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**BUREAU OF THE STEERING COMMITTEE  
ON THE MEDIA AND NEW COMMUNICATION SERVICES**

**(CDMC-BU)**

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**Meeting of 28 and 29 April 2008  
Council of Europe Office, 55 avenue Kléber, 75016 Paris  
(Room 2)**

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**BUREAU'S REPORT ON THE CURRENT STATE OF CDMC DISCUSSIONS ON  
THE SUBJECT OF A POSSIBLE FUTURE MECHANISM FOR PROMOTING  
RESPECT OF ARTICLE 10 OF THE EUROPEAN CONVENTION ON HUMAN  
RIGHTS**

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## **Introduction**

1. The relevant part of the report on the 6th meeting of the CDMC reads as follows:

“The CDMC pursued consideration of this matter. In particular, it took note of the oral report by Ms Delia Mucica (Romania) who chaired the informal working group set up by the Steering Committee to consider the questions raised by delegations at its previous meetings. The CDMC noted that not all persons invited to take part in the work of the informal group had been able to do so, and thanked all of them for their efforts, especially their constructive discussions.

The CDMC also noted the views expressed by Lord Andrew McIntosh, member of the Parliamentary Assembly and comments made by Mr Roland Bless, Director of the Office of the Representative on Freedom of the Media of the OSCE and of observers to the CDMC.

Discussions suggested an emerging agreement as to the desirability of a specialised mechanism designed to promote the implementation of Council of Europe freedom of expression and media related standards in practice, having regard to the specificities of each member state. The work of existing bodies that record cases of alleged violations of those freedoms should not be duplicated, and a Council of Europe mechanism should develop synergies with relevant existing bodies. Moreover, the objective of such a mechanism should be to work together with relevant member states in a spirit of cooperation and ongoing dialogue, based on professionalism and expertise, independence and impartiality.

There appeared also to be agreement as to the desirability for a “light weight” mechanism that does not require the formal creation of a new body or institution and that can easily be discontinued if it does not prove its efficacy. Due attention should also be paid to financial implications. Some delegations suggested that this mechanism could be associated to the institution of the Commissioner for Human Rights.

The CDMC asked the Bureau to prepare a more detailed paper setting out the current state of CDMC discussion on the subject and decided to resume consideration of this item at its next meeting.”

2. This document seeks to outline the state of discussions within the CDMC, signalling in particular the scope of agreement or degree of dissension, with a view to mapping out concrete possibilities and further action - if any - to be taken on the subject.

## **State of discussions within the CDMC**

3. In her report on the work of the informal group set up to look into the matter, Ms Delia Mucica indicated that the group (in their individual capacity as experts rather than

representatives of their respective states) agreed that there are grounds for concern as regards respect for freedom of expression and freedom of the media.

4. During the CDMC's own discussions, a number of the delegations that took the floor expressed their scepticism about the need to create a new monitoring mechanism within the Council of Europe. However, one of the delegations that found that the case for a new "formal monitoring mechanism for Article 10" had not been made, suggested establishing a small unit to deal with issues related to Article 10 and to test the scope for effective monitoring as a possible first step towards a more formal mechanism in the future. The delegation in question suggested that this unit could operate under the auspices of an existing mechanism, such as the Commissioner for Human Rights; the possibility of a joint venture with another international organisation (e.g. the OSCE) was also evoked.

5. Other delegations and the observers that took the floor during the discussions were far less sceptical about the need to create a new monitoring mechanism within the Council of Europe. More particularly, no delegation advanced that there are no grounds for concern. There is concern about actual and apparent breaches of Article 10 of the European Convention of Human Rights and threats to journalists in Council of Europe member states. This is borne out by the case law of the European Convention on Human Rights as well as by a number of professional and civil society organisations' reports. The CDMC noted in particular that, in 2007, the independent international think-tank Freedom House, in its Global Press Freedom report, rated four Council of Europe member states as "not free" and a further eleven as only "partly free". The World Press Freedom Index for 2007 of Reporters Without Borders is also disappointing in respect of a number of Council of Europe member states. However, it appeared that but found the suggestion of a "light weight" mechanism acceptable

6. Ms Mucica also conveyed the view of the informal group (again, in their capacity as experts) that something should be done by the Council of Europe to promote more actively respect for Article 10 of the European Convention on Human Rights, and that this should be done by means of an "upstream" preventive mechanism.

