, academic freedom in the premises of the University must mean in today's modern settings also academic freedom in the e-premises of the University.

The Greek court decision seems to be also in compliance with the Directive 2000/31/EC of the European Parliament and the Council of 8.6.2000, according to which (Article 15- "no general obligation to monitor"), the providers have no general obligation imposed to them by Member States to monitor the information which they transmit or store, nor actively seek facts or circumstances indicating illegal activity.² This provision assists to the protection of Internet Providers, search engines etc. from unjust prosecution, ultimately ensuring the essential conditions and free space needed for Internet.

¹ The description and data used in this article regarding the case and the trial are based on <http://www.tanea.gr/default.asp?pid=2&ct=1&artid=4631692>

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML>

This case in an EU State adds to the debate on challenging legal matters regarding the use of Internet for villain purposes and possible means of control. The phenomena of terrorism, violent radicalization and specifically incitement to terrorism have been the main reason for this discussion. In this context, on April 18 2008, the EU Justice Ministers decided that using the Web for public provocation to commit a terrorist offence, to recruit terrorist agents and train them should be punished as a special, separate, sui generis offence in all EU Member States. This response is believed to be necessary to make the criminal justice system more effective to respond to the current disturbing reality of a Web full of sites aiming to radicalize violently youth across Europe and create new terrorists.

Justice is at a cross road. On one hand democratic states are trying to ensure public safety. On the other hand the protection of freedom of speech, press, communication, criticism against the government and the status quo and ultimately the right of modern man to enjoy freely the Web are equally important. Freedom of Internet has become vital for our modern societies and life. Legislation and prosecutions against the freedom of Internet and prosecutions remind many people of past totalitarian regimes trying to censor speech and restrict the freedom of expression. It seems that as forth as we go with the advancement of technology, at the same time there is a trend of return to laws and procedures that used to suffocate freedom in the past. And citizens do not want or tolerate that.

In addition, there is the concern that battling radicalization or terrorism on the Web could be used as pretext and excuse by state authorities to silence disturbing voices. Many countries today in Europe face a deep economic crisis that has led to the dismay and up rising of people. This uprising has been facilitated and spread through Internet and especially with the use of e- social networks. Internet has given to people the unique power and opportunity to communicate with one another, express their views and dislike and coordinate lawful reactions. It is clear that inside a democratic state this venue of expression and communication must be safeguarded and not restricted.

As terrorism and extremist violence continue to pose a threat to security, measures will only get harder. Major search engines and uploading platforms have taken the decision to battle radicalization on the Net by self- regulation. Yet, this could not support a policy of prosecutions against providers, hosts, search engines etc, as it is very hard to prove that the latter are really able to control and know the unlawfulness of every bit of data that is uploaded in webpages. Let us also not forget that apart from radicalization and terrorism, there is a lot of other unlawful activity taking place in the Web today, including child pornography. The problem is that while it can be an easy call to identify criminal activity like child pornography, the distinction between legality and illegality can be more than tricky in situations of criticism and activism material on the Web.