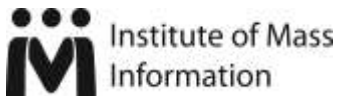




ADMINISTRATION  
OF THE PRESIDENT  
OF UKRAINE



PARLIAMENTARY COMMITTEE  
ON FREEDOM OF SPEECH AND  
INFORMATION POLICY



Institute of Mass  
Information



COUNCIL OF EUROPE PROJECT «STRENGTHENING FREEDOM  
OF THE MEDIA AND ESTABLISHING A PUBLIC BROADCASTING  
SYSTEM IN UKRAINE»



## General recommendations by the participants of the international conference "Safety of Journalists in Ukraine. Ending Impunity" (Kyiv, Ukraine, 25 October 2016)

### **The conference participants:**

- **recognizing** the importance to comply with the international standards and to fulfil the obligations of Ukraine in the sphere of freedom of expression, protection of citizens' right to access information and protection of journalistic activity,
- **emphasizing** that the European Convention on Human Rights (1950) is an important legally binding document on the right to freedom of expression at the European level, which, along with the Universal Declaration of Human Rights (1948), states that this right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers,
- **taking into account** the requirements of the practice of the European Convention on Human Rights and the requirements of the provisions of the Council of Europe recommendations regarding the concept of "journalistic activity" and a broad approach to this concept that includes not only journalists and media professionals, but also representatives of Internet media, including bloggers, journalists who are not officially registered as such, and representatives of nongovernmental organizations that collect and disseminate information of public interest,
- **supporting the fact** that safety of journalists is one of the priorities in the field of media of the Council of Europe Action Plan for Ukraine 2015-2017 - in particular, Ukraine has committed to strengthen its institutional framework for prevention of violations of journalists' rights and effective investigation of cases related to the safety of journalists,
- **taking into account** that at the time of armed conflicts provisions of the international humanitarian law apply as special since they provide legal safeguards for victims of armed conflicts. Such legal guarantees that specifically concern journalists are also separately defined in the Geneva Convention (III) relative to the Treatment of Prisoners of War (1949) and the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977), that was reiterated by para. 7 of the Resolution of the Parliamentary Assembly of the Council of Europe 1438 (2005),

- **emphasizing** that the Ukraine – European Union Association Agreement (2014) provides for the increased dialogue and cooperation to ensure safe work environment for journalists,
- **regarding** the best foreign practices as an example,
- **understanding** the importance and urgency of the problem of safety of journalists in Ukraine,
- **being aware** of the significance of media and media organizations for democratic reforms in the country,

**based on the expert discussion, recommend:**

**THAT THE STATE AUTHORITIES:**

- fulfil their obligations of promoting universal respect, observance and protection of journalists' rights according to the requirements of the European Convention on Human Rights, the case law of the European Court of Human Rights, the requirements that the judgments of this Court impose on Ukraine, and international commitments of Ukraine. Public authorities have the primary responsibility for guaranteeing the rights of their citizens and individuals who are within their territory, as provided by the relevant provisions of the international law;
- help create a secure work environment for journalists and also take appropriate measures to prevent violence, threats and attacks on journalists and media professionals. In addition, public authorities should ensure a proper, timely, and independent prosecution of high quality, and in the case of finding a person guilty based on a decision by a court or another authorised agency – holding liable those responsible for crimes or any other illegal acts committed against journalists and media professionals and other persons carrying out the journalistic activity or other activity that may amount as such;
- refrain from any action that might be regarded as an incitement or encouragement to commit violence against journalists. High state officials, public officers, civil servants should refrain from statements that stigmatize or contribute to stigmatization of journalists, media professionals, and other persons engaged in the journalistic activity;
- strengthen institutional mechanisms and legislation, as well as court and administrative practice, practice of the law enforcement agencies, that altogether ensure freedom of expression and freedom of information in accordance with international standards in this area;

