

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

9 June 2016

CDMSI(2015)18rev4

Compilation and analysis of replies received from CDMSI members on the implementation of Council of Europe relevant standards on safety of journalists and other media actors

A. Background information

On 2nd of April 2015, a selection of eight (8) questions on the implementation of Council of Europe standards related to safety of journalists and other media actors, as agreed by the CDMSI Bureau in their 31 March/1 April meeting, was sent to the CDMSI members with a deadline for reply by 1st of June 2015. The collected replies would be published and available online, on the website of CDMSI, and their compilation would constitute one of the background documents for the CDMSI Plenary in June on implementation of Council of Europe standards, for a CDMSI debate on this topic.

Until June 2015, the Secretariat had received contributions from seven (7) member States: **Greece, Slovakia, Czech Republic, Austria, Italy, Norway and Ireland.**

At its 8th meeting (16 – 19 June 2015), the CDMSI took note of the replies sent by member states to the questionnaire on safety of journalists and other media actors and expressed the wish that all member States send their replies. Consequently, it decided to extend the deadline until the end of July. It also took note of the follow up that will be given to this exercise by the Secretariat, namely a compilation and an analysis to be presented to the CDMSI at its next meeting in December 2015.

As of 3rd of December 2015, the Secretariat had received contributions from fourteen (14) more member States: **Sweden, Iceland, Germany, Latvia, Denmark, Russian Federation, Poland, Slovenia, San Marino, Bosnia and Herzegovina, the Netherlands, Montenegro, Armenia and Croatia.**

At its 9th meeting (8-11 December 2015), the CDMSI took note of the replies sent to the questionnaire on safety of journalists and other media actors by the above-mentioned twenty one (21) member States and it decided that the outstanding replies should be sent to the Secretariat by 29th February 2016. It also agreed to hold, at its 10th meeting in June 2016, a hearing on the topic.

As of 8th of April 2016, the Secretariat has received contributions from seventeen (17) more member States, namely by **France, Switzerland, United Kingdom, Lithuania, Ukraine, Republic of Serbia, Azerbaijan, Republic of Moldova, Malta, the former Yugoslav Republic of Macedonia, Estonia, Georgia, Turkey, Liechtenstein, Luxembourg, Monaco and Andorra.**

The nine (9) member States that haven't contributed yet to the questionnaire on safety of journalists and other media actors are **Albania, Belgium, Bulgaria, Cyprus, Finland, Hungary, Portugal, Romania and Spain.**

The compilation and analysis of the replies received from the thirty eight (38) member States that contributed so far to the questionnaire on the implementation of Council of Europe standards related to safety of journalists and other media actors produced the following results:

B. Compilation of responses received

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

None of the member States replies received identified mechanisms specifically designed to ensure investigation and prosecution of attacks against journalists and media actors. Physical attacks, like bodily injury, as well as threats, are criminal offences that have to be investigated and prosecuted ex officio. In the majority of the replies received, the Criminal and Penal Code of each member States contain a number of provisions extended to all individuals, including journalists and media actors, against physical and/or mental abuse.

However, in **Norway**, the case law of the Norwegian Supreme Court shows that threats against journalists with the purpose of influencing the media's activity are punished more severely than ordinary threats, in contradiction with **Austria** where there is no margin of discretion left to police or judicial authorities that could give them any leeway to treat attacks on journalists in a different way than attacks on other persons.

It should be also noted that, according to the reply received by the **Netherlands**, there is a debate in Dutch politics and society that journalists and other media actors deserve perhaps special attention, in order to protect their role within Dutch society.

2. Are there any non-judicial mechanisms, such as parliamentary or other public inquires, 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?

The replies received in the majority of the corresponded member States did not identify such mechanisms, but they emphasized the role of the traditional judicial mechanisms in their countries.

Nevertheless, **Poland, Slovakia, Czech Republic, Latvia, Bosnia and Herzegovina, Slovenia, Armenia, the Republic of Moldova, Luxembourg, Azerbaijan, the Former Yugoslav Republic of Macedonia, Monaco, Lithuania and Georgia** noted that one of the most important non-judicial mechanisms of protection of rights applicable also in relation to journalists is the Ombudsperson of their country. In particular, the Public Defender (Ombudsman) of **Georgia** expresses specific interest in the process of the investigation of cases regarding journalists and in such cases immediately prepares the relevant proposals and/or recommendations for the respective institutions, making also public statements in order to raise awareness on issues related to safety of journalists in the country.

Additionally, in **Poland** the National Broadcasting Council (KRRiT), in **Azerbaijan** the Press Council and in **Luxembourg** the Independent Audiovisual Authority (ALIA) and the Press Council monitor the developments of the country, related to the safety of journalists, and intervene whenever necessary.

