

COUNCIL OF EUROPE DOCUMENTS ON
SAFETY OF JOURNALISTS



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English edition
Council of Europe documents
Safety of journalists

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COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

DECLARATION

ON THE PROTECTION OF JOURNALISTS IN SITUATIONS OF CONFLICT AND TENSION

*(Adopted by the Committee of Ministers on 3 May 1996,
at its 98th Session)*

1. The Committee of Ministers of the Council of Europe condemns the growing number of killings, disappearances and other attacks on journalists and considers these to be also attacks on the free and unhindered exercise of journalism.
2. The Committee of Ministers appeals to all states, in particular to all member states of the Council of Europe, to recognise that the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in situations of conflict and tension.
3. The Committee of Ministers solemnly reaffirms that all journalists working in situations of conflict and tension are, without qualification, entitled to the full protection offered by applicable international humanitarian law, the European Convention on Human Rights and other international human rights instruments.
4. The Committee of Ministers reaffirms the commitments of governments of member states to respect these existing guarantees for the protection of journalists.
5. The Committee of Ministers, on the occasion of World Press Freedom Day, draws attention to Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension and the appended basic principles.
6. The Committee of Ministers shall consider, together with the Secretary General, ways of strengthening, in general, existing arrangements within the Council of Europe for receiving information, and taking action on, infringements of rights and freedoms of journalists in situations of conflict and tension.
7. The Committee of Ministers considers in this context that, in urgent cases, the Secretary General could take speedily all appropriate action on receipt of reports on infringements of rights and freedoms of journalists in member states in situations of conflict and tension and calls on the member states to co-operate with the Secretary General in this regard.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (96) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION OF JOURNALISTS IN SITUATIONS OF CONFLICT AND TENSION

*(Adopted by the Committee of Ministers on 3 May 1996
at its 98th Session)*

- The Committee of Ministers of the Council of Europe, under the terms of Article 15.b of the Statute of the Council of Europe,
- Emphasising that the freedom of the media and the free and unhindered exercise of journalism are essential in a democratic society, in particular for informing the public, for the free formation and expression of opinions and ideas, and for scrutinising the activities of public authorities;
- Affirming that the freedom of the media and the free and unhindered exercise of journalism must be respected in situations of conflict and tension, since the right of individuals and the general public to be informed about all matters of public interest and to be able to evaluate the actions of public authorities and other parties involved is especially important in such situations;
- Emphasising the importance of the role of journalists and the media in informing the public about violations of national and international law and human suffering in situations of conflict and tension, and the fact that they thereby can help to prevent further violations and suffering;
- Noting that, in such situations, the freedom of the media and the free and unhindered exercise of journalism can be seriously threatened, and journalists often find their lives and physical integrity at risk and encounter restrictions on their right to free and independent reporting;
- Noting that attacks on the physical safety of journalists and restrictions on reporting may assume a variety of forms, ranging from seizure of their means of communication to harassment, detention and assassination;
- Reaffirming the importance of international human rights instruments at both world and European levels for the protection of journalists working in situations of conflict and tension, especially the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention on Human Rights;
- Reaffirming also the importance of Article 79 of the First Additional Protocol to the Geneva Conventions of 12 August 1949, adopted on 8 June 1977, which provides that journalists shall be considered as civilians and shall be protected as such;
- Considering that this obligation also applies with respect to non-international armed conflicts;
- Convinced that it is necessary to reaffirm these existing guarantees, to make them better known and to ensure that they are fully respected with a view to strengthening the protection of journalists in situations of conflict and tension;

■ Stressing that any interference with the work of journalists in such situations must be exceptional, be kept to a minimum and be strictly in line with the conditions set out in relevant international human rights instruments ;

■ Noting that media organisations, professional organisations and journalists themselves can also contribute to enhancing the physical safety of journalists, notably by taking and encouraging practical prevention and self-protection measures;

■ Considering that, for the purposes of this recommendation, the term “journalist” must be understood as covering all representatives of the media, namely all those engaged in the collection, processing and dissemination of news and information including cameramen and photographers, as well as support staff such as drivers and interpreters,

■ Recommends that the governments of member states:

1. be guided in their actions and policies by the basic principles concerning the protection of journalists working in situations of conflict and tension set out in the appendix to this recommendation, and apply them without distinction to foreign correspondents and local journalists and without discrimination on any ground.

2. disseminate widely this recommendation and in particular bring it to the attention of media organisations, journalists and professional organisations, as well as public authorities and their officials, both civilian and military.

Appendix to Recommendation No. R (96) 4

Basic principles concerning the protection of journalists in situations of conflict and tension

CHAPTER A : PROTECTION OF THE PHYSICAL SAFETY OF JOURNALISTS

Principle 1

Prevention

1. Media organisations, journalists and professional organisations can take important preventive measures contributing to the protection of the physical safety of journalists. Consideration should be given to the following measures with a view to adequate preparation for dangerous missions in situations of conflict and tension:

a. the provision of practical information and training to all journalists, whether staff or freelance, with the assistance of experienced journalists and competent specialised authorities and organisations such as the police or the armed forces;

b. wide dissemination among the profession of existing “survival guides”;

c. wide dissemination among the profession of information on the availability of appropriate protection equipment.

2. While these measures are first and foremost the responsibility of media organisations,

journalists and professional organisations, the authorities and competent specialised organisations of the member states should be co-operative when approached with requests for the provision of information or training.

Principle 2

Insurance

1. Journalists working in situations of conflict and tension should have adequate insurance cover for illness, injury, repatriation and death. Media organisations should ensure that this is the case before sending journalists employed by them on dangerous missions. Self-employed journalists should make their own insurance arrangements.
2. Member states and media organisations should examine ways of promoting the provision of insurance cover for all journalists embarking on dangerous missions as a standard feature of contracts and collective agreements.
3. Media organisations and professional organisations in member states should give consideration to setting up a solidarity fund to indemnify journalists or their families for damage suffered in cases where insurance is insufficient or non-existent.

Principle 3

"Hotlines"

1. The emergency hotline operated by the International Committee of the Red Cross (ICRC) has proved invaluable for tracing missing journalists. Other organisations such as the International Federation of Journalists (IFJ) and the International Freedom of Expression Exchange (IFEX) operate effective hotlines which draw attention to cases of attacks on the physical safety of journalists and their journalistic freedoms. Media organisations and professional organisations are encouraged to take steps to make these hotlines better known among those in the profession. Member states should support such initiatives.
2. Journalists working in situations of conflict and tension should consider the advisability of keeping the local field offices of the ICRC informed, on a confidential basis, of their whereabouts, so enhancing the effectiveness of the hotline in tracing journalists and in taking steps to improve their safety.

CHAPTER B: RIGHTS AND WORKING CONDITIONS OF JOURNALISTS WORKING IN SITUATIONS OF CONFLICT AND TENSION

Principle 4

Information, movement and correspondence

Member states recognise that journalists are fully entitled to the free exercise of human rights and fundamental freedoms as guaranteed by the European Convention on Human Rights (ECHR), and by protocols thereto and inter national instruments to which they are a party, including the following rights:

a. the right of everyone to seek, impart and receive information and ideas regardless of frontiers;

b. the right of everyone lawfully within the territory of a state to liberty of movement and freedom to choose their residence within that territory as well as the right of everyone to leave any country;

c. the right of everyone to respect for their correspondence in its various forms.

Principle 5

Confidentiality of sources

Having regard to the importance of the confidentiality of sources used by journalists in situations of conflict and tension, member states shall ensure that this confidentiality is respected.

Principle 6

Means of communication

Member states shall not restrict the use by journalists of means of communication for the international or national transmission of news, opinions, ideas and comments. They shall not delay or otherwise interfere with such transmissions.

Principle 7

Checks on limitations

1. No interference with the exercise of the rights and freedoms covered by Principles 4 to 6 is permitted except in accordance with the conditions laid down in relevant provisions of human rights instruments, as interpreted by their supervisory bodies. Any such interference must therefore:

- be prescribed by law and formulated in clear and precise terms;

- pursue a legitimate aim as indicated in relevant provisions of human rights instruments; in accordance with the case-law of the European Court of Human Rights, the protection of national security within the meaning of the ECHR, while constituting such a legitimate aim, cannot be understood or used as a blanket ground for restricting fundamental rights and freedoms; and

- be necessary in a democratic society, that is: correspond to a pressing social need, be based on reasons which are relevant and sufficient and be proportionate to the legitimate aim pursued.

2. In situations of war or other public emergency threatening the life of the nation and the existence of which is officially proclaimed, measures derogating from the state's obligation to secure these rights and freedoms are allowed to the extent that these measures are strictly required by the exigencies of the situation, provided that they are not inconsistent with other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

3. Member states should refrain from taking any restrictive measures against journalists such as withdrawal of accreditation or expulsion on account of the exercise of their professional activities or the content of reports and information carried by their media.

Principle 8

Protection and assistance

1. Member states should instruct their military and police forces to give necessary and reasonable protection and assistance to journalists when they so request, and treat them as civilians.
2. Member states shall not use the protection of journalists as a pretext for restricting their rights.

Principle 9

Non-discrimination

Member states shall ensure that, in their dealings with journalists, whether foreign or local, public authorities shall act in a non-discriminatory and non-arbitrary manner.

Principle 10

Access to the territory of a state

1. Member states should facilitate the access of journalists to the territory of destination by promptly issuing visas and other necessary documents.
2. Member states should likewise facilitate the importation and exportation of professional equipment.

Principle 11

Use of accreditation systems

Systems for the accreditation of journalists should be introduced only to the extent necessary in particular situations. When accreditation systems are in place, accreditation should normally be granted. Member states shall ensure that:

- a. accreditation operates to facilitate the exercise of journalism in situations of conflict and tension;
- b. the exercise of journalism and journalistic freedoms is not made dependent on accreditation;
- c. accreditation is not used for the purpose of restricting the journalist's liberty of movement or access to information; to the extent that refusal of accreditation may have the effect of restricting these rights, such restrictions must be strictly in accordance with the conditions set out in Principle 7 above;

d. the granting of accreditation is not made dependent on concessions on the part of journalists which would limit their rights and freedoms to a greater extent than is provided for in Principle 7 above;

e. any refusal of accreditation having the effect of restricting a journalist's liberty of movement or access to information is reasoned.

CHAPTER C: INVESTIGATION

Principle 12

1. In situations of conflict and tension, member states shall investigate instances of attacks on the physical safety of journalists occurring within their jurisdiction. They shall give due consideration to reports of journalists, media organisations and professional organisations which draw attention to such attacks and shall, where necessary, take all appropriate follow-up action.