- In particular, the conference participants recommend the following changes to the criminal legislation:
  - introducing administrative liability for infringing journalists' professional activity, in particular, for the "unlawful failure to provide access to information to journalists upon their requests", "influencing the journalists in any way to obstruct their professional activity";
  - in the meantime, deleting the above wording from Parts 1 and 2 of Art. 171 of the Criminal Code of Ukraine (hereinafter - "the CCU") due to the low level of the public danger of the mentioned actions (decriminalizing and transferring the liability to the realm of administrative offences);
  - removing from the note to Art. 345-1 of the CCU (the definition of "professional activity of a journalist"), the word "systematic" and the second sentence of note (that refers to proving the status of a journalist with an ID);
  - removing from Art. 349-1 of the CCU the description of the act "taking or detaining journalists hostage", leaving in the Article only the acts committed against journalists' close relatives or family members;
  - introducing liability (either criminal or administrative) for obstructing the collection or dissemination of socially necessary information;
- enforce the legislation aimed at protecting the rights of journalists. Specifically, to this end, we recommend the Ministry of Interior and Prosecutor General Office to develop guidelines on investigating attacks on journalists' professional activities, or, as stated in the Guidelines of the Committee of Ministers of the Council of Europe d/d 26.09.2016 – on activities of media professionals that include all those engaged in the collection, processing and dissemination of information intended for the media; the term also includes cameramen and photographers, as well as support staff such as drivers and interpreters. Amendments to the existing legislation, as well as its clear and competent implementation can result in significant achievements in ensuring the safety of journalistic activity in Ukraine. The implementation should primarily aim at overcoming impunity – by improving the qualitative and quantitative indicators of investigating and solving cases of abuse of journalists' rights on the stage of pre-trial investigation and by precise adherence to the rules of the criminal and procedure law at the stage of the judicial proceedings;
- regard all journalists, media professionals, and related to them

personnel who perform professional duties in the anti-terrorist operation (ATO) zone as civilians who may possess the respective rights, provided that they have not performed any actions that negatively affect their status of civilians. Public authorities should not unduly complicate the access of journalists to the ATO zone and should not unreasonably limit the journalists in their rights to interview civilians and move around in civilian areas. That having been said, 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 (para. 12 of the Resolution 1438 (2005) by the Parliamentary Assembly of the Council of Europe);

- simplify the procedure of entering and exiting Crimea for foreign journalists, by providing them with an opportunity to receive online special permits to enter Crimea as well as through consular offices. As of now, according to the Resolution of the Cabinet of Ministers of Ukraine d/d 04.06.2015, No 367, foreigners and stateless persons can enter and exit the temporarily occupied territory of Ukraine through checkpoints (the list of which is given in the Annex to the Resolution) by showing a passport and special permits issued by the regional branch of the State Migration Service or its regional division in Novotroyitsk or Henichesk districts of the Kherson region;
- ensure that journalists seconded to scenes of fighting, are provided with body armour and other means of individual protection, for which we recommend to add the respective employers' obligation to Art. 15 of the Law of Ukraine "On State Support for the Mass Media and Social Protection of Journalists".

#### **THAT EDITORIAL OFFICES AND EMPLOYERS:**

- realize that they are responsible for the protection of the journalists' rights along with the state, and better care for the safety of their employees. To this end, we recommend in terms of social guarantees, to impose some pecuniary obligations (in addition to covering the cost of a journalist's funeral) and provision of accident and health insurance on the editorial offices of the media, and not solely on the state, to encourage the editorial management to take better care of the safety of their journalists when the latter go on business trips to the areas of hostilities or to provide coverage of mass disturbances;
- do not compel journalists to go on dangerous assignments against their will and without sufficient protection;
- make sure that their journalists and other employees participate in the security trainings, including those on digital security, and that

the journalists are informed about their rights and responsibilities under the Ukrainian legislation and international standards.

#### **THAT JOURNALISTS AND MEDIA ORGANISATIONS:**

- develop the dialogue with the law enforcement, in particular, participate in the elaboration of the methodological recommendations on application of the legislation in force and modified laws (if any) for the maximum implementation and practical application of the tools that are available to the law enforcement agencies;
- systematically monitor violations of the rights of journalists and the quality and status of investigations of these violations that would improve the situation on the safety of journalists in Ukraine;
- systematically cover the human rights violations, case law of the European Court of Human Rights, recommendations of the international organisations on safety of journalists, national trials, and publicly provide support to affected colleagues. Solidarity among journalists is vital when members of the profession are facing threats and attacks. Mutual support will help with overcoming impunity and improving the safety of journalists;
- exercise their lawful rights, provided by the effective procedural law - in particular, submit complaints to the law enforcement agencies in cases of violations of their right to engage in journalistic activity, and also cooperate with human rights public associations, attorneys-at-law unions and organisations as well as with private lawyers to provide legal assistance to journalists who suffered for the purpose of restoring their violated rights, receiving the compensation for the violation, and preventing such violations of journalists' rights in future.