

Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors

Response from BULGARIA

1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?

- 1) Legal safeguards for the protection of the functioning and independence of journalists and media organisations

Radio and Television Act

This Act shall regulate the media services provided by media service providers under the jurisdiction of the Republic of Bulgaria. The law guarantees the independence of media service providers and their operations from political and economic intervention (Art 5, para 1) and precludes the censorship of media services under any form (Art 5, para 2). At the same time, Art. 13 establishes the right of providers of media services to obtain the necessary information from the state and municipal bodies, providing that it does not contain confidential subject to the provisions of law. Articles 16 et seq. shall define the obligations of media service providers, including their liability for the content of the media services.

In Art. 11 the legislator gives guarantee for freedom of expression and protective clauses related to exercising the professional activity of journalists. An explicit legal regulation known as 'clause of conscience' has been introduced: journalists shall have the right to refuse performance of assignments that are contrary to their beliefs.

A Council for Electronic Media (CEM) is established, constituting an independent specialised body that shall regulate media services. CEM supervises the activity of media service providers only as it is explicitly defined in Art. 33 of the Act. Pursuant to Art. 32 (2) the Electronic Media Council shall adopt rules, decisions and declarations, and shall express opinions in the cases provisioned by law, by means of which a sustainable practice to protect freedom of expression and journalists has been established.

Compulsory Deposit of Printed and Other Works Act

Pursuant to this Act, the Ministry for Culture shall develop a register of information identifying the beneficial owner of the publisher.

Draft Law on the Protection of Journalists' Rights has been elaborated by the Union of Bulgarian Journalists, in order to ensure legal protection of the rights of journalists by dealing with issues related to collective labour agreements, editorial independence etc.

- 2) Self-regulation

- Ethical Code of the Bulgarian Media, adopted in 2004.
- Foundation "National Council for Journalistic Ethics" was established in 2005 to develop a functioning self-regulation system in printed and electronic media by applying the provisions of the Ethical code of the Bulgarian media and to mediate in disputes between newspapers, radio, TV, press agencies, sites and their audience. It shall inform and establish a culture of rights, responsibilities and freedoms of journalists and their audience.
- Register of ownership in electronic media differentiated for radio and television providers/broadcasters — developed and published by the Electronic Media Council.
- Print media in Bulgaria are not regulated by legislation which explicitly details their obligations and responsibilities, as well as the terms under which their freedom of expression could legitimately be restricted, which has a negative impact on the legal certainty. In this respect, the Ethical codes of conduct are insufficient.

- According to the Radio and Television Act, the Council for Electronic Media and the State Agency for Child protection each year develop evaluation criteria for programs and their components (audio-visual shows, radio programs, various forms of commercial communications and other elements) that are unfavorable or threatens to harm the physical, mental, moral and/or social development of children. The purpose is protecting the rights and interests of children throughout the duration of the programs.

2. *Are there any non-judicial mechanisms, such as Parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?*

The Ombudsman Act regulates the legal status, organization and activities of the Ombudsman as a body that covers the means provided for in this act, when due to action or inaction the rights and freedoms of citizens have been affected or violated by state and municipal authorities and their administrations, as well as by the persons entrusted to provide public services.

The law does not detail positions and it does not specifically addresses journalists and media actors, but stipulates an obligation for the Ombudsman to respond in writing to the person who has approached him within one month, and for complex cases this time-limit is three months.

Pursuant to Art. 19, Para. 1, item 8 of the Act, the Ombudsman shall provide opinions to the Council of Ministers and the National Assembly on bills that refer to human rights protection. Paragraph 3 of the same article empowers the Ombudsman to act on his own initiative when he finds out that the necessary conditions to protect citizens' rights and freedoms have not been created.

3. *Is the confidentiality of journalists' sources of information protected in both law and practice?*

Protection of journalistic sources is one of the main conditions for media freedom. Without such protection sources may be discouraged to assist media in informing the public on issues of public interest and to affect their ability to provide a credible and reliable information.

The exercise of freedom of expression is related to duties and responsibilities, as well as the protection of journalists provided by Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, obeys to the condition that they shall act in good faith and provide accurate and reliable information in compliance with journalistic ethics.

In line with Pt. 1.3.3. of the Ethical Code of the Bulgarian Media „We will not disclose our confidential sources of information“, The Journalistic Ethics Commission, at its regular meeting on 24 March 2015, gave the following opinion:

- Journalists have not only the right, but also the obligation to protect their sources when they are confidential.
- The right to protection of sources may be subject to restrictions when meeting the requirements of legality, proportionality and necessity in the democratic society, upon the judgement of an independent and impartial court of justice.

Practice shows that there exist cases where journalists' materials serve as a pretext to prosecute the journalist, not as legal grounds within the meaning of Art. 208, Pt. 2 of the Criminal Procedure Code (*"information about a perpetrated criminal offence, distributed by the mass media"*) to take action upon request to clarify if there is a committed crime by the persons, against whom the journalistic material refers.

4. *Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?*

Under the Bulgarian legislation defamation can be persecuted under civil and criminal law but imprisonment as a punishment was abolished in 1999. Fines and public censure remain as possible punishments under the Criminal Code.

According to Art.147 of the Criminal Code, a person who makes public a disgraceful fact about someone else or ascribes to him a crime, shall be punished for defamation by a fine from BGN three thousand up to seven thousand, as well as by public censure.