In **Armenia**, the Information Dispute Resolution Council, established in 2011, has as its main objective the protection of freedom of expression and the access to information. In **Lithuania**, an independent Lithuanian Journalist's association was established in 2006 with a view to protecting and strengthening journalist's rights, freedom, economic and social rights.

Moreover, in **Bosnia and Herzegovina** there are several non – judicial mechanisms, such as the Parliamentary Commission for Information, the Helsinki Committee for human rights in Bosnia and Herzegovina, the Free Media Help Line, etc that are engaged in issues related to threats and/or safety of journalists and in **Montenegro**, there is also an independent Commission which is dealing with threats and crimes targeting journalists and other media actors. Similarly in **Croatia**, the Croatian Journalists’ Association, as well as the Trade Union of Croatian Journalists, are also dealing with the same issues related to the threats and crimes targeting journalists and in the **Republic of Serbia**, the only non-judicial authority formed to deal with crimes targeting journalists and other media actors is the State Commission Assessing Progress in the Investigations of Unsolved Murders of Journalists in Serbia. In **Ukraine**, the protection of journalists is addressed by an institute of the Ukrainian Parliament Commissioner for Human Rights (governmental level) and by the National Union of Journalists of Ukraine, the Independent Media Labour Union of Ukraine, the NGO “Institute for Mass Information”, the Ukrainian Helsinki Union on Human Rights and the Media Law Institute (non-governmental level).

Furthermore, in 2014 in **Sweden** the Swedish National Council for Crime Prevention was given the task to investigate threats against different actors of special importance for the democratic society, including journalists and in the **Russian Federation**, the Russian Federal Service of Supervision of communications, information technology and mass media has a special 24 hours/7 days per week hot line for information on any kind of violation of journalists’ rights. Additionally , the reply received by the Russian Federation indicated that all the above-mentioned non-judicial mechanisms, referring to the question, are applicable to the Russian Federation, nonetheless, no further details were provided on the kind and the role of these non-judicial mechanisms.

In the **United Kingdom**, non-judicial, but authoritative remedies for issues of special concern to journalists are provided by the Independent Reviewer of Terrorism legislation and the Interception of Communications Commissioner’s Office. Both have published reports on the impact and application of UK laws covering police investigations and security services activities during 2015 and in both cases their reports were acknowledged by the UK Government in the process of undertaking legislative reforms.

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

In all member States replies received, the confidentiality of journalists’ sources of information is protected by Law, as a general rule.

Furthermore, in the **Netherlands** there is a proposal in the Dutch parliament to protect the confidentiality of sources not only for “journalists”, but also for “publicists”. This “broader definition” seeks to protect this confidentiality of sources not only for “professional journalists”, but also for “publicists” who play a role with their publications in the public debate about current affairs in Dutch politics and society.

However, in the majority of the corresponded member States, if important public interest (i.e. national security, territorial integrity, public safety, prevention of disorder, protection of health or morals, etc) or criminal cases require that evidence is presented and it’s of considerable importance to the clarification of the cases, the provisions of the Criminal and Penal Code of the member State stipulate that the Court may, based on an overall assessment, order the evidence to be presented or the journalistic source to be revealed.

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

According to the majority of the member States replies received (**Germany, France, Greece, Iceland, Denmark, Slovakia, Slovenia, Austria, Latvia, Poland, Slovenia, Denmark, Czech Republic, San Marino, Malta, Andorra, Liechtenstein, Monaco, Lithuania, Italy, Luxembourg, Netherlands, Switzerland, Croatia, Azerbaijan, the Russian Federation,**

Turkey etc), there are provisions, into their Criminal and Penal Code, respectively, that criminalize defamation/libel. However, although the penalties of the offence of defamation (i.e. period of imprisonment, threshold of fines etc) differ amongst member States, it has been identified in the majority of the replies received that the penalties are higher when the perpetrator commits defamation through means of mass communication (press, radio, television, etc).

However, according to the reply received by **Italy**, various pieces of legislation are under discussion before the Italian Parliament and the amendments proposed aim at limiting the use of criminal sanctions of defamation, introducing, first of all, the abolishment of imprisonment.

In **Ireland**, the Defamation Act 2009 abolished the common law offences of defamatory libel, seditious libel and obscene libel, although blasphemy is still defined as a criminal offence. Nonetheless, the Irish Government pledged in the Program for Government to establish a Constitutional Convention to consider comprehensive constitutional reform, with a brief to consider a range of issues, including the removal of the offence of blasphemy from the Constitution. Such a change would also permit the abolition of the statutory offence of blasphemy in the Defamation Act 2009, but requires holding a constitutional referendum in the country. In the **Netherlands** there is a debate taking place in Dutch politics and in society to remove defamation from the Criminal Law and to deal with it under the Private Law.