2. Member states should use all appropriate means to bring to justice those responsible for such attacks, irrespective of whether these are planned, encouraged or committed by persons belonging to terrorist or other organisations, persons working for the government or other public authorities, or persons acting in an individual capacity.

3. Member states shall provide the necessary mutual assistance in criminal matters in accordance with relevant applicable Council of Europe and other European and international instruments.



MEDIA AND TERRORISM

Parliamentary Assembly

1. The Parliamentary Assembly of the Council of Europe believes that terrorism should not affect the importance of freedom of expression and information in the media as one of the essential foundations of democratic society. This freedom carries with it the right of the public to be informed on matters of public concern, including terrorist acts and threats, as well as the response by the state and international organisations to these threats and acts.
2. Terrorist acts are acts which are intended to create terror, fear or chaos among the public. The spread of public terror, fear and feelings of chaos depends largely on the images and messages being carried by media reports about the terrorist acts and threats. The omnipresence of the mass media at global level frequently exaggerates these effects out of proportion.
3. The Assembly recalls its **Resolution 1271 (2002)** and **Recommendation 1550 (2002)** on combating terrorism and respect for human rights and reaffirms that the fight against terrorism must not be used as a pretext to restrict the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and related legal texts of the Council of Europe. In this respect, it supports the Committee of Ministers' Guidelines on Human Rights and the Fight against Terrorism of 11 July 2002.
4. Referring to the Committee of Ministers' Declaration of 2 March 2005 on freedom of expression and information in the media in the context of the fight against terrorism, the Assembly emphasises that Article 15 of the European Convention on Human Rights cannot be invoked in cases of terrorism in order to restrict this freedom beyond the existing limitations of Article 10, paragraph 2 of the Convention, because terrorist action can neither be regarded as war in a legal sense, nor can it threaten the life of a democratic nation.
5. The Assembly considers it necessary for the public and media to be aware of the fact that terrorists direct their action towards the public and thus utilise the media in order to have the strongest possible impact. This is even more important because terrorists have learned how to use information technologies in order to disseminate their own audiovisual recordings, electronic messages or web sites on the Internet, which compels states and the media to react accordingly.
6. With due regard to the privacy and human dignity of victims of terrorist acts and their families, the Assembly stresses the importance of fully informing the public about terrorist acts, particularly

1. Assembly debate on 20 June 2005 (17th Sitting) (see **Doc. 10557**, report of the Committee on Culture, Science and Education, rapporteur: Mr Jarab). Text adopted by the Assembly on 20 June 2005 (17th Sitting).



the suffering caused by these acts as well as the socio-cultural and political context of such acts. Informed public debate about concrete acts of terrorism can lead to forming adequate political responses to it and to preventing others from joining terrorist groups.

7. The Assembly trusts in the ability of the European political system and culture and in its citizens, politicians and journalists to avoid sensationalist media reports related to terrorism.

8. The Assembly invites media professionals:

to develop, through their professional organisations, a code of conduct for journalists, photographers and editors dealing with terrorist acts and threats, in order to keep the public informed without contributing unduly to the impact of terrorism;

to organise training courses for media professionals aimed at increasing awareness of the sensitive nature of media reports on terrorism ;

to co-operate between themselves, for instance through their professional organisations, in order to avoid a race for sensationalist news and images which plays into the hands of terrorists ;

to avoid acting in the interests of terrorists by adding to the feeling of public fear which terrorist acts can create or by offering terrorists a platform for publicity ;

to refrain from publishing shocking pictures or disseminating images of terrorist acts which violate the privacy and human dignity of victims or contribute to increase the terrorising effect of such acts on the public as well as on the victims and their families ;

to avoid aggravating, through their news and comments, the societal tensions underlying terrorism, and in particular to refrain from disseminating any kind of hate speech.

9. The Assembly asks all its member and observer delegations to take account of this recommendation in their national work and to hold a debate on this issue in their respective national parliaments.

10. The Assembly recommends that the Committee of Ministers ask member and observer states:

to inform the public and the media regularly about government strategies and action towards combating terrorism as well as its causes;

to abstain from prohibiting or even restricting unduly the dissemination of information and opinions in the media about terrorism as well as about the reaction by state authorities to terrorist acts and threats under the pretext of fighting terrorism;

to inform, upon their request, media dealing with terrorism about the specific security situation in each context, in order to avoid journalists investigating terrorism being unnecessarily exposed to dangers caused by terrorists or the anti-terrorist action of state authorities;

to include media literacy in their school curricula, in order to encourage a critical and informed consumption of media content and raise citizens' awareness of the horror of terrorist acts as early as possible;

to co-operate through their law enforcement authorities and police in order to prevent the dissemination of illegal messages and images by terrorists on the Internet;

to apply the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems to terrorist content in so far as the latter advocates, promotes or incites hatred or violence against any individual or group of individuals based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

11. The Assembly asks the Committee of Ministers to:

to monitor the treatment of terrorism in European media in particular with regard to its Declaration on freedom of expression and information in the media in the context of the fight against terrorism;

to prepare, under the guidance and in close co-operation with media professionals and their professional organisations, and with UNESCO and other organisations working in the same field, a handbook for journalists reporting about terrorist acts and violence;

to initiate work towards an additional protocol to the Convention on Cybercrime setting up a framework for security co-operation between member and observer states for the prevention of cyber terrorism, in the form of large-scale attacks on and through computer systems which threaten a state's national security, public safety or economic well-being.



FREEDOM OF THE PRESS AND THE WORKING CONDITIONS OF JOURNALISTS IN CONFLICT ZONES

Parliamentary Assembly

1. The Parliamentary Assembly of the Council of Europe recalls the importance of freedom of expression and information in the media for democratic societies and for each individual. It constitutes a core value guaranteed throughout Europe by the European Convention on Human Rights. Situations of war or conflict do not make the adequate provision of information through the media any less important; on the contrary, they enhance its relevance.
2. Journalists reporting from dangerous places, such as war zones, conflict areas or lawless areas, are often faced with difficult and dangerous working conditions and sometimes even with widespread and systematic targeting by terrorist groups in search of media attention, as is the case at present in Iraq. Freedom of expression and information may, depending on the individual circumstances, be weighed against other fundamental considerations, in particular the rights to life, liberty and security of journalists. These other rights must not be compromised by growing market pressure for more reports directly from dangerous places and a supposedly increasing public demand for sensational reporting.
3. The Assembly deplores the great number of murders, kidnappings and disappearances of journalists working in conflict areas or on dangerous subjects and regards these as grave acts of aggression against freedom of expression and information in the media. Widespread publicity and the fulfilment of terrorists' demands, such as paying large ransoms to kidnappers, considerably increase the risks run by journalists working in dangerous areas and thus reduce the possibility for the public to receive valuable information.
4. Concerned about the state of freedom of expression and information in the media in Iraq, the Assembly deplores the numerous deaths and disappearances of journalists there and the continued detention as hostages of Florence Aubenas, Hussein Hanoun al-Saadi, Sorin Dumitru Miscoci, Marie-Jeanne Ion and Eduard Ovidiu Ohanesian. It calls for the immediate release of those held hostage.
5. The Assembly pays tribute to non-governmental organisations such as the International News Safety Institute, the International Press Institute, Reporters Without Borders, the International Federation of Journalists, Article 19 and the Institute for War & Peace Reporting for providing help and advice to journalists working in dangerous situations and conflict areas.
6. Welcoming the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas

1. Assembly debate on 28 April 2005 (14th Sitting) (see **Doc. 10521**, report of the Committee on Culture, Science and Education, rapporteur : Mr Jarab). Text adopted by the Assembly on 28 April 2005 (14th Sitting).



drawn up by the organisation Reporters Without Borders, the Assembly recalls the importance of employing only experienced and well trained journalists, who volunteer to take up such tasks, and of providing them with adequate safety, communication and first-aid equipment, psychological counselling after their return and with insurance for illness, injury, repatriation, disability and loss of life.

7. The Assembly recalls and reaffirms that journalists must be considered civilians under Article 79 of Protocol I to the Geneva Conventions of 1949, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents, who are accredited to the armed forces and accompany them without actually being members thereof, to the status of prisoner of war under Article 4.A.4 of Geneva Convention III once fallen into the power of the enemy.

8. Recalling the Committee of Ministers' Declaration and Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension, the Assembly calls on all member and Observer states to comply fully with them, in particular to:

respect the right to freedom of expression and information;

refrain from restricting the use of communication equipment, such as fixed and mobile telephones, satellite telephones and radio communication devices;

instruct their military and police forces to give protection and assistance to journalists;

facilitate access to the territory of destination by issuing necessary visas and other travel documents to journalists;

respect the confidentiality of journalists' sources.

9. All Council of Europe member and Observer states are called upon:

to ensure that journalists can work safely on their territories;

to investigate all acts of violence or lethal incidents involving journalists which occur on their territories as well as those occurring abroad in which their armed or security forces may have been involved, including those due to friendly fire.

10. Furthermore, the Assembly calls on Council of Europe member and Observer states to set up compulsory training and information programmes for war correspondents embedded in military forces, to be provided prior to departure.

11. Media should indicate clearly to the public which reports are from war correspondents embedded in military or security forces.

12. The Assembly stresses that, if, for reasons of their own personal safety, journalists embedded in the military or security forces may only work in certain areas, restrictions on their reporting must be limited to the absolute minimum required to prevent the disclosure of confidential information which might endanger ongoing military operations.

13. Journalists' employers, and professional organisations should organise training courses to

prepare journalists for the risks of working in conflict areas. The media should declare publicly that no financial payments or political concessions will be made to kidnappers and that political statements made by kidnapped journalists are made under coercion and are hence without any value.

14. All journalists and their employers are encouraged to adhere to the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas drawn up by the organisation Reporters Without Borders.

15. With reference to the Committee of Ministers' Declaration of 3 May 1996 on the protection of journalists in situations of conflict and tension, the Assembly asks the Secretary General of the Council of Europe to pay particular attention to the fate of journalists in situations of conflict and tension and to regularly follow cases of journalists who are missing, detained or have been wounded or killed in the exercise of their profession in member or Observer states or in connection with military or peace-keeping operations conducted by Council of Europe member or Observer states abroad.

