

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (74) 26

ON THE RIGHT OF REPLY . POSITION OF THE INDIVIDUAL IN RELATION TO THE PRESS

*(Adopted by the Committee of Ministers on 2 July 1974
at the 233rd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the right to freedom of expression includes the freedom to receive and to impart information and ideas without interference by public authority and regardless of frontiers, as laid down in Article 10 of the European Convention on Human Rights ;

Considering that under this provision the exercise of this freedom carries with it duties and responsibilities, in particular in connection with the protection of the reputation or rights of others ;

Considering that it is desirable to provide the individual with adequate means of protection against the publication of information containing inaccurate facts about him, and to give him a remedy against the publication of information, including facts and opinions, that constitutes an intrusion in his private life or an attack on his dignity, honour or reputation, whether the information was conveyed to the public through the written press, radio, television or any other mass media of a periodical nature ;

Considering that it is also in the interest of the public to receive information from different sources, thereby guaranteeing that they receive complete information ;

Considering that for these purposes the same principles should apply in respect of all media, although the means available to the individual might vary depending on whether the written press, the radio or television were involved ;

Considering that at the present stage only the position of the individual in relation to media of a periodical character, such as newspapers, broadcasting and television should be taken into account and that the protection of the individual against interferences with his privacy or against attacks upon his honour, dignity or reputation should be particularly dealt with,

Recommends to member governments, as a minimum, that the position of the individual in relation to media should be in accordance with the following principles :

1. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective possibility for the correction, without undue delay, of incorrect facts relating to him which he has a justified interest in having corrected, such corrections being given, as far as possible, the same prominence as the original publication.

2. In relation to information concerning individuals published in any medium, the individual concerned shall have an effective remedy against the publication of facts and opinions which constitute :

i. an interference with his privacy except where this is justified by an overriding, legitimate public interest, where the individual has expressly or tacitly consented to the publication or where publication is in the circumstances a generally accepted practice and not inconsistent with law ;

ii. an attack upon his dignity, honour or reputation, unless the information is published with the express or tacit consent of the individual concerned or is justified by an overriding, legitimate public interest and is a fair criticism based on accurate facts.

3. Nothing in the above principles should be interpreted to justify censorship.

4. In the above principles :

i. the term "individual" is to include all natural and legal persons as well as other bodies irrespective of nationality or residence, with the exclusion of the state and other public authorities ;

ii. the term "medium" covers any means of communication for the dissemination to the public of information of a periodical character, such as newspapers, broadcasting or television ;

iii. the term "effective possibility for the correction" means any possibility which can be used as a means of redress, whether legal or otherwise, such as a right of correction, or a right of reply, or a complaint to press councils ;

iv. the term "remedy" means a form of redress, whether legal or otherwise, such as provided under the law of defamation or a complaint to press councils, which is available to every individual without undue limitation such as unreasonable costs.

5. The above principles shall apply to all media without any distinction. This does not exclude differences in the application of these principles to particular media, such as radio and television, to the extent that this is necessary or justified by their different nature.

Recommends that member governments, when adopting legislation concerning the right of reply, make provision for the right of reply in the press and on radio and television and any other periodical media on the pattern of the minimum rules annexed to this resolution.

APPENDIX

MINIMUM RULES REGARDING THE RIGHT OF REPLY TO THE PRESS, THE RADIO AND THE TELEVISION AND TO OTHER PERIODICAL MEDIA

1. Any natural and legal person, as well as other bodies, irrespective of nationality or residence, mentioned in a newspaper, a periodical, a radio or television broadcast, or in any other medium of a periodical nature, regarding whom or which facts have been made accessible to the public which he claims to be inaccurate, may exercise the right of reply in order to correct the facts concerning that person or body.
2. At the request of the person concerned, the medium in question shall be obliged to make public the reply which the person concerned has sent in.
3. By way of exception the national law may provide that the publication of the reply may be refused by the medium in the following cases :
 - i. if the request for publication of the reply is not addressed to the medium within a reasonably short time ;
 - ii. if the length of the reply exceeds what is necessary to correct the information containing the facts claimed to be inaccurate ;
 - iii. if the reply is not limited to a correction of the facts challenged ;
 - iv. if it constitutes a punishable offence ;
 - v. if it is considered contrary to the legally protected interests of a third party ;
 - vi. if the individual concerned cannot show the existence of a legitimate interest.
4. Publication of the reply must be without undue delay and must be given, as far as possible, the same prominence as was given to the information containing the facts claimed to be inaccurate.
5. In order to safeguard the effective exercise of the right to reply, the national law shall determine the person who shall represent any publication, publishing house, radio, television or other medium for the purpose of addressing a request to publish the reply. The person who shall be responsible for the publication of the reply shall be similarly determined and this person shall not be protected by any immunity whatsoever.
6. The above rules shall apply to all media without any distinction. This does not exclude differences in the application of these rules to particular media such as radio and television to the extent that this is necessary or justified by their different nature.
7. Any dispute as to the application of the above rules shall be brought before a tribunal which shall have power to order the immediate publication of the reply.