During discussions, many CDMC delegations agreed that some form of preventive action in respect of Article 10 is necessary; no delegation held the view that no further Council of Europe action is needed. While protecting and promoting individual rights under Article 10 might not justify a further mechanism (the question was raised as to what would justify giving priority to this Convention Article as compared to other Convention rights), the answer is different when regard is had to the key part played by freedom of expression and freedom of the media in democracy; as the CDMC has had occasion to state, without such freedoms, elections and other democratic processes are seriously challenged and flawed. Some participants suggested that the emphasis should be on freedom of the media.

7. There appeared to be agreement as to the desirability for a "light weight" mechanism (see paragraph 4 above) that does not require the formal creation of a new body or institution and that can easily be discontinued if it does not prove its efficacy. Although not unanimously, the Bureau concludes that the idea of some form of Council of Europe mechanism for promoting respect of Article 10 of the European Convention on Human Rights (as worded in

the Secretariat discussion paper) or monitoring (as referred to in Parliamentary Assembly documents and, albeit with some apprehension, by some CDMC members) should be pursued.

However, it is the clear view of the CDMC - and of the Bureau - that, in making any proposals concerning a Council of Europe mechanism for promoting respect of Article 10 of the European Convention on Human Rights, it is of utmost importance (i) not to duplicate the work of existing bodies that record cases of alleged violations of freedom of expression and freedom of the media or carry out other related work, (ii) for the resulting Council of Europe mechanism to seek to develop synergies with relevant existing bodies, and (iii) to pay attention to the financial implications of setting up such a mechanism and of its ongoing functioning. Further comments follow in respect of these matters.

8. Duplication was identified as a real risk which needs to be addressed from the outset. In what one delegation described as an already crowded field, there are organisations and institutions that:

- (a) record violations of the rights to freedom of expression and freedom of the media (e.g. professional and civil society organisations);
- (b) sound the alarm bell in serious cases or ongoing situations of concern in respect of Article 10 or relating to its alleged violation (e.g. the Parliamentary Assembly of the Council of Europe, the OSCE Representative on Freedom of the Media, professional and civil society organisations);
- (c) promote freedom of expression and freedom of the media in general or advocate in favour of these rights in specific cases (e.g. the Council of Europe Commissioner for Human Rights, the OSCE Representative on Freedom of the Media, civil society and professional organisations);
- (d) monitor freedom of expression and freedom of the media (e.g. Council of Europe Committee of Ministers, Secretary General and Parliamentary Assembly, including in specific circumstances such as election campaigns);
- (e) confront member states with their responsibilities under Article 10 (e.g. the Parliamentary Assembly; the Committee of Ministers, including in the context of the execution of judgements of the European Court of Human Rights; the Secretary General of the Council of Europe can also take some action by virtue of his powers under Article 52 or the European Convention on Human Rights<sup>1</sup> and paragraph 7 of the Committee of Ministers Declaration of 3 May 1996 on the protection of journalists in situations of conflict and tension<sup>2</sup>);

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<sup>1</sup> Article 52 of the European Convention on Human Rights, on Inquiries by the Secretary General, reads as follows: "On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention."

<sup>2</sup> Paragraph 7 of the Committee of Ministers Declaration on the protection of journalists in situations of conflict and tension reads as follows: "The Committee of Ministers considers in this context that, in urgent cases, the Secretary General could take speedily all appropriate action on receipt of reports on infringements of rights and freedoms of journalists in member states in situations of conflict and tension and calls on the member states to cooperate with the Secretary General in this regard."

(f) offer advice, assistance and/or guidance to relevant member states (e.g. the Council of Europe Directorate of Cooperation, the OSCE, the European Union, as well as civil society and professional organisations); and

(g) adjudicate in respect of alleged violations of the rights protected under Article 10 (e.g. national courts and the European Court of Human Rights).

9. Nonetheless, the Bureau gained the impression from CDMC discussions (a view that was not shared by one of its members) that the risk of overlap was not considered an insurmountable obstacle, but rather something that required attention with a view to its proper management. Overlap can be avoided by a Council of Europe mechanism attentive to the work being carried out by, and through developing synergies with, other institutions.