APPENDIX 11

(Item 5.3)

GUIDELINES OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON PROTECTING FREEDOM OF EXPRESSION AND INFORMATION IN TIMES OF CRISIS

*(Adopted by the Committee of Ministers on 26 September 2007 at the
1005th meeting of the Ministers' Deputies)*

The Committee of Ministers,

1. Emphasising that freedom of expression and information and freedom of the media are crucial for the functioning of a truly democratic society;
2. Reaffirming that Article 10 of the European Convention on Human Rights (ETS No. 5) and the relevant case law of the European Court of Human Rights remain the fundamental standards concerning the exercise of the right to freedom of expression and information;
3. Deeply concerned by the fact that crisis situations, such as wars and terrorist attacks, are still wide spread and threaten seriously human life and liberty, and the fact that governments, concerned about the survival of society may be tempted to impose undue restrictions on the exercise of this right;
4. Condemning the killings and other attacks on media professionals and recalling its Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension;
5. Recalling Resolution No. 1 on freedom of expression and information in times of crisis adopted by the Ministers of states participating in the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10-11 March 2005);
6. Having taken note of Resolution 1535 (2007) and Recommendation 1783 (2007) of the Parliamentary Assembly of the Council of Europe on threats to the lives and freedom of expression of journalists;
7. Welcoming Resolution 1738 (2006) of the Security Council of the United Nations condemning attacks on media professionals in conflict situations and recognising the urgency and necessity of taking action for the protection of these professionals;
8. Underlining that dialogue and co-operation between governments, media professionals and civil society can contribute to the efforts to guarantee freedom of expression and information in times of crisis;
9. Convinced not only that media coverage can be crucial in times of crisis by providing accurate, timely and comprehensive information, but also that media professionals can make a positive contribution to the prevention or resolution of certain crisis situations by adhering to the highest professional standards and by fostering a culture of tolerance and understanding between different groups in society;
10. Adopts, as an extension and complement to the "Guidelines on human rights and the fight against terrorism" adopted on 11 July 2002, the following guidelines and invites member states to

ensure that they are widely disseminated and observed by all relevant authorities.

I. Definitions

1. As used in these guidelines,

- the term “crisis” includes, but is not limited to, wars, terrorist attacks, natural and man-made disasters, i.e. situations in which freedom of expression and information is threatened (for example, by limiting it for security reasons);

- the term “media professionals” covers all those engaged in the collection, processing and dissemination of information intended for the media. The term includes also cameramen and photographers, as well as support staff such as drivers and interpreters.

II. Working conditions of media professionals in crisis situations

Personal safety

2. Member states should assure to the maximum possible extent the safety of media professionals – both national and foreign. The need to guarantee the safety, however, should not be used by member states as a pretext to limit unnecessarily the rights of media professionals such as their freedom of movement and access to information.

3. Competent authorities should investigate promptly and thoroughly the killings and other attacks on media professionals. Where applicable, the perpetrators should be brought to justice under a transparent and rapid procedure.

4. Member states should require from military and civilian agencies in charge of managing crisis situations to take practical steps to promote understanding and communication with media professionals covering such situations.

5. Journalism schools, professional associations and media are encouraged to provide as appropriate general and specialised safety training for media professionals.

6. Employers should strive for the best possible protection of their media staff on dangerous missions, including by providing training, safety equipment and practical counselling. They should also offer them adequate insurance in respect of risks to the physical integrity. International organisations of journalists might consider facilitating the establishment of an insurance system for freelance media professionals covering crisis situations.

7. Media professionals who are expelled from zones with restricted access for disobeying national and international law, inciting violence or hatred in the content of their news or spreading propaganda of warring parties should be accompanied by military forces to a neutral, secure region or a country or embassy.

Freedom of movement and access to information

8. Member states should guarantee freedom of movement and access to information to media professionals in times of crisis. In order to accomplish this task, authorities in charge of managing crisis situations should allow media professionals accredited by their media organisations access to crisis areas.

9. Where appropriate, accreditation systems for media professionals covering crisis situations should be used in accordance with Principle 11 of the Appendix to Recommendation No. R (96) 4 of the Committee of Ministers to member states on the protection of journalists in situations of conflict and tension.

10. If required by national law, accreditation should be given to all media professionals without discrimination according to clear and fast procedures free of bureaucratic obstacles.

11. Military and civilian authorities in charge of managing crisis situations should provide regular information to all media professionals covering the events through briefings, press conferences, press tours or other appropriate means. If possible, the authorities should set up a secure information centre with appropriate equipment for the media professionals.

12. The competent authorities in member states should provide information to all media professionals on an equal basis and without discrimination. Embedded journalists should not get more privileged access to information than the rest except for the advantage naturally due to their attachment to military units.

III. Protection of journalists' sources of information and journalistic material

13. Member states should protect the right of journalists not to disclose their sources of information in accordance with Recommendation No. R (2000) 7 of the Committee of Ministers on the same subject. Member states should implement in their domestic law and practice, as a minimum, the principles appended to this recommendation.

14. With a view, inter alia, to ensuring their safety, media professionals should not be required by law-enforcement agencies to hand over information or material (for example, notes, photographs, audio and video recordings) gathered in the context of covering crisis situations nor should such material be liable to seizure for use in legal proceedings. Any exceptions to this principle should be strictly in conformity with Article 10 of the European Convention on Human Rights and the relevant case law of European Court of Human Rights.

IV. Guarantees against misuse of defamation legislation

15. Member states should not misuse in crisis situations libel and defamation legislation and thus limit freedom of expression. In particular, member states should not intimidate media professionals by law suits or disproportionate sanctions in libel and defamation proceedings.

16. The relevant authorities should not use otherwise legitimate aims as a pretext to bring libel and defamation suits against media professionals and thus interfere with their freedom of expression.

V. Guarantees against undue limitations on freedom of expression and information and manipulation of public opinion

17. Member states should not restrict the public's access to information in times of crisis beyond the limitations allowed by Article 10 of the European Convention on Human Rights and interpreted in the case law of the European Court of Human Rights.

18. Member states should always bear in mind that free access to information can help to

effectively resolve the crisis and expose abuses that may occur. In response to the legitimate need for information in situations of great public concern, the authorities should guarantee to the public free access to information, including through the media.

19. Member states should not use vague terms when imposing restrictions of freedom of expression and information in times of crisis. Incitement to violence and public disorder should be adequately and clearly defined.

20. International and national courts should always weigh the public's legitimate need for essential information against the need to protect the integrity of court proceedings.

21. Member states should constantly strive to maintain a favourable environment, in line with the Council of Europe standards, for the functioning of independent and professional media, notably in crisis situations. In this respect, special efforts should be made to support the role of public service media as a reliable source of information and a factor for social integration and understanding between the different groups of society.

22. Member states should consider criminal or administrative liability for public officials who try to manipulate, including through the media, public opinion exploiting its special vulnerability in times of crisis.

VI. Responsibilities of media professionals

23. Media professionals need to adhere, especially in times of crisis, to the highest professional and ethical standards, having regard to their special responsibility in crisis situations to make available to the public timely, factual, accurate and comprehensive information while being attentive to the rights of other people, their special sensitivities and their possible feeling of uncertainty and fear.

24. If a system of embedded journalists needs to be maintained and journalists choose to make use of it, they are advised to make this clear in their reports and to point out the source of their information.

25. Self-regulation as the most appropriate mechanism for ensuring that media professionals perform in a responsible and professional way needs to be made more effective in times of crisis. In this regard, co-operation between self-regulatory bodies is encouraged at both the regional and the European levels. Member states, professional organisations of journalists, other relevant non-governmental organisations and the media are invited to facilitate such co-operation and provide further assistance where appropriate.

26. Media professionals are invited to take into consideration in their work Recommendation No. R (97) 21 of the Committee of Ministers to member states on the media and the promotion of a culture of tolerance and to apply as a minimum the professional practices outlined in the appendix to this recommendation.

VII. Dialogue and co-operation

27. National governments, media organisations, national or international governmental and non-governmental organisations should strive to ensure the protection of freedom of expression and information in times of crisis through dialogue and co-operation.

28. At the national level, relevant stakeholders such as governmental bodies, regulatory authorities, non-governmental organisations and the media including owners, publishers and editors might consider the establishment of voluntary fora to facilitate, through dialogue, the exercise of the right to freedom of expression and information in times of crisis.

29. Media professionals themselves are encouraged, directly or through their representative organisations, to engage in a constructive dialogue with the authorities in situations of crisis.

30. Non-governmental organisations and in particular specialised watchdog organisations are invited to contribute to the safeguarding of freedom of expression and information in times of crisis in various ways, such as:

- maintaining help lines for consultation and for reporting harassment of journalists and other alleged violations of the right to freedom of expression and information;

- offering support, including in appropriate cases free legal assistance, to media professionals facing, as a result of their work, lawsuits or problems with the public authorities;

- co-operating with the Council of Europe and other relevant organisations to facilitate exchange of information and to effectively monitor possible violations.

31. Governmental and non-governmental donor institutions are strongly encouraged to include media development and media assistance as part of their strategies for conflict prevention, conflict resolution and post-conflict reconstruction.



DECLARATION BY THE COMMITTEE OF MINISTERS ON THE PROTECTION AND PROMOTION OF INVESTIGATIVE JOURNALISM

*(Adopted by the Committee of Ministers on 26 September 2007
at the 1005th meeting of the Ministers' Deputies)*

The Committee of Ministers of the Council of Europe,

1. Recalling Article 10 of the European Convention on Human Rights which guarantees the freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers;
2. Recalling also its declarations on the freedom of expression and information of 29 April 1982 and on freedom of political debate in the media of 12 February 2004 and reiterating the importance of free and independent media for guaranteeing the right of the people to be fully informed on matters of public concern and to exercise scrutiny over public authorities and political affairs, as repeatedly confirmed by the European Court of Human Rights;
3. Convinced that the essential function of the media as public watchdog and as part of the system of checks and balances in a democracy would be severely crippled without promoting such investigative journalism, which helps to expose legal or ethical wrongs that might have been deliberately concealed, and thus contributes to the formation of enlightened and active citizenry, as well as to the improvement of society at large;
4. Acknowledging, in this context, the important work of investigative journalists who engage in accurate, in-depth and critical reporting on matters of special public concern, work which often requires long and difficult research, assembling and analysing information, uncovering unknown facts, verifying assumptions and obtaining corroborative evidence;
5. Emphasising, however, that investigative journalism needs to be distinguished from journalistic practices which involve probing into and exposing people's private and family lives in a way that would be incompatible with Articles 8 and 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights;
6. Bearing in mind also that investigative journalism could benefit from the adherence of media professionals to voluntarily adopted self-regulatory instruments such as professional codes of conduct and of ethics which take full account of the rights of other people and the role and responsibility of the media in a democratic society;
7. Considering that, because of its very nature, investigative journalism is of particular significance in times of crisis, a notion that includes, but is not limited to, wars, terrorist attacks and natural and man-made disasters, when there may be a temptation to limit the free flow of information for security or public safety reasons;

8. Conscious that in emerging democracies the encouragement and development of investigative journalism is especially important for the stimulation of free public opinion and the entrenchment of a democratic political culture while, at the same time, it is at a greater danger of potential abuse;

9. Bearing in mind the Parliamentary Assembly of the Council of Europe's Recommendation 1506 (2001) on freedom of expression and information in the media in Europe, and in particular its concern about the continuing use of violence as a way of intimidating investigative journalists;

10. Recalling its Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information;

11. Welcoming developments in certain member states' domestic case law tending to confirm and uphold the right of journalists to investigate matters of public interest and disclose facts and express opinions in respect of such matters without interference by public authorities,

I. Declares its support for investigative journalism in service of democracy.

II. Calls on member states to protect and promote investigative journalism, having regard to Article 10 of the European Convention on Human Rights, the relevant case law of the European Court of Human Rights and other Council of Europe standards, and in this context:

1. to take, where necessary, suitable measures designed to ensure the personal safety of media professionals, especially those involved in investigative journalism, and promptly investigate all cases of violence against or intimidation of journalists;

2. to ensure the freedom of movement of media professionals and their access to information in line with Council of Europe standards and facilitate critical and in-depth reporting in service of democracy;

3. to ensure the right of journalists to protect their sources of information in accordance with Council of Europe standards;

4. to ensure that deprivation of liberty, disproportionate pecuniary sanctions, prohibition to exercise the journalistic profession, seizure of professional material or search of premises are not misused to intimidate media professionals and, in particular, investigative journalists;

5. to take into consideration and to incorporate into domestic legislation where appropriate the recent case law of the European Court of Human Rights which has interpreted Article 10 of the European Convention of Human Rights as extending its protection not only to the freedom to publish, but also to journalistic research, the important preceding stage which is essential for investigative journalism.

