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Thematic debate on the “safety of journalists – further steps for the better implementation of human rights standards”

Discussion paper presented by the Secretary General

I. Introduction

- This thematic debate takes place in the spirit of the two previous important debates on media freedom and on safety of journalists held in 2011 and 2012.¹ It also takes place in the aftermath of the United Nations General Assembly's decision to proclaim 2 November as the international day to end impunity for crimes against journalists.
- The fundamental importance of freedom of expression both as an individual right and as an essential tool for the defence of other human rights, has been repeatedly underlined by Council of Europe bodies. Moreover, it is a fundamental element of and *sine qua non* for a genuine democracy.
- An impressive number of international standards on freedom of expression have been adopted over the years, including within the Council of Europe. However, these standards would remain a dead letter without an effective right to safety for journalists and other media actors, who play a vital part in and for a democratic society: informing the public about matters of societal interest, commenting on them, holding public authorities and other powerful forces up to scrutiny and to account.
- Notwithstanding the willingness expressed by member States to protect the free flow of information, journalism remains a high risk profession. This is illustrated by the fact that, since 1992, more than 100 journalists have been killed in Europe in the course of their work and many more have been physically attacked.² From November 2012 to June 2013, the OSCE region saw at least 21 members of the media having been assaulted and injured by unidentified assailants.³ Therefore, the debate this year rightly focuses on the implementation of the human rights standards for an effective right to safety for journalists, which is also a precondition for free media.
- Without safe working conditions, journalists cannot collect, produce and disseminate information freely. Violence and all attacks against journalists and journalism, in their different forms, have been also described as direct and

¹ Discussion papers presented by Secretary General:
Thematic debate on "Media freedom", 9 December 2011
[https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf\(2011\)27&Language=lanEnglish&Ver=original&Site=CM&BackColorInter_net=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf(2011)27&Language=lanEnglish&Ver=original&Site=CM&BackColorInter_net=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)
Thematic debate on the "safety of journalists", 22 March 2012
[http://www.coe.int/t/dghl/standardsetting/media//CDMSI/SG%20Inf%20\(2012\)6_en.pdf](http://www.coe.int/t/dghl/standardsetting/media//CDMSI/SG%20Inf%20(2012)6_en.pdf)

² See foreword by the then Council of Europe Commissioner for Human Rights in Human Rights and a Changing Media Landscape, p. 7

<http://www.coe.int/t/commissioner/Activities/themes/MediaFreedom/MediaLandscape2011.pdf>

³ OSCE Regular Report to the Permanent Council 13 June 2013, <http://www.osce.org/fom/102651>

indirect forms of censorship by Dunja Mijatovic, the OSCE Representative on Freedom of the Media.⁴

- On 7 and 8 November 2013, at the Council of Europe Conference of Ministers responsible for media and information society, held in Belgrade, the participating ministers adopted the following statement in their political declaration: "Freedom of expression and media freedom are threatened in various parts of Europe, online as well as offline. This calls for political commitment and additional efforts by member States. In this respect, we acknowledge the longstanding work carried out by the Council of Europe and its potential to further promote freedom of expression and media freedom in Europe."⁵
- In the Resolution on Safety of Journalists adopted at the same Conference, the ministers expressed their deep concern about the continuing physical violence including killings, inhuman treatments, harassment, judicial intimidation, threats, as well as arbitrary measures such as detentions, expulsions, surveillances, searches and seizures. The ministers condemned such attacks and the impunity of the perpetrators, as constituting violations of rights guaranteed by the European Convention on Human Rights.
- Threats to the safety of journalists, bloggers and other persons communicating in the public interest are sometimes symptoms of a deeper problem: insufficient freedom of expression and the knowledge or belief that the state or its officials wish, tolerate or condone their physical attacks, harassment and killings. It is therefore necessary to address the root cause in order to eliminate the symptoms.

II. An enabling environment for journalism and free media

- The creation of an enabling environment for safe and free journalism has been described as a state's duty by the European Court of Human Rights: "While setting up an efficient system to protect authors and journalists, States should create an environment which allows full participation in open debates, enabling everyone to express their opinions and ideas without fear, even if they are contrary to those defended by authorities or by an important share of public opinion or even if they shock or offend them."⁶ This comprehensive and strong

⁴ Dunja Mijatovic, "Protection of journalists from violence", in *Human rights and a changing media landscape* (Strasbourg, Council of Europe Publishing, 2011), pp. 21-45.

⁵ For adopted texts at the Conference of Ministers, see: http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/Belgrade%20Ministerial%20Conference%20Texts%20Adopted_en.pdf

⁶ *Dink v Turkey*, Nos. 2668/07, 6102/08, 30079/08, 7072/09 & 7124/09, 14.9.10, para. 137 (non-official translation).

ruling is the very core of the notion of “positive obligations” of States concerning the protection of journalists, but also journalism as a function.⁷

- The notion of an enabling environment for freedom of expression and media is under constant development in different Council of Europe activities.
- This enabling environment seeks to prevent and eradicate crimes and offences perpetrated to silence journalists and other media actors, as well as impunity for their perpetrators.
- The creation of such an environment should also aim at preventing other sorts of threats to freedom of expression, in particular for journalists and media actors, such as legal restraints on freedom of expression, including restrictive legislation in key areas such as defamation, reporting and protection of sources in the context of state security (including in the context of counter-terrorism), access to information (including on on-going criminal proceedings), right to privacy and hate speech.
- These elements of the “enabling environment” relate to a state’s duties not to interfere and to protect human rights standards.

