

Freedom of Expression, journalism and the Council of Europe

*On the Agenda, the next draft recommendation on **protection of journalism and safety of journalists and other media actors** should be presented to the CM by the end of March. That recommendation will be the updated successor of the homonymous 2014 Declaration¹, incorporating the most recent ECHR cases. This text is the result of the various CoE's activities relating to the subject from the last 3 years such as seminars, conferences, thematic debates, previous recommendations and the online CoE platform for the safety of journalists.*

1- Context of the recommendation

The drafting process of the recommendation benefited from the dialogue between international judicial bodies² and also from the discussions³ that lead to the creation of the online platform for the protection of journalists. Indeed, the effective cooperation with other international organisations is recognised as an important condition for a solid foundation of this Recommendation, in particular the UN Action Plan on safety of journalists and the issue of impunity.

The MSI-JO (committee drafting the recommendation) is composed of 11 governments' members + 2 independent members, including the former ECHR vice president, Belgian Françoise Tulkens. She was included in order to remain close to the full range of positive obligations towards the states as developed within the Convention (ECHR) art. 10 and the related case law of the ECtHR.

2- General scope and structure of the recommendation

The Recommendation contextualizes the ECHR case law, particular the positive obligations of states on the topic, in a more edible way. The committee has opted for a very comprehensive approach although not exhaustive, where the scope is not limited to physical harms, threats, or deprivation of liberty but extends to a full range of positive obligations, reinforcements and remedies.

The drafting committee has opted for a structure composed of a preamble with an operative part underlining urgent matters and concrete guidelines designed to meet the challenge of ensuring effective protection of journalism and safety of journalists which necessitates coherent and complementary strategies by member states.

The guidelines are organised in pillars:

- 1- Prevention,
- 2- Protection,
- 3- Prosecution,
- 4- Promotion of information, education and awareness raising

The very last explanatory part called *principles* exposes those developed by the ECtHR case law.

It should be underlined that this recommendation is strongly anchored in ECtHR case law, aware of latest evolution in the field (including the Internet). The recommendation surely deals with article 10 of the ECHR on freedom of expression, but it also deals with article 2, 3 on bodily harm and article 5 on safety through an extensive interpretation of the notion of "favourable environment for public debate". The need for protection bears with the fact that (a) journalists are more vulnerable than the mere citizen, because of their "public watchdog" and counter-power role, and (b) freedom of media is also an essential tool for the defence of other human rights. That has been repeatedly underlined by Council of Europe bodies, for being a core element for democracy.

¹ [Declaration on the protection of journalism and safety of journalists and other media actors 30.04.14](#)

² Seminar and international judicial dialogue: <http://www.coe.int/en/web/freedom-expression/seminar-inter-regional-dialogue>

³ Round Table: <http://www.coe.int/en/web/freedom-expression/round-table-safety-journalists>

On the substance 1 point of dissent remained for one delegation, who raised the voice of the extension of the function of journalism to “other media actors”⁴ (already made in 2014), as it considers this term to be unspecific and without any basis in binding international legal documents.

3- Related publication: Journalism at risk

Journalism at Risk is a new book from the Council of Europe (<https://book.coe.int/eur/en/human-rights-and-democracy/6675-journalism-at-risk.html>), in which ten experts from different backgrounds examine the role of journalism in democratic societies.

How can these threats be tackled? What is the role of the Council of Europe, the European Court of Human Rights and national governments in protecting journalists and freedom of expression?

The key discussion in this book strives around the notion of “favourable environment for a public debate” as stated in the case law of the ECHR⁵.

Soon available in 3 different languages (English, French, Turkish), voluntary contributions are still needed for further translations.

4- The platform for the protection of journalism and safety of journalists

The Council of Europe has set up an online platform to improve protection of journalists and media professionals. The platform offers a systematic alert to Council of Europe bodies and institutions, enabling timely and coordinated action when necessary. It also helps the Organisation identify trends and propose adequate policy responses in the field of media freedom.

More on <http://www.coe.int/en/web/media-freedom/the-platform>

⁴ Art. 10 of the Convention doesn’t distinguish ordinary citizens and journalists. However an enhanced protection for the exercise of 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, the latter shouldn’t be envisaged as a precondition for the protection to be provided by states.

⁵ Paragraph 137 of the [Dink v/ Turkey](#) judgment: obligation on states to create a *favourable environment* for public debate in which everyone can participate.