III. Draws the attention of member states to recent worrying developments which might have an adverse effect on journalistic activity and on investigative journalism in particular and calls on member states, if appropriate, to take remedial action, in line with Council of Europe standards, when faced with the following situations:

1. an apparent trend towards increasing limitations on freedom of expression and information in the name of protecting public safety and fighting terrorism;

2. lawsuits brought against media professionals for acquiring or publishing information of public interest which the authorities sought without good reason to keep undisclosed;
3. cases of unjustified surveillance of journalists, including the monitoring of their communications;
4. legislative measures being taken or sought to limit the protection granted to “whistle blowers”.

IV. Invites the media, journalists and their associations to encourage and support investigative journalism while respecting human rights and applying high ethical standards.

V. Calls on member states to disseminate widely this declaration, where appropriate accompanied by a translation, and to bring it, in particular, to the attention of relevant governmental bodies, legislators and the judiciary as well as to make it available to journalists, the media and their professional organisations.

DECLARATION OF THE COMMITTEE OF MINISTERS ON THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS AND OTHER MEDIA ACTORS^[1]

(Adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies)

1. Journalists and other media actors in Europe are increasingly being harassed, intimidated, deprived of their liberty, physically attacked and even killed because of their investigative work, opinions or reporting. These abuses and crimes are often met with insufficient efforts by relevant State authorities to bring the perpetrators to justice, which leads to a culture of impunity.
2. This alarming situation is not exclusively limited to professional journalists and other traditional media actors. As many intergovernmental bodies have recognised, including the United Nations Human Rights Committee in its General Comment No. 34,^[2] the scope of media actors has enlarged as a result of new forms of media in the digital age.^[3] Those at risk also include others who contribute to inform the public debate and persons performing journalistic activity or public watchdog functions.
3. The right to freedom of expression, to receive and impart information, ideas and opinions without interference is guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5, the "Convention"); it constitutes one of the fundamental principles upon which a democratic society is based. The public watchdog functions of the media are crucial for upholding these rights and for the protection of all other human rights. Misuse of power, corruption, discrimination, criminal activity or human rights violations have come to light as a direct result of the work of investigative journalists and other media actors. Making the facts known to the public is essential for redressing such situations and holding to account those responsible.
4. Journalists and others who perform public watchdog functions through the media are often in a vulnerable position vis-à-vis the public authorities or powerful interests groups because of their role in informing the public and provoking debate on issues of public interest. Obstacles created in order to hinder access to information of public interest may not only discourage journalists and other media actors from fulfilling their public watchdog role,^[4] but may also have negative effects on their safety and security.
5. Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the very heart of pluralist democracy.

[1] The Russian Federation made a reservation concerning this Committee of Ministers' Declaration, specifically denying its application to "other media actors", as it considers this term to be unspecific and without any basis in binding international legal documents.

[2] General Comment No. 34, point 44: "Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3. Limited accreditation schemes are permissible only where necessary to provide journalists with privileged access to certain places and/or events. Such schemes should be applied in a manner that is non-discriminatory and compatible with Article 19 and other provisions of the International Covenant on Civil and Political Rights, based on objective criteria and taking into account that journalism is a function shared by a wide range of actors."

[3] See Committee of Ministers' Recommendation **CM/Rec(2011)7** to member States on a new notion of media.

[4] See in this regard *Társaság a Szabadságjogokért v. Hungary*, Application No. 37374/05, judgment of 14 April 2009, paragraph 38.

6. The European Court of Human Rights has held that the role played by journalists in a democratic society confers upon them certain increased protections under Article 10 of the Convention. The exercise of media freedom, including in relation to matters of serious public concern, also involves duties and responsibilities. The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.^[5]

7. 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.^[6] To do this, States must not only refrain from interference with individuals' freedom of expression, but are also under a positive obligation to protect their right to freedom of expression against the threat of attack, including from private individuals, by putting in place an effective system of protection.

8. Eradicating impunity is a crucial obligation upon States, as a matter of justice for the victims, as a deterrent with respect to future human rights violations and in order to uphold the rule of law and public trust in the justice system.^[7] All attacks on journalists and other media actors should be vigorously investigated in a timely fashion and the perpetrators prosecuted. The effective investigation of such attacks requires that any possible link to journalistic activities be duly taken into account in a transparent manner.

9. A favourable environment for public debate requires States to refrain from judicial intimidation by restricting the right of individuals to disclose information of public interest through arbitrary or disproportionate application of the law, in particular the criminal law provisions relating to defamation, national security or terrorism. The arbitrary use of laws creates a chilling effect on the exercise of the right to impart information and ideas, and leads to self-censorship. Furthermore, prompt and free access to information as the general rule and strong protection of journalists' sources are essential for the proper exercise of journalism, in particular in respect of investigative journalism.^[8]

10. Surveillance of journalists and other media actors, and the tracking of their online activities, can endanger the legitimate exercise of freedom of expression if carried out without the necessary safeguards and can even threaten the safety of the persons concerned. It can also undermine the protection of journalists' sources.

11. In view of the foregoing, the Committee of Ministers:

- alerts member States to the increasing number of reports of attacks on journalists and other media actors in several parts of Europe, including specific dangers that female journalists face. These constitute attacks on the right to freedom of expression, to hold opinions and to receive and impart information and ideas and to other fundamental rights provided for in the European Convention on Human Rights;

[5] See, for example, *Standard Verlagsgesellschaft mbH (No. 2) v. Austria*, Application No. 37464/02, judgment of 22 February 2007, paragraph 38.

[6] *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, judgment of 14 September 2010, paragraph 137.

[7] See the Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations, adopted on 30 March 2011.

[8] See, for example, the Council of Europe Convention on Access to Official Documents (CETS No. 205) and Committee of Ministers Recommendation **Rec(2000)7** on the right of journalists not to disclose their sources of information.

- decides to facilitate the development of an Internet-based platform drawing on information supplied by interested media freedom organisations to record and publicise possible infringements of the rights guaranteed by Article 10 of the European Convention on Human Rights;

- urges member States to fulfil their positive obligations to protect journalists and other media actors from any form of attack and to end impunity in compliance with the European Convention on Human Rights and in the light of the case law of the European Court of Human Rights; and invites member States to review at least once every two years the conformity of domestic laws and practices with these obligations on the part of member States;

- encourages member States to contribute to the concerted international efforts to enhance the protection of journalists and other media actors by ensuring that legal frameworks and law-enforcement practices are fully in accord with international human rights standards. The implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity is an urgent and vital necessity;

- will intensify its standard-setting and co-operation activities for the protection of journalism and the safety of journalists and other media actors as a priority and contribute expertise to other international organisations with regard to the particular competence of the Council of Europe;

- will consider further measures to ensure the protection of journalists from threats and acts of violence, as well as measures to eradicate impunity, and the alignment of laws and practices concerning defamation, anti-terrorism and protection of journalists' sources with the European Convention on Human Rights;

- will address the specific challenges and threats that women journalists are confronted with in the course of their work.



PROTECTION OF THE SAFETY OF JOURNALISTS AND OF MEDIA FREEDOM IN EUROPE

Parliamentary Assembly

1. Condemning in the strongest possible terms the terrorist attack on the French magazine Charlie Hebdo in Paris on 7 January 2015, the Parliamentary Assembly reiterates the importance of media freedom for democracy. The media create the public space for the dissemination of information and the expression of opinions. Media freedom therefore constitutes an important index for democracy, political freedoms and the rule of law in a country or region. Any attack on the media and journalists is an attack on a democratic society.
2. Appalled by the horrible and cowardly crimes committed in Paris, the Assembly underlines the importance it attaches to freedom of expression, one of the cornerstones of democracy. When in a society fear and self-censorship take the place of freedom to criticise and investigate, democracy is undeniably ailing. The freedom and safety of journalists are also our freedom and our safety.
3. Deeply concerned about the deterioration of the safety of journalists and media freedom in Europe, the Assembly urges member States to step up their domestic and multilateral efforts for the respect of the human rights to freedom of expression and information as well as to the protection of the life, liberty and security of those working for and with the media. Democracy and the protection of human rights depend on media freedom.
4. The Assembly recalls that political criticism and satire must be protected as an essential part of media freedom. Freedom of expression is applicable not only to information or ideas that are favourably received or perceived as inoffensive or with indifference, but also to those that offend, shock or disturb the State or any sector of the population, subject only to the conditions and restrictions provided for in the European Convention on Human Rights (ETS No. 5).
5. Recalling **Recommendation 1702 (2005)** on freedom of the press and the working conditions of journalists in conflict zones, the Assembly condemns the killings and the alleged targeted attacks on journalists in the armed conflict in eastern Ukraine and calls on the authorities of Ukraine to do their utmost to investigate those attacks and bring the perpetrators before the domestic courts. The Assembly welcomes the release of the Ukrainian journalists Roman Cheremsky on 27 December 2014 and Serhiy Sakadynskiy on 5 January 2015, who had been detained for months in the conflict area in eastern Ukraine. The Assembly notes with concern that the Ukrainian film

1. Assembly debate on 29 January 2015 (7th and 8th Sittings) (see Doc. 13664, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Gvozden Srećko Flego). Text adopted by the Assembly on 29 January 2015 (8th Sitting). See also Recommendation 2062 (2015).



producer Oleg Sentsov was transferred from detention in Simferopol to Moscow in May 2014 and has since been under criminal investigations by a Russian court in Moscow. Referring to the United Nations General Assembly Resolution A/RES/68/262 of 27 March 2014, which declared illegal the annexation of the Crimean Peninsula by the Russian Federation, Oleg Sentsov should be transferred by the Russian authorities to the appropriate law-enforcement authorities of Ukraine without further delay. The systematic harassment of the free and independent media in annexed Crimea, including the recent raid on the ATR television station, cannot be tolerated in Europe.