In **Norway** (2015), **Republic of Serbia** (2012)¹, the **former Yugoslav Republic of Macedonia** (2012), **Armenia** (2010), **Republic of Moldova** (2004), **Bosnia and Herzegovina** (2002), **Montenegro**, **Georgia**, **United Kingdom** and **Ukraine** defamation/libel has been decriminalized.

In **Sweden**, although defamation in the media is covered by the Fundamental Law on Freedom of Expression, prosecution in these cases is handled by the Chancellor of Justice, instead of a regular prosecutor, and punishments differ from those of the criminal law. Similarly, in **Slovenia**, although defamation includes criminalisation of certain activities that can be punished by imprisonment, the way it is regulated bears resemblance to procedures that are typical for the civil law.

In **Estonia**, defamation is criminalised, but only towards the representative of a state authority protecting public order in connection with performance of his/her official duties.

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?

In the majority of member States that replied to the questionnaire there are procedural guarantees that apply in cases of defamation (i.e. the right to defense, the burden of proof, etc.). Depending on the member State, the concrete rules applicable to defamation are established in the Criminal and/or Civil Code respectively. One clear difference amongst member States is the period of limitations applicable to defamation suits.

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?

In **Ireland**, **Sweden**, **Slovakia**, **Slovenia**, **Latvia**, **Switzerland**, **Liechtenstein**, **Montenegro**, **Azerbaijan**, **United Kingdom**, **Republic of Serbia**, **Bosnia and Herzegovina**, the **Former Yugoslav Republic of Macedonia**, **Republic of Moldova**, **Ukraine**, **Austria**, **Georgia** and **Croatia**, state officials are generally not protected against criticism and insult at a higher level than ordinary people through penal laws.

¹ However, and regarding insult, the domestic legislation in the **Republic of Serbia** includes criminal law provisions.

Nevertheless, in the majority of the member States' replies received, namely in **Greece, France, Russian Federation, Poland, Czech Republic, Norway, Iceland, Denmark, Armenia, San Marino, Andorra, Monaco, Luxembourg, Malta, the Netherlands, Lithuania, Estonia, Germany and Turkey**, the Criminal Code of these countries penalizes the act of insulting a state/public official in the performance of his/her duties.

There are differences amongst member States related to the specific title/role of the state official (King, Queen, Prince, President of the Republic, Minister, Member of the Parliament, Judge, civil servant etc.), as protected by a specific defamation provision and the sanctions applied. Countries which have already decriminalised ordinary defamation (i.e. Norway, Armenia) have still kept such specific defamation laws in their respective criminal code.

Furthermore in **the Netherlands**, there is a current debate to abolish the relevant provisions of the Criminal Code related to the protection of state officials against criticism and insult at a higher level than ordinary people and in **Lithuania**, in 2016, the provision of the Criminal Law related to the insult targeting a civil servant or a person performing the functions of public administration in exercising his/her duties and including a custodial sentence for a term of up to two years will be transferred to the Code of Administrative Offences.

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 **Ireland, United Kingdom, Estonia, France, Czech Republic, Poland, Ukraine, the Republic of Serbia, Bosnia and Herzegovina, Monaco, Armenia, Turkey, Azerbaijan, the Republic of Moldova, Georgia and Latvia** freedom of expression may be explicitly limited by law, particularly in the case of measures that are necessary in a democratic society, such as the protection of the national security, the territorial integrity, the rights and freedoms of others, the public security, the public health and morals, the incitement to terrorism, etc.

In particular, in **Estonia**, one of the strongest limitations to freedom of expression is provided in the National Defense Act of the country. The latter provides that in case of the state of war, the Government of the Republic, the Prime Minister and a minister responsible for internal security may, until the end of a state of war, prohibit communication of data with certain contents in a mass medium, if the disclosure thereof may pose a threat to the military defense of the state or otherwise endanger the security of the state.

In **Denmark, Switzerland, Ireland, Germany, Greece, Italy, Sweden, Slovakia, Lithuania, Austria, Iceland, the Netherlands, San Marino, Andorra, Malta, Liechtenstein and Norway** there are no particular safeguards for the right to freedom of expression in laws on the protection of public order, national security or anti-terrorism, as the right to freedom of expression is a constitutional right, which takes supremacy over any other acts of legislation that have to be interpreted and applied in conformity with the constitutional law.

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 organizations of lawyers and media professionals?