This was also the view in particular of the Director of the Office of the OSCE Representative on Freedom of the Media, who enounced various circumstances where synergies would be possible and welcome. For his part, the representative of the Parliamentary Assembly's Sub-Committee on the Media also evoked the complementarities of efforts made by different actors. He also alluded to the potential of the Parliamentary Assembly itself to act as a resonance box for the work carried out by others and also to engage in dialogue with parliamentary leaders in countries experiencing situations of concern.

10. Moreover, in the CDMC's view there can be specific added value if such a mechanism is able to work together with relevant member states in a spirit of cooperation and ongoing dialogue and if the mechanism in question offers guarantees of professionalism and expertise, independence and impartiality.

Subject to meeting these requirements (and bearing in mind scepticism expressed as regards setting up a new formal mechanism – see paragraph ...), many CDMC delegations found that it would be desirable to redouble efforts towards the respect and implementation in practice of the wealth of standards developed over the last two and half decades by the Council of Europe with a view to reinforcing and guaranteeing the rights protected under Article 10 of the European Convention on Human Rights. The need to deploy such efforts will not decrease, but rather increase, as new standards are worked out among member states in respect of freedom of expression in the new information and communications environment and traditional media move from mono to multimedia and occupy spaces in that new environment.

Observer organisations also underlined the need to place an emphasis on practical implementation of relevant Council of Europe standards and the desirability that this be done by the Council of Europe itself (although one delegation also evoked the possibility of a joint endeavour with another international organisation, such as the OSCE).

11. There was also general agreement within the CDMC as to the need to pay attention to the financial implications of setting up a mechanism for promoting respect of Article 10 of the European Convention on Human Rights and of the mechanism's ongoing functioning. This concern appeared to be addressed by the above-mentioned proposal for the establishment of a "light weight" mechanism.

Concerns in respect of the best use of resources in the longer-term are, for their part, would be addressed by avoiding the formal creation of a new permanent sizeable machinery but choosing an arrangement the cost of which can be absorbed within current budgetary constraints and that can be discontinued if it does not prove its efficacy. As indicated earlier, a delegation's proposal involved establishing a small unit to deal with issues related to Article 10 and to test the scope for effective monitoring as a possible first step towards a more formal mechanism in the future; the small unit could operate under the auspices of an existing mechanism, such as the Commissioner for Human Rights.<sup>3</sup> Some delegations supported this suggestion.

10. However, other delegations considered that, although it meets the requirements of independence and impartiality, the Commissioner's mandate (and expertise) may not be the ideal framework for a specific Article 10 mechanism. Although the Commissioner has to date paid some attention to freedom of expression and freedom of media matters, the institution does so within the context of a very general mandate which was conceived as complementary to the specialised mandates of other Council of Europe bodies dealing with specific human right issues (e.g. ECRI, CPT). Its priorities may change from time to time and thus fail to provide the desirable continuity in promoting freedom of expression and freedom of the media through ongoing cooperation and dialogue with relevant member states.

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<sup>3</sup> According to Article 3 of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, the Commissioner shall:

- a. promote education in and awareness of human rights in the member States;
- b. contribute to the promotion of the effective observance and full enjoyment of human rights in the member States;
- c. provide advice and information on the protection of human rights and prevention of human rights violations. When dealing with the public, the Commissioner shall, wherever possible, make use of and co-operate with human rights structures in the member States. Where such structures do not exist, the Commissioner will encourage their establishment;
- d. facilitate the activities of national ombudsmen or similar institutions in the field of human rights;
- e. identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings;
- f. address, whenever the Commissioner deems it appropriate, a report concerning a specific matter to the Committee of Ministers or to the Parliamentary Assembly and the Committee of Ministers;
- g. respond, in the manner the Commissioner deems appropriate, to requests made by the Committee of Ministers or the Parliamentary Assembly, in the context of their task of ensuring compliance with the human rights standards of the Council of Europe;
- h. submit an annual report to the Committee of Ministers and the Parliamentary Assembly;
- i. co-operate with other international institutions for the promotion and protection of human rights while avoiding unnecessary duplication of activities.