6. Recalling in particular the events on Independence Square in Kyiv in February 2014, the Assembly condemns the alleged targeted physical attacks by police or security forces against journalists covering demonstrations and other popular protest movements. The Assembly is also concerned about allegations of targeted physical attacks against journalists during the events around Gezi Park in Istanbul in May and June 2013. The Assembly therefore calls for full judicial investigations into those attacks and reminds member States of their respective obligations under the European Convention on Human Rights.

7. Concerned by the detention of Khadija Ismayilova, the criminal charges against Emin Huseynov and the closure of Radio Free Europe/Radio Liberty in Baku in December 2014, the Assembly calls on the authorities of Azerbaijan to respect the right to the presumption of innocence as well as freedom of expression of foreign media in Azerbaijan. Considering the wide attention given to those criminal proceedings, judicial authorities should inform the media about their principal decisions, without prejudice to the secrecy of investigations and the rights of victims or defendants.

8. Referring to Resolution A/RES/68/163 of the United Nations General Assembly on the safety of journalists and the issue of impunity, the Assembly calls on member States to fully investigate all violent deaths of journalists, such as the deaths of Elmar Huseynov (2005) and Rafiq Tagi (2011) in Azerbaijan, Paul Khlebnikov (2004) and Anna Politkovskaya (2006) in the Russian Federation, Dada Vujanović (1994) and Milan Pantić (2001) in Serbia, Hrant Dink (2007) in Turkey, Martin O'Hagan (2001) in the United Kingdom and Georgiy Gongadze (2000) and Vasil Klementiev (2010) in Ukraine, as well as the murder of Erosi Kitsmarishvili, the media manager and founder of one of the major television channels in Georgia (2014).

9. Although any propaganda for war and any advocacy of hatred that constitutes incitement to discrimination, hostility or violence are prohibited by law under Article 20 of the United Nations International Covenant on Civil and Political Rights, the Assembly remains concerned about excessive application of such laws in some countries against media and journalists who express political criticism of the government. In this context, the Assembly welcomes the considerable reduction in the number of journalists detained in Turkey, but regrets, in spite of some progress, the arrest of one journalist following the operations involving some media in Istanbul on 14 December 2014, the recent denial by the Turkish Prime Minister's Directorate General of Press and Information (BYEGM) to grant permanent press cards to 94 journalists and the number of journalists who are still prosecuted or detained. The Assembly calls for further legislative reforms concerning in particular Articles 216, 301 and 314 of the Turkish Penal Code which could lead to arbitrary applications against journalists.

10. Recalling the judgment of the European Court of Human Rights in the case of Ahmet Yildirim v. Turkey (18 December 2012), the Assembly concurs that the right to Internet access is considered to be inherent in the right to freedom of expression and information, as expressed in **Resolution 1987 (2014)** on the right to Internet access. Therefore, the Assembly considers the generalised blocking by public authorities of websites or web services as a serious violation of media freedom,

which deprives a high and indiscriminate number of Internet users of their right to Internet access. The Assembly welcomes the fact that Turkey has introduced legal measures to restrict the possibilities for blocking specific Internet content.

11. Aware of the dissuasive effect of legislation on defamation, the Assembly calls on member States to review such legislation in accordance with **Resolution 1577 (2007)** "Towards decriminalisation of defamation". Such review should deal with criminal law penalties as well as civil procedures for defamation which could financially threaten, in a disproportionate way, journalists and media. Referring to the opinion on the legislation on defamation of Italy by the European Commission for Democracy through Law (Venice Commission)(6-7 December 2013), the Assembly urges the Italian Parliament to resume consideration of its legislation in accordance with this opinion.

12. Referring to the opinion of the Council of Europe Commissioner for Human Rights on Hungary's media legislation (25 February 2011) and the subsequent co-operation of the Council of Europe with Hungary, the Assembly urges the Hungarian Parliament to pursue further reforms of its legislation in order to improve the independence of the media regulatory authorities, the State news agency and the public service broadcasters, to increase transparency and pluralism in the private media, as well as to combat racist expressions against ethnic minorities.

13. Referring to the opinion of the Venice Commission on Azerbaijan's legislation pertaining to the protection against defamation (14 October 2013) and the observations of the Commissioner for Human Rights in this regard (23 April 2014), the Assembly urges the Azerbaijani Parliament to amend its legislation in order to bring it into line with Azerbaijan's obligations under the European Convention on Human Rights and with the legislative proposal made by the Plenum of the Supreme Court of Azerbaijan. In the meantime, the Assembly urges the authorities to use the existing legislation with caution, to take particular steps to guarantee the right to a fair trial in this regard, and to avoid prison sentences for such offences as proposed by the Plenum of the Supreme Court.

14. In addition to the observations expressed with regard to Georgia in **Resolution 2015 (2014)** on the functioning of democratic institutions in Georgia and **Resolution 1920 (2013)** on the state of media freedom in Europe, the Assembly notes with concern the controversial changes in media ownership following the 2012 parliamentary elections and the recent adoption of legislation aimed at curbing the financial independence of private broadcasters and thus potentially influencing their editorial independence.

15. Although media freedom is widely proclaimed in Europe, the Assembly regrets that this freedom is frequently restricted by limiting the freedom and safety of journalists. Danger to journalists, be it physical, financial, existential or a combination thereof, restricts their journalistic freedom and affects the results of their work, sometimes forcing them to satisfy the demands of editors, publishers, owners, advertisers, politicians or others.

16. Pluralism in the media is a necessary condition for a pluralistic society and a pluralistic political system. Transparency of media ownership is necessary in order to control media concentration, to prevent the media from being in the hands of a few and to enable pluralism of media ownership. Therefore, the Assembly proposes publicising a "Media Identity Card" which should, inter alia, provide information about the owners of the media outlet concerned and those who contribute substantially to its income, such as big advertisers or donors.

17. Recalling its **Recommendation 1878 (2009)** on the funding of public service broadcasting, the Assembly continues to be alarmed by tendencies in some member States to erode the financial stability and the independence of public service broadcasters. Public service broadcasting remains an important element in a democratic society for providing the general public with unbiased information and culture in an increasingly commercialised, economically weakened and politically controlled media landscape.

18. Recalling its past reports on serious violations of, and challenges to, media freedom, the Assembly considers it important that media freedom in Europe remains on the agenda of the Assembly and of the Council of Europe as a whole. The adoption of this resolution is only one step in a necessarily ongoing process of awareness and scrutiny by parliamentarians and governments throughout Europe of serious violations of media freedom.

19. The Assembly invites:

19.1. national parliaments to hold annual public debates (hearings, committee meetings or plenary sessions), with the participation of associations of journalists and the media, on the state of media freedom in their respective countries;

19.2. the Commissioner for Human Rights to pay particular attention to the situation of media freedom in all conflict zones in Europe, particularly in eastern Ukraine;

19.3. the Venice Commission to:

19.3.1. analyse the conformity with European human rights standards of Articles 216, 301 and 314 of the Turkish Penal Code and Law No. 5651 of Turkey, as well as their application in practice;

19.3.2. identify the provisions which pose a danger to the right to freedom of expression and information through the media in the Hungarian Act CLXXXV of 2010 on Media Services and Mass Media, the Hungarian Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content and the Hungarian tax laws on progressive tax on advertising revenue for media;

19.4. the Conference of International Non-governmental Organisations (INGOs) to promote closer co-operation between NGOs working for media freedom and the safety of journalists and all Council of Europe bodies and institutions;

19.5. the committees of the European Parliament dealing with media freedom to establish close co-operation with the Assembly regarding political action against serious violations of media freedom.

RECOMMENDATION CM/REC(2016)4¹
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS
AND OTHER MEDIA ACTORS

*(Adopted by the Committee of Ministers on 13 April 2016
at the 1253rd meeting of the Ministers' Deputies)*

1. It is alarming and unacceptable that journalists and other media actors in Europe are increasingly being threatened, harassed, subjected to surveillance, intimidated, arbitrarily deprived of their liberty, physically attacked, tortured and even killed because of their investigative work, opinions or reporting, particularly when their work focuses on the misuse of power, corruption, human rights violations, criminal activities, terrorism and fundamentalism. These abuses and crimes have been extensively documented in authoritative reports published by the media, non-governmental organisations and human rights defenders.

2. Journalists and other media actors are often specifically targeted on account of their gender, gender identity, sexual orientation, ethnic identity, membership of a minority group, religion, or other particular characteristics which may expose them to discrimination and dangers in the course of their work. Female journalists and other female media actors face specific gender-related dangers, including sexist, misogynist and degrading abuse; threats; intimidation; harassment and sexual aggression and violence. These violations are increasingly taking place online. There is a need for urgent, resolute and systemic responses.

3. The abuses and crimes described above, which in practice are committed by both State and non-State actors, have a grave chilling effect on freedom of expression, as safeguarded by Article 10 of the European Convention on Human Rights (ETS No. 5, "the Convention"), including on the ability to access information, on the public watchdog role of journalists and other media actors and on open and vigorous public debate, all of which are essential in a democratic society. They are often met with insufficient efforts by relevant State authorities to bring the perpetrators to justice, which leads to a culture of impunity and can fuel further threats and violence, and undermine public trust in the rule of law.

4. This alarming situation is not exclusively limited to professional journalists and other traditional media actors. As the European Court of Human Rights and many intergovernmental bodies have recognised, including the United Nations in its Plan of Action on the Safety of Journalists and the Issue of Impunity and the Human Rights Committee in its General Comment No. 34, the definition of media actors has expanded as a result of new forms of media in the digital age. It therefore includes others who contribute to public debate and who perform journalistic activities or fulfil public watchdog functions.

5. Given the scale and severity of threats and attacks against journalists and other media actors in Europe and their damaging effects on the functioning of democratic society, far-reaching measures are necessary at the international and national levels in order to strengthen the protection of journalism and the safety of journalists and other media actors, and to eradicate impunity. The international community has repeatedly stated the need for a more effective

¹ When adopting this recommendation, the Permanent Representative of the Russian Federation indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his government to comply or not with the recommendation, in so far as it referred to other media actors.

implementation of existing international and regional standards and enhanced compliance with existing monitoring mechanisms and initiatives. Protecting journalists and other media actors and combating impunity for perpetrators of crimes against them are pressing political priorities across Council of Europe member States, as stated in the Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.

