

## Freedom of Expression, journalism and the Council of Europe<sup>1</sup>

*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 Declaration<sup>2</sup>, 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 effective cooperation with other international organisations is recognised as an important condition for a solid foundation of the Recommendation, in particular UN Action Plan on safety of journalists and the issue of impunity
- The drafting process of the recommendation benefited from the dialogue between international judicial bodies<sup>3</sup> and also from the discussions<sup>4</sup> resulted in the creation of the online platform for the protection of journalists.
- MSI-JO Committee producing recommendation: 11 governments' members + 2 independent members, including former ECtHR 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

- Committee has chosen a very comprehensive approach although not exhaustive. Scope not limited to physical harms, threats, or deprivation of liberty but extends to full range of positive obligation/reinforcements/remedies

Contextualises the ECHR case law, in particular the positive obligations of states on the topic, in a more edible way.

The drafting committee has opted for a structure composed of a preamble with an operative part underlining urgent matters

- 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
- Guidelines organised in pillars:
  - 1- Prevention,
  - 2- Protection,
  - 3- Prosecution,
  - 4- Promotion of information, education and awareness raising
- The very last part called principles exposes those developed by the ECtHR case law. Explanatory and pedagogical function.

### - 3. Why important:

- 1- Strongly anchored in ECtHR case law, more aware of latest evolution in the field (incl. the Internet)
- 2- Art. 10 but also 2, 3 on bodily harm & 5 on safety = extensive interpretation of the notion of "favourable environment for public debate"
  - a- Journalist more vulnerable than the mere citizen, because of their "public watchdog" and counter-power role
  - 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 of democracy.

- Issues:

- On the substance 1 point of dissent remained for one delegation, RF, who raised the voice of the extension of the function of journalism to "other media actors"<sup>5</sup> (already made in 2014), as it considers this term to be unspecific and without any basis in binding international legal documents.

<sup>1</sup> For more information on CoE bodies roles to enhance media freedom and the protection of journalists, see

<https://rm.coe.int/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=09000016804916a5>

<sup>2</sup> Declaration on the protection of journalism and safety of journalists and other media actors 30.04.14

<sup>3</sup> Seminar and international judicial dialogue: <http://www.coe.int/en/web/freedom-expression/seminar-inter-regional-dialogue>

<sup>4</sup> Round Table: <http://www.coe.int/en/web/freedom-expression/round-table-safety-journalists>

- Who is a journalist? Who isn't? Blogger? The internet has redistributed the "cards". Shall extend the protection to new actor as well as reinforcing the role and protection of traditional journalists (true info, ethical, trustworthy).
- Criteria: the source<sup>6</sup> and protection of journalistic sources // Privileged access to info
- 2 movements must merge : value of informative function + public debate value
- Let us remind that art. 10 represent a right AND a duty (cf. Aidan White "ethics of journalism").

-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, the later shouldn't be envisaged as a precondition for the protection to be provided by states.

#### 4. Related publication and recent events

##### a- Journalism at risk

- Journalism at Risk is a new book from the Council of Europe, 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?
- A key discussion in this book strives around the notion of "favourable environment for a public debate" as stated in the case law of the ECHR<sup>7</sup>.
- Economic viability of the function of journalist and legal approach
- Available here: <https://book.coe.int/eur/en/human-rights-and-democracy/6675-journalism-at-risk.html>
- Soon available in 3 different languages.
- Voluntary contributions needed to translate in other languages. Way to support CoE + leverage.

##### b- The 7 videos "Hows and Whys/ Freedom of expression: a human right"

Again give access to technical case law through understandable wording and user friendly, pedagogical videos: <http://www.coe.int/fr/web/freedom-expression/videos>

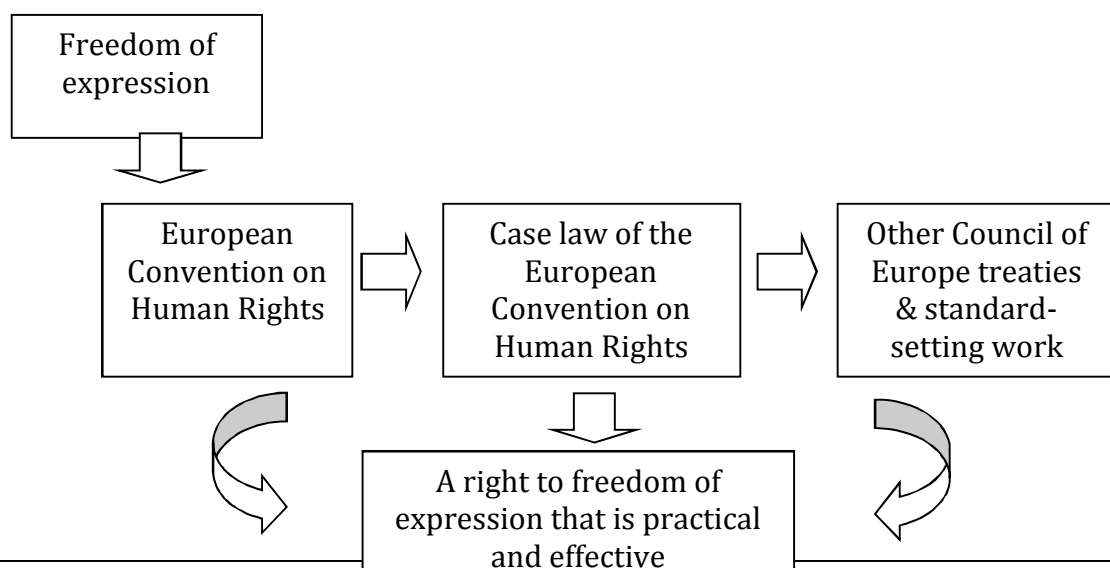
##### c- Conferences

<http://www.coe.int/fr/web/freedom-expression/seminar-inter-regional-dialogue>

- Conference of 13-14 October 2015

<http://www.coe.int/fr/web/freedom-expression/freedom-of-expression-still-a-precondition-for-democracy->  
Many documents reports available on that link.

*CoE's normative process to operationalise the right to freedom of expression:*



<sup>5</sup> Art. 10 of the Convention doesn't distinguish between an enhanced protection for the exercise of freedom of expression is guaranteed for journalistic activities.

<sup>6</sup> [PACE Recommendation 1950 \(2011\) – The protection of journalists' sources](#)

<sup>7</sup> Paragraph 137 of the [Dink v/ Turkey](#) judgment: obligation on states to create a *favourable environment* for public debate in which everyone can participate.

## **2- 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.

partnership with NGOs + professional organizations

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