



## **The role of Council of Europe bodies to enhance media freedom and the protection of journalists**

The Council of Europe provides for the protection of freedom of expression notably through the European Convention on Human Rights, its Court and its standard setting by the Committee of Ministers. This system could be described as creating an “enabling environment” for freedom of expression, including as exercised by journalists and other media actors. The European Court of Human Rights has established that States are required to create a favourable environment for participation in public debate by all persons, enabling them to express their opinions and ideas without fear.<sup>1</sup>

***Consequently, Article 10 of the European Convention on Human Rights (“ECHR”) is at the core of the Council of Europe’s system for the protection of the right to freedom of expression.***

It reads:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

On proceedings, it follows that:

- Individuals, but also non-governmental organisations, like the press, NGOs, human rights defenders may **bring cases** before the Court for their rights guaranteed in the Convention.

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<sup>1</sup> See *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, judgment of 14 September 2010, paragraph 137.

- Experts, representatives of human rights organisations and others can gain permission from the President of the Court to intervene in the proceedings by filing pleadings and/or to take part in public hearings (**third party intervention**).
- **Interim measures** under Rule 39: The Court has the power to order the equivalent of an injunction, in 'life and limb' cases. If it were possible to present compelling evidence that a journalist has been targeted and that the state is complicit or that the State refuses to provide the necessary protection, it is possible that the Court could order interim measures to require the State to provide the required protection.

On substance:

- The right to freedom of expression and its corollary, freedom of media, are also **essential tools for the defence of other human rights**. That has been repeatedly underlined by Council of Europe bodies, for being a core element of democracy.
- *"Not only the media have the task of imparting (...) information and ideas: the public also has a right to receive them".<sup>2</sup>*
- Article 10 doesn't distinguish ordinary citizens and journalists. However, **an enhanced protection for the exercise of the freedom of expression is guaranteed for journalistic activities**. While the enjoyment of the freedom -and task to- informing is coupled with the expectation of adherence to professional ethics and codes of conduct, the later shouldn't be envisaged as a precondition for the protection to be provided by states.
- The ECtHR doesn't give a definition of journalism but refers to a diverse range of contributions to public debate, emphasizing the freedoms that are instrumental to the realisation of the public watchdog role traditionally played by journalists and the media in any democratic society. **Whereas public watchdog functions were predominantly fulfilled by journalists and the media in the past, they are now increasingly being fulfilled also by other media and non-media actors.**
- Not only article 10 of the ECHR, but also the number of autonomous rights guaranteed in the ECHR is potentially (depending on the type of interference) implicated in issues surrounding the **safety of journalists and the fight against impunity**. Typically, they include: the right to life (Article 2); prohibition of torture (Article 3); right to liberty and security (Article 5); right to a fair trial (Article 6) and no punishment without law (Article 7). The ECtHR has read positive State obligations into these rights.
- State obligations to protect the physical integrity of journalists under the European Convention on Human Rights can be simplified to: **prevention, protection and prosecution**.
- Attacks on, and intimidation of, journalists and other media actors inevitably have a very **chilling effect on freedom of expression**. The chill factor is all the more piercing when the prevalence of attacks and intimidation is compounded by a culture of legal impunity for their perpetrators.

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<sup>2</sup> The Sunday Times v. the United Kingdom, (no1), 26 April 1979, § 65, Series A no.30.

***The translation of the ECHR's principles through divers tools, mandates and fora, by all relevant Council of Europe bodies: standard-setting, monitoring, political fora, expertise, cooperation, country visits, dialogue***

**The Committee of Ministers**, as the decision-making body of the Organisation is the political forum where member States can debate and agree on joint action to protect and further the values of the Organisation. The Committee of Ministers adopts reports, statements, resolutions or other standard-setting instruments.

The Committee of Ministers also holds regular thematic debates in the context of their meetings. These debates are the subject of a summing-up under the Chair's responsibility. They may also give rise to the adoption of decisions.

The Committee of Ministers pursued dialogue on the safety of journalists and media freedom devoting three thematic debates to these topics on 2011, 2012 and 2013 (please see list of documents).

The Committee of Ministers monitors the execution of judgments of the Court by member States in respect of which the Court has found a violation of Article 10. As a first measure when it is deemed necessary, the Committee of Ministers can change the monitoring procedure of a particular case and decide to continue its examination under enhanced procedure which requires closer scrutiny by the Committee. In case of lack of a development in the execution of a case, the Committee may invite or even urge a member state to take necessary measures to prevent similar violations in the future. If the state does not take action, the Committee of Ministers may decide to send a letter to the authorities of that state or pass an interim resolution. According to Article 46§4 of the Convention, having considered that the relevant state refuses to abide by a final judgment, the Committee of Ministers may refer the issue to the Court. Some of the cases which are currently being supervised by the Committee of Ministers are *Gongadze v. Ukraine* (enhanced supervision) *Dink v. Turkey* (enhanced supervision), *Muradova vs. Azerbaijan*, *Mahmudov and Agazade v Azerbaijan*, *Fatullayev v. Azerbaijan* (enhanced supervision).