Provisions concerning insult and defamation are laid down in Articles 146 et seq. of the Criminal Code of the Republic of Bulgaria. Object of offences referred to in Articles 146 to 148 of the Criminal Code are public relations which ensure privacy, honour and dignity of citizens. Subject to the main composition of Art. 146 and 147 is any criminally responsible person. The law does not necessitate any particular qualities which the offender must have in order to be prosecuted. The legislator has not considered it necessary to implement a comprehensive detailed approach of all positions for all offences criminalised in the Criminal Code neither against perpetrators, nor to victims. Qualifying offenses — such as legislative approach and criminal policy in view of the subject of crime or the victim, respectively his official quality, are provided only for a range of offences, among which representatives of the media are not included. This circle of victims generally do not fall by name and into the category of cases monitored by the Supreme Judicial Council and the European Commission under the Cooperation and verification Mechanism.

A particular subject provides a qualified composition of Art. 148 , Para. 1 Pt. 4 of the Criminal Code relevant to insult, when committed by an official or representative of the public in the course of or related to the performance of his official duties or functions.

According to Art. 148a of the Criminal Code, a person who makes public, by means of printed matter or in another way, data, circumstances or allegations about another person, based on unlawfully obtained information from the archives of the Ministry of Interior, shall be punished by a fine of five BGN five thousand to twenty thousand.

*5. What are the procedural guarantees “the right to defence, the periods of limitation applicable to defamation suits, defence of truth (exceptio veritatis) and the burden of proof, presumption of good faith ETC.) included in the civil and/or criminal legislation related to defamation?*

A number of new legal acts, such as the Election Code, the Radio and Television Act, the Protection Against Discrimination Act, the Personal Data Protection Act, the Classified Information Protection Act, regulate various restrictions on the activity of journalists and publishers, respectively the opportunities to impose all kind of administrative sanctions (including the revocation of licences, fines, the amount of which may reach 30000 BGN etc.).

Any sanction, related to offence or defamation, shall be proportional in terms of the damage to reputation. The law stipulates very wide discretionary powers for the courts to determine the amount of the particular sanction, which is understandable and necessary.

Regarding defamation cases, Art. 147 (2) of the Criminal Code has introduced protection for true reflected facts, which released the defendant from criminal liability if the truthfulness of the circumstances spread by him is proven.

The principle of “presumption of innocence” does not allow to shift the burden of proof on the accused who shall not be considered guilty of the offence and/or defamation until he has been proved that he has infringed the ‘reputation of others.’

A case for defamation or insult may be brought pursuant to Art. 45 in conjunction with Art. 52 of the Obligations and Contracts Act, i.e. by or in accordance with art. 161 of the Criminal Code in conjunction with Articles 146 to 148a of the Penal Code. A case of claim does not prove the defendant’s fault, and it is the only way in this provision of law against a person enjoying immunity — diplomat, magistrate, Member of Parliament, President, etc.

Members of Parliament have immunity from criminal prosecution, but for civil courts there is no obstacle against them, including public speaking in plenary and in committee work, to civil matters, relating to non-pecuniary damages under the Obligations and Contracts Act (and to be sentenced), although their speeches are in connection with their official business.

*6. In the domestic legal framework, are State officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?*

In the preamble to the Constitution, dignity of the individual is an overarching principle. According to the constitutional provisions - Art 4, paragraph 2, and 32, paragraph 1, it shall be guaranteed by the State and everyone has the right to be protected against abuses which undermine him. Criminal liability for insult and defamation as defined in Art. 146, 147 and 148 of the Penal Code is one of the legal guarantees that ensure protection of the individual's dignity.

The stipulated criminal liability for insult and defamation is not an obstacle to criticize person in the political system or the system of State authorities.

The official and the representative of the public may be subject to insult and defamation under subparagraphs 3 and 4 of art. 148, para. 1 of the Criminal Code only if the act has been committed while or in connection with carrying out their duties or their functions. The existence of this requirement means that criminal law protects both the individuals and the prestige of the institution concerned. This protection does not hinder the possibility to criticize individuals who are civil servants or public figures. It shall not exceed the permissible restrictions on constitutional rights referred to in Articles 39-41. Therefore its provision is a matter of legislative discretion rather than constitutionality.

But the penalties imposed for damage to reputation cannot in principle be more severe in cases involving public figures rather than the criminal penalties provided for defamation of individuals which are not respected in the Bulgarian criminal law. The provision of Art. 148 of the Criminal Code stipulates increased fines for insult and defamation, where the person whose reputation has been undermined is an official or a representative of the public during or in connection with the fulfilment of his duties or function'.

*7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?*

The exercise of the right to freedom of expression and access to information and its restrictions are laid down in a series of Bulgarian laws such as:

- the Criminal Code
- Radio and Television Act;
- Access to Public Information Act
- other sectoral laws (environmental, electronic communications, privatisation, etc.), stipulating for obligations to provide information, etc.
- Law on Copyright and Related Rights;
- The Judicial System Act and certain other laws contain specific prohibitions on certain categories of professions (such as doctors, military officials, etc.) to disseminate information received in that capacity which, by its very nature, is liable to affect other enforceable rights and interests.

The application of restrictions on the exercise of freedom of expression is usually limited to seeking property liability for damage to reputation. This is the most to be done in the context of criminal proceedings for crimes against personality, against the rights of the citizens or against the State. Criminal law should not merely exhaust the tools for protecting the right to freedom of expression.

*8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?*

All documents are translated and published on the website of the Ministry:

<https://www.mtict.government.bg/page.php?category=733>

<https://www.mtict.government.bg/bg/suvet-na-evropa/dokumenti>

Different options are used for targeted dissemination and popularisation of CoE standards related to Information society and Media.