III. States’ duties not to interfere and to protect – core obligations

- A safe environment for journalistic activities implies a number of rights as guaranteed in the European Convention on Human Rights. The duty to protect life, the duty to investigate fatalities and the prohibition to prevent torture and ill-treatment are all relevant in this respect. According to well-established case law, States are also under a positive obligation to carry out effective, independent and prompt investigations into alleged unlawful killings or of ill-treatment, either by State or non-State actors.
- Genuine, effective exercise of freedom of expression does not depend only on the state’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals, i.e. unlawful interferences by third parties.⁸
- The primary duty of the state is to secure the right to life and physical integrity by putting in place effective criminal-law provisions to deter the commissions of offences against the person, backed up by effective law enforcement for the prevention, suppression and punishment of breaches of such provisions.

⁷ For a detailed analysis see the report by Philip Leach on “the principles that can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism”:
[http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/MCM\(2013\)012_en_Leach_Protection_ofJournalists.pdf](http://www.coe.int/t/dghl/standardsetting/media/belgrade2013/MCM(2013)012_en_Leach_Protection_ofJournalists.pdf)

⁸ Özgür Gündem v. Turkey, no.23144/93, §43, ECHR 2000-III.

- A journalist may be in a vulnerable position *vis-à-vis* those in positions of authority, power or influence (including, for example, a journalist covering politically sensitive topics or investigating corruption) and may even sometimes face a real and imminent threat of assassination, notably when investigating organised crime. The State may be under a positive obligation to take preventive measures to protect the life of the journalist if the authorities knew or ought to have known of the existence of such a threat.
- The offences against these fundamental rights of the journalists within the exercise of their journalistic activities have been characterised as “crimes against freedom of expression” by the international mechanisms for promoting freedom of expression.⁹ It is alarming that authorities are sometimes willing to treat violent acts against journalists as unrelated to the journalist’s professional activities. The recognition of the causal link between the violation of human rights of individuals and their activity of collecting, producing and disseminating information and ideas on matters of general public interest is crucial for the fight against impunity.
- As the Strasbourg Court has phrased it “Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them”.¹⁰ While the enjoyment of the freedom and the task to inform is coupled with the expectation of adherence to professional ethics and codes of conduct, the latter should not be seen as a precondition for the protection to be provided by states.
- The safeguard of the operational autonomy necessary for the fulfilment of journalistic tasks in a democratic society is another aspect of the enabling environment. To provide for effective safeguards, the states have firstly to recognise legally and protect specific journalistic practices and realities involved in the collection, production and publication of information. Guaranteeing the right of access to information and the protection of the confidentiality of sources, including against abusive digital surveillance, are emerging as the most obvious examples of duties of the states in this respect.
- Criminal liability or excessive fines for the offence of defamation remains, in a number of countries, like the sword of Damocles hanging over the heads of journalists. Criminal sanctions do exist even in long-established democracies.

⁹ Joint Declaration on Crimes against Freedom of Expression, 4 May 2012, by UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information.

¹⁰ *The Sunday Times v. the United Kingdom* (no. 1), 26 April 1979, §65 Series A no.30.

- Anti-Terror Laws are in some countries used to silence critical voices. States should ensure that legislation designed to fight terrorism can never be used to crack down on fundamental rights such as free expression and free media.
- In some countries, the arbitrary filtering and blocking of Internet sites are used to restrict the exercise of fundamental freedoms online, including by journalists.

IV. Proposals to the Committee of Ministers for further action

In view of the challenges and threats presented above, more resolved action needs to be taken to secure the protection of journalists. The Committee of Ministers is invited to consider the following possible lines of action:

- instruct the Steering Committee on Media and Information Society (CDMSI) to elaborate guidelines for the protection of journalism and the safety of journalists and others who carry out journalistic activity or perform public watchdog functions with a view to establishing effective legislative frameworks, practice and law-enforcement processes at national level, including through positive obligations in line with the case law of the European Court of Human Rights;
- promote the sharing of best practices among member States on the effective protection of journalists and ways to prevent and combat violence against them, through the Council of Europe's co-operation and technical assistance programmes or other means;
- instruct the secretariat to explore ways to undertake joint action with other international partners, such as the OSCE and the European Union, in order to establish rapid response mechanisms to instances of threats or violence against journalists or other media actors and provide them with assistance when in need of urgent protection or relocation.¹¹.
- instruct the secretariat to explore ways of intensifying actions to raise awareness of existing standards of protection, in particular among law enforcement agencies in charge of investigating and prosecuting crimes against journalists;
- address the specific challenges and threats that women journalists are confronted with in the course of their work. Instruct the Secretariat to explore the possibility of organising targeted awareness-raising and training activities in this respect.

¹¹ The Deputies already took a decision in which they "agreed on the usefulness of addressing an open invitation to interested media freedom organisations to report serious violations of media freedom to the relevant Council of Europe bodies via the Secretariat; also agreed to reflect on the modalities for the creation of an Internet based platform aimed at facilitating the compilation, processing and dissemination of the information collected to the above-mentioned bodies and to the OSCE Representative on Freedom of the Media"¹¹. There is on-going reflection within the Secretariat on the follow-up to the decisions of 10 July 2013. This reflection is focusing on defining the scope, function and how to make the new platform operational.