6. In order to create and secure a favourable environment for freedom of expression as guaranteed by Article 10 of the Convention, States must fulfil a range of positive obligations, as identified in the relevant judgments of the European Court of Human Rights and set out in the principles appended to this recommendation. Such obligations are to be fulfilled by the executive, legislative and judicial branches of governments, as well as all other State authorities, including agencies concerned with maintaining public order and national security, and at all levels – federal, national, regional and local.

7. Under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1), the Committee of Ministers recommends that governments of member States:

1. implement, as a matter of urgency and through all branches of State authorities, the guidelines set out in the appendix to this recommendation, taking full account of the principles included there;

2. review relevant domestic laws and practice and revise them, as necessary, to ensure their conformity with States' obligations under the European Convention on Human Rights;

3. promote the goals of this recommendation at the national level and engage and co-operate with all interested parties to achieve those goals.

Appendix to Recommendation CM/Rec(2016)4

I. Guidelines

These guidelines are designed to meet the many-faceted challenge of ensuring the effective protection of journalism and safety of journalists and other media actors, which necessitates coherent, complementary strategies by member States. They are based on the principles that are set out in this appendix and which constitute an integral part of the recommendation. The guidelines are organised into four pillars: prevention, protection, prosecution (including a specific focus on impunity) and promotion of information, education and awareness-raising. Within each pillar, detailed guidance is offered to member States on how to fulfil their relevant obligations, combining legal, administrative and practical measures.

Prevention

1. Member States should, in accordance with their constitutional and legislative traditions, ensure independence of the media and safeguard media pluralism, including the independence and sustainability of public-service media and community media, which are crucial elements of a favourable environment for freedom of expression.

2. Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear. Such a framework should reflect the principles set out in this appendix and thereby guarantee

public access to information, privacy and data protection, confidentiality and security of communications and protection of journalistic sources and whistle-blowers. The legislative framework, including criminal law provisions dealing with the protection of the physical and moral integrity of the person, should be implemented in an effective manner, including through administrative mechanisms and by recognising the particular roles of journalists and other media actors in a democratic society. The legislative framework and its implementation should guarantee effective protection of female journalists and other female media actors from gender-related dangers in the course of their work. Due attention should be paid to the importance of adequate labour and employment laws to protect journalists and other media actors from arbitrary dismissal or reprisals, and from precarious working conditions that may expose them to undue pressures to depart from accepted journalistic ethics and standards.

3. This legislative framework should be subject to independent, substantive review to ensure that safeguards for the exercise of the right to freedom of expression are robust and effective in practice and that the legislation is backed up by effective enforcement machinery. After an initial expeditious review, further reviews should be carried out at regular periodic intervals. The reviews of laws and practices should assess the compliance of the legislative framework and its application with authoritative European and international human rights standards, including all relevant positive obligations of States, and contain recommendations on the basis of its key findings. The reviews should cover existing and draft legislation, including that which concerns terrorism, extremism and national security, and any other legislation that affects the right to freedom of expression of journalists and other media actors, and any other rights that are crucial for ensuring that their right to freedom of expression can be exercised in an effective manner.

4. The reviews may be carried out by one or more appropriate new or existing independent bodies that have authoritative mandates and are supported by sufficient resources. National authorities are urged to establish favourable conditions in which such reviews may take place, allowing for detailed public scrutiny and the drawing up of recommendations by organisations and experts acting independently of governmental, political, religious, commercial and other partisan influences. The reviewing body or bodies could be a national human rights commission, ombudsperson and/or another independent body established for the specific purposes described above. It is recommended that the reviewing body or bodies have an explicit mandate to collect, receive and use information from any source and be granted optimal access to documents and officials across all branches of State authorities. The review process should be transparent and include public hearings, facilitating the full and active participation of civil society, including representatives of journalist organisations, the media and other stakeholders.

5. Provision should be made for the review reports to be formally submitted to relevant State authorities, in particular ministries, requiring a timely response by those authorities, including, as appropriate, corrective or other follow-up action to the findings and recommendations of the reviews. The findings and recommendations of the reviews should also be systematically channelled into ongoing reporting, monitoring or information-sharing exercises at the Council of Europe, such as for the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights. They may also be made available to similar exercises of other intergovernmental organisations, such as the UN Human Rights Committee, the UN Human Rights Council's Universal Periodic Review, UNESCO, the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media.

6. As part of the reviews of laws and practices, member States which have defamation laws should ensure that those laws include freedom of expression safeguards that conform to

European and international human rights standards, including truth/public-interest/fair comment defences and safeguards against misuse and abuse, in accordance with the European Convention on Human Rights and the principle of proportionality, as developed in the relevant judgments of the European Court of Human Rights. Furthermore, given the chilling effect that legislation criminalising particular types of expression has on freedom of expression and public debate, States should exercise restraint in applying such legislation, where it exists. States should be guided in this regard by the European Court of Human Rights finding that the imposition of a prison sentence for a press offence is only permissible in exceptional circumstances, notably where other fundamental rights have been seriously impaired, for example, in the case of hate speech or incitement to violence. Such legislation should be subjected to similar critical scrutiny in the context of the reviews of laws and practices.

7. Member States should clarify the legal bases of State surveillance and interception of communications data and the procedural safeguards against misuse and abuse, such as the possibility of review by a competent judicial authority, due process and user notification. Member States should ensure the effective operation of oversight mechanisms for State surveillance of communications, to ensure transparency and accountability for the scope and nature of such practices. A range of stakeholders should be represented on such oversight bodies, including journalists and their organisations and legal and technical experts.

Protection

8. Legislation criminalising violence against journalists should be backed up by law enforcement machinery and redress mechanisms for victims (and their families) that are effective in practice. Clear and adequate provision should be made for effective injunctive and precautionary forms of interim protection for those who face threats of violence.

9. State authorities have a duty to prevent or suppress offences against individuals when they know, or should have known, of the existence of a real and immediate risk to the life or physical integrity of these individuals from the criminal acts of a third party and to take measures within the scope of their powers which, judged reasonably, might be expected to avoid that risk. To achieve this, member States should take appropriate preventive operational measures, such as providing police protection, especially when it is requested by journalists or other media actors, or voluntary evacuation to a safe place. Those measures should be effective and timely and should be designed with consideration for gender-specific dangers faced by female journalists and other female media actors.

10. Member States should encourage the establishment of, and support the operation of, early-warning and rapid-response mechanisms, such as hotlines, online platforms or 24-hour emergency contact points, by media organisations or civil society, to ensure that journalists and other media actors have immediate access to protective measures when they are threatened. If established and run by the State, such mechanisms should be subject to meaningful civil society oversight and guarantee protection for whistle-blowers and sources who wish to remain anonymous. Member States are urged to wholeheartedly support and co-operate with the Council of Europe's platform to promote the protection of journalism and the safety of journalists and thereby help to strengthen the capacity of Council of Europe bodies to warn of and respond effectively to threats and violence against journalists and other media actors.

11. In all cases of deprivation of liberty of journalists or other media actors by the police or other law-enforcement officials, adequate procedural guarantees must be adhered to, in order to prevent

unlawful detention or ill-treatment. Such procedural guarantees must include: the right to inform, or to have informed, a third party of their choice of their deprivation of liberty, their location and any transfers; the right of access to a lawyer; the right of access to a medical doctor; and the right to challenge the lawfulness of the detention before a court of law. Persons arrested or detained in relation to the commission of an offence must be brought promptly before a judge, and they have the right to a trial within a reasonable time or to be released pending trial, in accordance with Article 5 of the Convention (right to liberty and security).

12. Member States are urged to develop protocols and training programmes for all State authorities who are responsible for fulfilling State obligations concerning the protection of journalists and other media actors. Those protocols should be adapted to the nature and mandate of the State agency personnel in question, for example, judges, prosecutors, police officers, military personnel, prison wardens, immigration officials and other State authorities, as appropriate. The protocols and training programmes should be used to ensure that the personnel of all State agencies are fully aware of the relevant State obligations under international human rights law and humanitarian law and the actual implications of those obligations for each agency. The protocols and training programmes should be informed by an appreciation of the important role played by journalists and other media actors in a democratic society and of gender-specific issues.

13. Member States must exercise vigilance to ensure that legislation and sanctions are not applied in a discriminatory or arbitrary fashion against journalists and other media actors. They should also take the necessary legislative and/or other measures to prevent the frivolous, vexatious or malicious use of the law and legal process to intimidate and silence journalists and other media actors. Member States should exercise similar vigilance to ensure that administrative measures such as registration, accreditation and taxation schemes are not used to harass journalists and other media actors, or to frustrate their ability to contribute effectively to public debate.

14. Member States should take into account the specific nature and democratic value of the role played by journalists and other media actors in particular contexts, such as in times of crisis, during election periods, at public demonstrations and in conflict zones. In these contexts in particular, it is important for law enforcement authorities to respect the role of journalists and other media actors covering demonstrations and other events. Press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials, and where it is not possible for journalists or other media actors to produce professional documentation, every possible effort should be made by State authorities to ascertain their status. Dialogue between State authorities and journalists' organisations is moreover encouraged in order to avoid friction or clashes between police and members of the media.

15. State officials and public figures should not undermine or attack the integrity of journalists and other media actors, for example on the basis of their gender or ethnic identity, or by accusing them of disseminating propaganda, and thereby jeopardise their safety. Nor should they require, coerce or pressurise, by way of violence, threats, financial penalties or inducements or other measures, journalists and other media actors to derogate from accepted journalistic standards and professional ethics by engaging in the dissemination of propaganda or disinformation. State officials and public figures should publicly and unequivocally condemn all instances of threats and violence against journalists and other media actors, irrespective of the source of those threats and acts of violence.

16. Member States should encourage media organisations, while not encroaching on their editorial or operational autonomy, to fulfil their institutional responsibilities towards all journalists

and other media actors working for them – in salaried, freelance and all other capacities. This may include the adoption of in-house guidelines and procedures for the deployment of journalists and other media actors on difficult or dangerous assignments, for instance in conflict zones. Such deployment should be voluntary and informed. Institutional responsibilities also include providing journalists and other media actors with adequate information, including on the risks involved, and requisite training in all matters of safety, digital security and privacy, as well as arranging for life assurance and health and travel insurance as part of a comprehensive and equitable package of work conditions. These institutional responsibilities additionally include, as relevant, the provision of legal support and representation and trauma counselling on return from assignments.

