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Freedom of Expression –
role and powers of National Human Rights Institutions
(NHRIs)
and other national mechanisms

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Agora, Room G03

*High-level Seminar co-organised by the Council of Europe and the European
Network of National Human Rights Institutions (ENNHRI)*

Draft Concept Paper

Background

Freedom of expression and free flow of information are essential parts of public debate and democracy. In this context, the watchdog role of journalists and other media actors which have emerged in the new media ecosystem proves crucial to the functioning of our societies.

For years, the Council of Europe has regularly been providing its member States with guidelines regarding the protection of journalists and other media actors, thus at the same time enabling the citizens to make effective use of their right to information. The standard setting activity of the Council of Europe relating to media freedom is based on and inspired by the European Convention on Human Rights (the Convention), as interpreted in the case-law of the European Court of Human Rights (ECtHR) which, over decades, has developed a number of principles on the freedom of expression including those on the safety of journalists.

Yet in the recent years Europe has witnessed an increase of pressure, threats, intimidation and physical attacks on journalists in several countries, giving rise to the question whether special protection should be accorded to journalism and journalists in the execution of their tasks, so as to ensure effective functioning of the media and of the process of disseminating news and information.

The Committee of Ministers of the Council of Europe responded to this worrying trend with a Declaration of 30 April 2014 on the protection of journalism and safety of journalists and other media actors. The Declaration was followed on 13 April 2016 by the

adoption of the Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, which provides the most comprehensive list of principles related to safety of journalists, as established by the ECtHR's case-law, and urges member States to carry out independent review of whether the safeguards for the exercise of the right to freedom of expression in a given member State are robust and effective, and whether the member States' respective legislations are backed by effective enforcement machinery. Based on the Recommendation, independent review should be carried out by independent bodies such as national human rights structures, and including human rights commissions, ombudspersons, and/or other bodies established for this specific purpose.

Moreover, the Secretary General of the CoE in his 2015 report "State of democracy, human rights and the rule of law in Europe" proposed a two-year Europe-wide programme to support national mechanisms to protect journalists, such as ombudsman institutions, press commissioners and non-governmental organisations. The goal of the programme is (a) to strengthen the capacities of such mechanisms, (b) to promote networking and exchanges of experience in the area of safety of journalists and (c) to raise the visibility of the issue in the member States. Such national mechanisms or national human rights structures include National Human Rights Institutions (NHRIs), Ombuds institutions, Equality Bodies, Data Protection Authorities, and other specialist bodies working on human rights at the national level.

NHRIs are independent bodies with a broad constitutional or legal mandate to protect and promote human rights. Their functions include: assisting individuals (through complaints handling or legal assistance); monitoring the human rights situation on the ground; advising government and parliament on compliance with international human rights norms; reporting to international human rights mechanisms; and promoting a culture of rights, through human rights education and awareness raising. As such, NHRIs act as a bridge between civil society and the state, and between the national and international arenas. It is in the interest of democratic states to ensure their independence, pluralism and accountability in line with the UN Paris Principles¹. According to the UN Paris Principles, NHRIs have, among others, the role "to publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs." Furthermore, the UN Paris Principles set out that "within the framework of its operation, an NHRI can address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations".

¹ Principles relating to the Status of National Institutions (The Paris Principles) Adopted by General Assembly resolution 48/134 of 20 December 1993
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

Press freedom and freedom of expression are therefore critical for NHRIs to fulfil their mission, as well as for the fulfillment and enjoyment of human rights in general.

Objectives

Within the context of the Secretary General's above-mentioned two-year programme, the CoE and ENNHRI are organising the Seminar aimed at bringing together the representatives of NHRIs and other national mechanisms, as well as ECtHR judges and other CoE's bodies dealing with the topic in question. Also participating will be journalists' organisations, notably the European Federation of Journalists (EFJ), the International Federation of Journalists (IFJ), the Association of European Journalists (AEJ), Reporters Without Borders (RWB), Article 19, Index on Censorship, the Committee to Protect Journalists, and the International Press Institute.

Physical and psychological safety of journalists and other media actors, bloggers, writers, etc., is but one of the means to achieving an enabling environment for freedom of expression. Many other adverse elements have been identified and addressed in the relevant Council of Europe's instruments, e.g. impunity of perpetrators of crimes committed against journalists, threats to the confidentiality of journalists' sources, threats to journalists' privacy, and chilling effects on media freedom related to judicial intimidation and political intimidation of journalists including hate speech and incitement to violence against journalists. The Seminar will endeavour to provide some insight into these topics from the perspectives of both the CoE and the NHRIs.

Support to this seminar is given by the European Network of National Human Rights Institutions (ENNHRI), which brings together 40 NHRIs from across the Council of Europe.

The Seminar is designed as the first step towards identifying synergies between the work of the Council of Europe and the ENNHRI in the field of promotion and protection of the freedom of expression. It is intended to be exploratory in nature and, while the safety of journalists is to be considered a starting point, the Seminar will not be limited to that topic, but may also focus on other aspects of the freedom of expression in which shared interests of the participating organisations will be recognised.

Its primary objective is to provide a platform for the exchange of experiences and practices of the participant organisations related to the above-mentioned areas, identification of common interests and concerns, as well as challenges to cooperation. In this connection, it is worth noting that the roles, competences and priorities of NHRIs in different countries may differ, and that communication rights may not be among the priority areas for their activities. Nevertheless, as shown by, among others, the case-law of the ECtHR, the work of these institutions is linked also to the enforcement of the

freedom of expression. It is therefore envisaged that the initial exchange of views and practices might, at a later stage, lead to concrete cooperation towards creating an environment enabling everyone to express their opinions without fear.

Therefore, the Seminar will seek to:

- Present the CoE's and ECtHR's standards and work related to the freedom of expression including the safety of journalists;
- Present the competences and activities of NHRIs and other national mechanisms related to the freedom of expression including the safety of journalists;
- Include and discuss experiences of NHRIs and other national mechanisms;
- Identify common interests and issues which have hitherto been addressed by all participant organisations (e.g. providing opinions on the legislation regulating media freedom, reviewing measures restricting freedom of expression or combating impunity of the perpetrators of criminal offences directed against journalists);
- Situate those issues in the context of the recent trend of restricting freedom of expression and thus raise their visibility among the NHRIs and other national mechanisms;
- Explore the possibilities for future cooperation.

It is expected that the Seminar will prepare the ground for:

- Enhanced information-sharing between the CoE and NHRIs and other national mechanisms;
- Targeted and on-going dialogue between the CoE and NHRIs and other national mechanisms.