The Department of Execution of Judgments working under the Committee of Ministers also provides technical assistance to member states in the framework of different projects, country visits and bilateral meetings.

**The Parliamentary Assembly ("PACE")** has four plenary part-sessions of one week each in Strasbourg every year. Committees meet also throughout the year, often in national parliaments. Its 318 representatives are appointed by national parliaments from among their members in accordance with the party-political composition of each parliament. The parliaments of Canada, Israel and Mexico are observers and Kyrgyzstan, Morocco and the Palestinian Legislative Council have a status as Partner for Democracy. Parliamentary delegations of other states often participate in Assembly work.

Under the Statute of the Council of Europe, the Assembly elects the judges to the European Court of Human Rights, the Commissioner for Human Rights as well as the Secretary General and Deputy Secretary General of the Council of Europe.

Based on committee reports prepared by individual parliamentarians, the Assembly adopts three types of text: resolutions, recommendations to the Committee of Ministers and opinions on draft conventions or treaties prepared by the Committee of Ministers. Following a plenary debate, those decisions are taken by the Assembly through voting.

Assembly resolutions and recommendations often initiate new work by the Council of Europe, and the most important initiative was the drafting of the European Convention on Human Rights ("ECHR").

The Assembly monitors the honouring of obligations and commitments of individual Council of Europe member states through its Monitoring Committee and prepares a thematic analysis of serious violations of media freedom in Europe by a parliamentary rapporteur of the Committee on Culture, Science, Education and Media. The latter committee frequently prepares also reports on other issues related to Article 10 of the ECHR. The Assembly Bureau produces reports on election observations in member States, which also look at media freedom and election campaigns.

Individual parliamentarians can put written questions to the Committee of Ministers, make declarations in plenary sessions and initiate new Assembly reports. The preparation of reports typically involves country visits, hearings with NGOs such as journalists' and media organisations as well as expert reports.

PACE resolutions aim to analyse situations in member states, which give rise for concern in the light of Article 10 ECHR; they politically guide national parliaments and often address also other international organisations.

**The Congress of Local and Regional Authorities** has a fundamental role in promoting democracy by involving local and regional authorities. The Congress can also initiate cooperation at the highest level with representatives of national authorities and be informed about critical situation on the ground by a variety of sources.

The Congress is currently preparing a report on the situation of regional media, which will address the issues of media freedom and working conditions of regional media (legal framework, ownership, censorship, persecution, etc.). However, the Congress has not yet addressed in-depth and exclusively the subject of the safety of journalists

The media role in electoral campaigns is also regularly addressed in Congress reports on local and regional elections' observation, mainly from the viewpoint of objectivity, fair coverage, access of candidates and media freedom vs. control over media.

**The Commissioner for Human Rights:** His mission is to promote the observance of human rights and to assist member States to implement the standards of the Council of Europe. The Commissioner visits member States and prepares reports on the national or regional problems with regard to human rights. He cooperates with the standing committee of Conference of INGOs, which is the highest representative of the civil society and develops fruitful relations with the NGO's (about 400) setting guidelines and adopting action plans.

The safety of journalists and media freedom has been a focus of a number of the Commissioner's country visits and reports; it is also the subject of regular media, including social media, and conference interventions of the Commissioner. The Commissioner can visit journalists in detention and raise issue arising out of these cases with the relevant national authorities, and more broadly.

In the Commissioner's view, bloggers, reporting citizens and others active on the Internet have joined traditional journalists in the ranks of those who are at risk of retaliation by state authorities or interest groups. The protection and safety of journalists must therefore be strengthened in a manner that is as inclusive as possible, including not only journalists in the formal sense, but all those reporting in the public interest.

Whatever the source of the attacks, the Commissioner's main recommendations are the following: Effective investigations, prosecutions and dissuasive sanctions for those who ordered the attacks and those who carried them out / Measures to protect journalists, such as police protection / Unequivocal political signals from the highest level that such attacks are attacks on democracy / Ensure that policing fully respects freedom of expression and media freedom.

In this work, the Commissioner cooperates with several important partners – not only associations of journalists and specialised NGOs, but also at UN level (the Special Rapporteur on freedom of expression and UNESCO). The OSCE Representative on Freedom of the Media, with which the Commissioner's office is in regular contact, is a particularly important partner.

**For all relevant documents, please see Round Table web page**