Prosecution

17. It is imperative that everyone involved in killings of, attacks on and ill-treatment of journalists and other media actors be brought to justice. Investigations into such crimes and the prosecution of those responsible for them must therefore meet a number of general requirements. When those responsible for such crimes are not brought to justice, a culture of impunity can arise, which calls for particular courses of action.

General requirements

18. Investigations into killings, attacks and ill-treatment must be effective and therefore respect the essential requirements of adequacy, thoroughness, impartiality and independence, promptness and public scrutiny.

19. Investigations must be effective in the sense that they are capable of leading to the establishment of the facts as well as the identification and eventually, if appropriate, punishment of those responsible. The authorities must take every reasonable step to collect all the evidence concerning the incident. The conclusions of the investigation must be based on thorough, objective and impartial analysis of all the relevant elements, including the establishment of whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate. State authorities are also obliged to investigate the existence of a possible link between racist attitudes and an act of violence. The relevance of gender-related issues should also be investigated.

20. For an investigation to be effective, the persons responsible for, and who are carrying out, the investigation must be independent and impartial, in law and in practice. Any person or institution implicated in any way with a case must be excluded from any role in investigating it. Moreover, investigations should be carried out by specialised, designated units of relevant State authorities in which officials have been given adequate training in international human rights norms and safeguards. Investigations must be effective in order to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Investigations should also be subject to public oversight, and in all cases the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

21. Member States have an obligation to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice, whether they are State actors or not. Investigations and prosecutions should consider all of the different – actual and potential – roles in these crimes, such as authors, instigators, perpetrators and accomplices, and the criminal liability

that arises from each of those roles.

22. Member States are obliged to ensure the integrity of court proceedings; they must guarantee the independence and impartiality of the judiciary. They must also ensure the safety of judges, prosecutors, lawyers and witnesses involved in prosecutions for crimes against journalists and other media actors.

23. Member States must ensure that effective and appropriate remedies are available to victims and, as relevant, to their families, including legal remedies, financial compensation, medical and psychological treatment, relocation and shelter. Remedies should take due account of cultural, ethnic, religious gender-related and other aspects. An ongoing or pending criminal prosecution should not preclude victims from seeking civil remedies.

Impunity

24. When prosecutions for crimes against journalists and other media actors are not initiated or are obstructed in different ways, unacceptable delays to the administration of justice are created and give rise to impunity for those responsible for the crimes. Therefore, when a State agent has been charged with crimes involving ill-treatment, it is of the utmost importance that criminal proceedings and sentencing are not time-barred. In order to maintain public trust in the justice system, measures such as the granting of an amnesty or pardon should not be envisaged or accepted without convincing reasons. The law should provide for additional or aggravated penalties to be applicable to public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for crimes against journalists or other media actors on account of their work or contribution to public debate.

25. When investigations and prosecutions do not result in bringing to justice the perpetrators of killings of journalists or other media actors, or other serious crimes against them, member States may consider establishing special judicial or non-judicial inquiries into specific cases or independent specialised bodies to conduct such inquiries on an ongoing basis. The latter may have special authority and involve participation or leadership by respected media and/or civil society figures, with the aim of advancing the process of fact-finding, without prejudice to the responsibility of the State prosecuting and investigating authorities to bring the perpetrators to justice.

26. Member States should enhance the co-operation and exchange of information, expertise and best practices with other States whenever crimes against journalists and other media actors involve cross-border or online dimensions, subject to safeguards for the rights to privacy, data protection and the presumption of innocence.

27. Member States should proactively and vigorously pursue the priorities of protecting journalists and other media actors and combating impunity in all relevant regional and international intergovernmental forums and, more generally, in their foreign policy and relations. This could involve co-operating fully with information-gathering, awareness-raising and other initiatives co-ordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors, in particular periodic State reporting processes, for example to the UN Human Rights Committee, as part of the UN Human Rights Council's Universal Periodic Review and to the Director-General of UNESCO on the actions taken to prevent the impunity of perpetrators and on the status of judicial inquiries on each of the killings of journalists condemned

by UNESCO. This would also include member States' roles and responsibility in the supervision of the execution of the judgments of the European Court of Human Rights by the Council of Europe Committee of Ministers and providing prompt and full responses to ad hoc requests by the Council of Europe Commissioner for Human Rights and the OSCE Representative on Freedom of the Media.

Promotion of information, education and awareness raising

28. Member States should promote the translation (into the national and minority languages of the country) and the widest possible dissemination of this recommendation, as well as awareness raising about its content in a variety of publicity materials. Information and awareness-raising strategies should include specific campaigns designed to capitalise on the publicity opportunities provided by internationally designated days such as World Press Freedom Day (3 May), International Day to End Impunity for Crimes against Journalists (2 November) and International Right to Know Day (28 September). Member States should co-operate fully with information-gathering, awareness-raising and other initiatives co-ordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors. In doing so, they should proactively highlight, as appropriate, gender-specific issues and those concerning impermissible grounds for discrimination.

29. Member States should encourage relevant bodies to give prominence to this recommendation – and educational materials dealing with all the issues it addresses, including gender-specific issues – in training programmes in journalism schools and as part of continuing education for journalists, and media and information literacy initiatives.

30. Member States should develop a partnership with civil society and the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity. This should involve putting into practice the principles of open government and open justice and adopting a constructive and responsive attitude to civil society and media reporting on threats and violence against journalists and other media actors, highlighting gender-specific and other issues, as appropriate. It should also involve active co-operation in publicising and educating about relevant issues and standards.

II. Principles

The preceding recommendation, including its guidelines, is based on an extensive body of principles anchored in the European Convention on Human Rights and in the relevant judgments and decisions of the European Court of Human Rights. A relevant selection of these principles are set out and contextualised in the following paragraphs. The principles have been grouped into the following categories: freedom of expression; enabling environment; safety, security, protection; contribution to public debate and chilling effect.

Freedom of expression

1. The right to freedom of expression, as enshrined in Article 10 of the European Convention on Human Rights, Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and other international and regional instruments, is a fundamental human right enjoyed by everyone, offline and online, without discrimination. It is a compound right, comprising the right to hold opinions and the rights to seek, receive and impart information and ideas of all kinds without interference and regardless of frontiers.

2. The right to freedom of expression and information, as guaranteed by Article 10 of the Convention, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual. Freedom of expression is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. In this way, freedom of expression facilitates robust public debate, which is another prerequisite of a democratic society characterised by pluralism, tolerance and broadmindedness. Any interference with the right to freedom of expression of journalists and other media actors therefore has societal repercussions as it is also an interference with the right of others to receive information and ideas and an interference with public debate.

3. The exercise of the right to freedom of expression carries with it duties and responsibilities, as stated in Article 10, paragraph 2. In the context of journalism, relevant duties and responsibilities are understood as including acting in good faith in order to provide accurate and reliable information, in accordance with the ethics of journalism.

4. While the right to freedom of expression is not absolute, an interference with this right is only permitted if it is prescribed by law, pursues one of the legitimate aims set out in Article 10, paragraph 2 of the Convention, is necessary in a democratic society – which implies that it corresponds to a pressing social need – and is proportionate to the legitimate aims pursued. These aims are: national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary.

5. Moreover, some types of hate speech which incite violence or hatred fall under Article 17 of the Convention (prohibition of abuse of rights) and are therefore not afforded protection because their aim is to destroy some of the rights and freedoms set forth in the Convention.

6. All human rights are universal, indivisible, interdependent and interrelated and there is important interplay between the right to freedom of expression and other human rights, such as the rights to freedom of thought, conscience and religion, the right to freedom of assembly and association and the right to vote in free and fair elections.

7. Other human rights associated with issues surrounding the safety of journalists and other media actors and the fight against impunity include: the right to life (Article 2), the prohibition of torture (Article 3), the right to liberty and security (Article 5), the right to a fair trial (Article 6), no punishment without law (Article 7), the right to respect for private and family life (Article 8) and the right to an effective remedy (Article 13).

8. The Convention is a living instrument which is to be interpreted in light of present-day conditions and in a way that ensures that all of the rights it guarantees are not theoretical or illusory but practical and effective, both in terms of the substance of those rights and the remedies available in case of their violation.

9. Ongoing technological developments have transformed the traditional media environment, as described, inter alia, in CM/Rec(2011)7 on a new notion of media, leading to new conceptions of media and new understandings of the evolving media ecosystem. Advances in information and communication technologies have made it easier for an increasingly broad and diverse

range of actors to participate in public debate. Consequently, the European Court of Human Rights has repeatedly recognised that individuals, civil society organisations, whistle-blowers and academics, in addition to professional journalists and media, can all make valuable contributions to public debate, thereby playing a role similar or equivalent to that traditionally played by the institutionalised media and professional journalists.

10. The UN Human Rights Committee has similarly stated that “journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere”. The UN General Assembly has also acknowledged that “journalism is continuously evolving to include inputs from media institutions, private individuals and a range of organisations that seek, receive and impart information and ideas of all kinds, online as well as offline ... thereby contributing to shape public debate”. According to the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, “the protection of journalists should not be limited to those formally recognised as journalists, but should cover others, including community media workers and citizen journalists and others who may be using new media as a means of reaching their audiences”.

11. The obligation on States to ensure the effective exercise of human rights involves not only negative obligations of non-interference, but also positive obligations to secure those rights to everyone within their jurisdiction.

12. Genuine, effective exercise of freedom of expression may require various positive measures for protection, even in the sphere of relations between individuals. These positive obligations include, among others: to create a favourable environment for participation in public debate for everyone and to enable the expression of ideas and opinions without fear; to put in place an effective system of protection for authors and journalists; to afford protection against physical violence and intimidation; to protect life; to investigate fatalities; and the duty to prevent torture and ill-treatment.

Enabling environment

13. A favourable or enabling environment for freedom of expression has a number of essential features which collectively create the conditions in which freedom of expression and information and vigorous public debate can thrive. The right to receive information embraces a right of access to information. The public has a right to receive information and ideas of public interest, which journalists and other media actors have the task of imparting. The gathering of information is an essential preparatory step in journalism and an inherent, protected part of press freedom. The participation of journalists and other media actors in public debate on matters of legitimate public concern must not be discouraged, for example by measures that make access to information more cumbersome or by arbitrary restrictions, which may become a form of indirect censorship.

14. The media ecosystem is shaped by the interplay of legal, political, socio-cultural, economic, technological and other influences and its vitality is crucial for ensuring an enabling environment for freedom of expression and information in democratic society. One feature of the media ecosystem is that individuals have become empowered as a result of new technologies that facilitate their ability to participate in public debate. Another feature of the media ecosystem is that online intermediaries may carry out an influential gate-keeping function in respect of public debate that is conducted via their private networks, such as social media. It must be recalled that online intermediaries are indirectly bound to respect their users’ right to freedom of expression and other human rights.

15. Media pluralism and diversity of media content are essential for the functioning of a democratic society and are the corollaries of the fundamental right to freedom of expression and information as guaranteed by Article 10 of the Convention. States have a positive obligation to guarantee pluralism in the media sector, which entails ensuring that a diversity of voices, including critical ones, can be heard. Independent media regulatory authorities can play an important role in upholding media freedom and pluralism and States should therefore safeguard their independence. The adoption and effective implementation of media-ownership regulation also plays an important role in this respect. Such regulation should ensure transparency in media ownership and prevent its concentration where this is detrimental to pluralism. It should address issues such as indirect and cross-media ownership, and appropriate restrictions on media ownership by persons holding public office.

16. In the course of their work, journalists and other media actors often face specific risks, dangers and discrimination on grounds of their gender, gender identity, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Moreover, the pursuit of particular stories and coverage of particular issues (such as sensitive political, religious, economic or societal topics, including misuse of power, corruption and criminal activities) can also expose journalists and other media actors to threats, attacks, abuse and harassment by State and/or non-State actors. Non-State actors could, for instance, be terrorist or criminal groups. These specific situations should be taken into account when affording effective preventive or protective measures.

17. Female journalists and other female media actors face specific gender-related dangers in the course of their work, such as threats, (sexual) aggression and violence, in targeted ways, in the context of mob-related sexual violence or sexual abuse while in detention. These dangers are often compounded by various factors, such as under-reporting, under-documentation, lack of access to justice, social barriers and constraints concerning gender-based violence, including stigmatisation, lack of recognition of the seriousness of the problem and discriminatory attitudes by extremist sections of society. A systematic, gender-sensitive approach is required to prevent and combat these specific dangers, as well as to counter the underlying societal customs, practices, gender stereotypes, prejudices and discrimination on which they feed. Primary responsibility for developing such strategies lies with State authorities, but media, civil society and corporate organisations also have important roles to play: a gender-specific perspective should be a central feature of all measures and programmes dealing with the protection of journalists and other media actors and the fight against impunity.

18. Being able to exercise the right to freedom of expression without fear implies that, as a minimum, the safety, security and protection are guaranteed effectively in practice for everyone, in particular journalists and other media actors, and there is an expectation that they can contribute to public debate without fear and without having to modify their conduct due to fear. Fear can arise from online harassment, threats and cyberattacks, and other illegal behaviour, including trolling, cyberstalking and hacking of e-mail and social media accounts, electronic storage, websites and mobile phones or other devices. Online harassment, threats, abuse and violations of digital security tend to target female journalists and other female media actors in particular, which calls for gender-specific responses. Threats and violence are not the only sources of fear, however. Fear can also be generated by (the threat or reasonable expectation of) a range of legal, political, socio-cultural and economic pressures, which can be exacerbated in times of economic crisis and financial austerity.

19. Threats to, and intimidation of, journalists and other media actors can often be seen as indicators or warning signals of wider or escalating threats to freedom of expression in society. As such, they point to a more general deterioration in human rights, democracy and rule of law.

Safety, security, protection

20. The State must guarantee the safety and physical integrity of everyone within its jurisdiction and this entails not only the negative obligation to refrain from the intentional and unlawful taking of life, but also the positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction. This positive obligation has substantive and procedural dimensions.

21. The substantive dimension involves a primary obligation for the State to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against individuals, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. This also extends, in appropriate circumstances, to a positive obligation on the authorities to take preventive operational measures to protect individuals whose lives are at risk from the criminal acts of another individual. Bearing in mind the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Nevertheless, the authorities should pay attention to the vulnerable position in which journalists who cover politically sensitive topics place themselves vis-à-vis those in power.

22. Unregulated and arbitrary action by State agents is incompatible with effective respect for human rights. This means that, as well as being authorised under national law, policing operations, including the policing of public demonstrations, must be sufficiently regulated by it, within a system of adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident. This implies a need to take into consideration not only the actions of the law enforcement agents of the State who actually use force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination. A legal and administrative framework should define the limited circumstances in which law enforcement officials may use force and firearms, in the light of the international standards which have been developed on this topic. In this respect, a clear chain of command, coupled with clear guidelines and criteria are required; specific human rights training can help to formulate such guidelines and criteria. In any case, the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals and Article 3 of the Convention does not allow authorities to weigh the physical integrity of an individual against the aim of maintaining public order.

23. The procedural dimension involves a positive obligation on the State to carry out effective, independent and prompt investigations into alleged unlawful killings or ill-treatment, either by State or non-State actors, with a view to prosecuting the perpetrators of such crimes and bringing them to justice. Article 13 of the Convention also requires States to ensure that an effective remedy is available whenever any of the substantive rights in the Convention are violated.

24. The absence of such effective measures gives rise to the existence of a culture of impunity, which leads to the tolerance of abuses and crimes against journalists and other media actors. When there is little or no prospect of prosecution, perpetrators of such abuses and crimes do not fear punishment. This inflicts additional suffering on victims and can lead to the repetition of

abuses and crimes.

25. The State has an obligation to guarantee the substantive liberty of everyone within its jurisdiction and to that end must ensure that journalists and other media actors are not subjected to arbitrary arrest, unlawful detention or enforced disappearance.

26. The State should not unduly restrict the free movement of journalists and other media actors, including cross-border movement and access to particular areas, conflict zones, sites and forums, as appropriate, because such mobility and access is important for news and information-gathering purposes.

27. The effectiveness of a system of protection may be influenced by contextual factors, such as in crisis or conflict situations, where there are heightened risks for the safety and independence of journalists and other media actors, and where State authorities may experience difficulties in exerting de facto control over the territory. Nevertheless, the relevant State obligations apply mutatis mutandis in such specific contexts, which are at all times subject to international human rights law and international humanitarian law.

28. Ensuring the safety and security of journalists and other media actors is a precondition for ensuring their ability to participate effectively in public debate. The persistence of intimidation, threats and violence against journalists and other media actors, coupled with the failure to bring to justice the perpetrators of such offences, engender fear and have a chilling effect on freedom of expression and on public debate. States are under a positive obligation to protect journalists and other media actors against intimidation, threats and violence irrespective of their source, whether governmental, judicial, religious, economic or criminal.

Contribution to public debate

29. Journalists and other media actors make an essential contribution to public debate and opinion-making processes in a democratic society by acting as public or social watchdogs and by creating shared spaces for the exchange of information and ideas and for discussion. Their watchdog role involves, inter alia, informing the public about matters of public interest, commenting on them, holding public authorities and other powerful forces in society to account and exposing corruption and abuse of power.

30. In order to enable journalists and other media actors to fulfil the tasks ascribed to them in a democratic society, the European Court of Human Rights has recognised that their right to freedom of expression should enjoy a broad scope of protection. Such protection includes a range of freedoms that are of functional relevance to the pursuit of their activities, such as: protection of confidential sources, protection against searches of professional workplaces and private domiciles and the seizure of materials, protection of news and information-gathering processes, and editorial and presentational autonomy.

31. The operational or functionally relevant freedoms enjoyed by journalists and other media actors, which cover news and information-gathering, processing and dissemination activities, are necessary for their right to freedom of expression to be practical and effective, both offline and online.

32. Article 10 of the Convention protects not only the ideas and information expressed, but also the manner in which they are conveyed. This implies that journalists and other media actors have

the freedom to choose their own technique or style for reporting on matters of public interest, which includes possible recourse to a degree of exaggeration, or even provocation. In addition to reporting, other genres contribute to public debate in different ways and should accordingly be protected, such as satire, which is a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate.

Chilling effect

33. A chilling effect on freedom of expression arises when an interference with this right causes fear, leading to self-censorship and ultimately the impoverishment of public debate, which is to the detriment of society as a whole. Accordingly, State authorities should avoid taking measures or imposing sanctions that have the effect of discouraging participation in public debate.

34. Legislation and how it is applied in practice can give rise to a chilling effect on freedom of expression and public debate. Interferences that take the form of criminal sanctions have a greater chilling effect than those constituting civil sanctions. Thus, the dominant position of State institutions requires the authorities to show restraint in resorting to criminal proceedings. A chilling effect on freedom of expression can arise not only from any sanction, disproportionate or not, but also the fear of sanction, even in the event of an eventual acquittal, considering the likelihood of such fear discouraging one from making similar statements in the future.

35. Although sentencing is in principle a matter for the national courts, the imposition of a prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.

36. Actual misuse, abuse or threatened use of different types of legislation to prevent contributions to public debate, including defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws can prove effective as means of intimidating and silencing journalists and other media actors reporting on matters of public interest. The frivolous, vexatious or malicious use of the law and legal process, with the high legal costs required to fight such law suits, can become a means of pressure and harassment, especially in the context of multiple law suits. The harassment can prove particularly acute when it concerns journalists and other media actors who do not benefit from the same legal protection or financial and institutional backing as those offered by large media organisations. In this respect, it should be recalled that it is central to the concept of a fair trial, in civil as in criminal proceedings, that a litigant is not denied the opportunity to present his or her case effectively before the court and that he or she is able to enjoy equality of arms with the opposing side. States are therefore required to take appropriate measures, which could include the institution of a legal aid scheme, in order to ensure that each side is afforded a reasonable opportunity to present his or her case.

37. A chilling effect also results from the arbitrary use of administrative measures such as registration and accreditation schemes for journalists, bloggers, Internet users, foreign correspondents, NGOs, etc., and tax schemes, in order to harass journalists and other media actors, or to frustrate their ability to contribute effectively to public debate. The discriminatory allocation of public media or press subsidies or of State advertising revenue can also produce a chilling effect on critical editorial lines pursued by the media, in particular for smaller media organisations and in precarious economic climates.

38. The surveillance of journalists and other media actors, and the tracking of their online activities, can endanger the legitimate exercise of freedom of expression if carried out without the necessary safeguards. They can also threaten the safety of the persons concerned and undermine the protection of journalists' sources. Surveillance and tracking are facilitated when the integrity of communications and systems are compromised, for example, when service providers or hardware or software manufacturers build surveillance capabilities or backdoors into their services or systems, or when service providers are implicated in State surveillance practices. In order for systems of secret surveillance to be compatible with Article 8 of the Convention, they must contain adequate and effective safeguards against abuse, including independent supervision, since such systems designed to protect national security entail the risk of undermining or even destroying democracy on the ground of defending it.

39. Attacks on and intimidation of journalists and other media actors inevitably have a grave chilling effect on freedom of expression and this effect is all the more piercing when the prevalence of attacks and intimidation is compounded by a culture of legal impunity for their perpetrators. Such a culture of legal impunity is an indicator of endemic abuse of human rights.

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