- **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**

In **France**, all documents mentioned are available on the website of the Ministry of Culture and Communication, where there is also a specific link to the site of the Council of Europe on the field of media and freedom of expression. However, no specific indication was provided on the further dissemination of the documents to the relevant French authorities.

In the **United Kingdom**, the Department for Culture, Media and Sport and the Foreign and Commonwealth Office promote awareness of the above CoE instruments, standards, declarations and recommendations across the UK administration, including other government ministries, through existing policy coordination channels. However, the UK administration does not have a dedicated process in place for specifically drawing these instruments to the attention of judicial authorities and police services.

In **Switzerland**, all the documents have been translated into the national languages of the country and they have been disseminated to all the relevant authorities mentioned in the question.

In **Greece**, all the Recommendations mentioned are available in the official languages of the CoE through the site of the Council of Europe (www.coe.int). Although the documents haven't been translated into the Greek language, all of them are available to all relevant authorities and media stakeholders in Greece.

In **Slovakia, Slovenia, Montenegro, Estonia, Lithuania** and **Denmark** the documents are available in English. Their translation into Slovak, Slovenian, Montenegrin, Estonian, Lithuanian and Danish has not been performed yet. In **Estonia** and **Lithuania**, none of these instruments have been brought to the attention of judicial authorities, or to representative organizations of lawyers and media professionals.

In **Czech Republic**, the documents are available on the website of the Ministry of Culture and their translation into the Czech language is being added sequentially. In **Monaco**, the documents are available in French on the official website of the Government, where there are published all the laws and codes of the Principality of Monaco. Similarly, in **Luxembourg**, the documents are available in French and the Press Council of the country often consults the website of the Council of Europe on the recent developments in the field of media and freedom of expression. However, no specific indication was provided on the further dissemination of the documents to the relevant authorities of the three above-mentioned countries.

In **Austria, Armenia, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, the Netherlands, Republic of Moldova, Liechtenstein, and Latvia**², although the documents haven't been translated into the national languages, it appears that their basic contents have been disseminated widely to media organisations, journalists and other relevant media institutions of the countries. In particular, in the **Republic of Moldova**, the Moldovan Broadcasting Coordinating Council published on its official website all the CoE Recommendations, Guidelines and Resolutions regarding the protection of journalists and called on the relevant institutions, state and non-state, to respect and protect the rights of journalists and other media actors.

In **Andorra** and in **Malta** the documents have never been translated, since the French (in Andorra) and English (in Malta) are commonly spoken and understood. In Andorra the documents have never been disseminated. In Malta the work of the CoE is widely followed by the relevant authorities of the country.

In **Georgia**, apart from the "Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)", which has been translated into the national language, all the other documents are available in English. However, in cooperation with the CoE Office in Georgia, the translation of the other documents is in the pipeline. In the **Republic of Serbia**, the CoE Office in Belgrade has published into Serbian all the CoE relevant to media legal instruments from 2007 to 2014.

According to the replies received by **Turkey, the Russian Federation and Azerbaijan**, most of the above-mentioned documents have been translated into the national language of the country and they have been also disseminated to the related public institutions, lawyers, media professionals and NGOs of the Country. However, no more details were provided of the number and/or the name of the translated Recommendations in Turkish, in Russian and in Azerbaijani respectively.

In **Italy**, the Inter-ministerial Committee for Human Affairs has expressed its strong willingness to translate and disseminate the above-mentioned documents, including to the Italian Parliament and in **Ireland**, arrangements are now being put in place to ensure the dissemination of the various instruments to relevant parties.

In **Norway, Sweden, San Marino and Iceland**, the documents have not been translated and there are no general mechanisms which ensure that these instruments are disseminated widely. In **Germany**, there is no concrete information on the translation of the mentioned instruments other than those translations available at the CoE website. In **Croatia**, some of the above mentioned documents have been translated, the others are in the process of translation and as regards their dissemination it has been expressed that greater effort has to be achieved by the Croatian authorities.

In **Poland** the documents have been already translated and they are available on the website of the National Broadcasting Council of the country.

Lastly in **Ukraine**, the translation of the Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings is placed on the website of the Parliament of Ukraine (Verkhovna Rada), and the following three (3) recommendations are available in Ukrainian on the webpage of the Media Law Institute:

- Recommendation Rec(2004)16 of the Committee of Ministers to member states on the right of 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.

² Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media has been translated in Latvian.

Furthermore, the recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality is available in Ukrainian on the webpage of the All-Ukrainian Association "Information Safety and Information Technologies" and all the above-mentioned documents have been disseminated at large and are publicly available.

However, the responses received revealed that translation and consequently dissemination of CoE standards is not followed systematically. It should be underlined that translation is indispensable for effective dissemination of Council of Europe's standards in its member States.