

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors

1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

The investigation and prosecution mechanisms are found in the Criminal Code. They do not distinguish between journalists and other victims of crime.

2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?

There are no ECHR judgments against Malta related to the safety of journalists or to the issue of impunity.

3. Is the confidentiality of journalists' sources of information protected in both law and practice?

The confidentiality of journalistic sources is protected through Article 46 of the Press Act which states as follows:

46. No court shall require any person mentioned in article 23 to disclose, nor shall such person be guilty of contempt of court for refusing to disclose, the source of information contained in a newspaper or broadcast for which he is responsible unless it is established to the satisfaction of the court that such disclosure is necessary in the interests of national security, territorial integrity or public safety, or for the prevention of disorder or crime or for the protection of the interests of justice:

Provided that the court shall not order such disclosure unless it is also satisfied that in the particular circumstances of the case the need for investigation by the court outweighs the need of the media to protect its sources, due regard being taken of the importance of the role of the media in a democratic society:

Provided further that nothing in this article shall be interpreted

as exempting any person mentioned in article 23 from proving the truth of any facts attributed by him in terms of article 12.

The article is in practice applied by the Courts and respected by the police and administrative authorities.

4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?

The Press Act includes the possibility of instituting a criminal action for libel upon the complaint of the injured party. In the case of defamation not consisting of wrong allegation of facts which the defendant assumed the burden of proving in Court to be true, the maximum penalty is a fine not exceeding EUR 1164. In the case where the defendant claims the truth of the facts alleged but then fails to prove them in Court the maximum punishment in the criminal action is that of imprisonment for six months and a fine of EUR 1164. The last prison sentence imposed on a journalist for libel goes back to the early 1970s and even then it was an isolated case.

5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

An action for libel is subject to all the procedural guarantees applicable to criminal and civil trials respectively and one of these is the right to defence in accordance with Article 6 of the ECHR. The period of limitation for filing an action in libel is that of one year. The *exceptio veritatis* is acceptable in the case where the allegations concern a person who falls within a wide definition of a public figure. When the *exceptio veritatis* is fielded the burden of proving the truth of the facts alleged passes on to the defendant. Damages awardable in a civil action for libel are currently capped at a maximum EUR 1146. It is a general principle in court procedure that good faith is presumed and that it is the person who claims that there was bad faith who has to prove it.

6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?

The Criminal Code includes an offence of contempt of the President and of reviling a Judge, the Attorney General (who is the Public Prosecutor) or a juror in the exercise of his or her duties. The Press Act does not provide for a higher punishment or for higher damages if the plaintiff or complainant is an official of the State. Prosecutions under the above quoted articles of the Criminal Code are very rare and the articles are not generally understood as protecting the State officials concerned against mere criticism.

7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?

In this regard there are no special provisions but reliance is made on the fundamental nature of the right to freedom of expression as enshrined in Article 41 of the Constitution of Malta and in Article 10 of the ECHR.

8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?

The English language version of the guidelines is easily understandable in Malta and the work of the Council of Europe and of the European Court of Human Rights is widely followed by the authorities and by other interested parties such as journalists and the media. Recently a seminar on 'Positive Obligations' under the European Convention on Human Rights, a subject closely related to the prevention of impunity, was organised by the Chamber of Advocates and the Judicial Studies Committee in Malta with participation of speakers from the ECHR.

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)
- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity
- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment
- Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content
- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings
- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists

