

**REPORT ON THE COUNCIL OF EUROPE HIGH-LEVEL SEMINAR ON
“FREEDOM OF EXPRESSION AND THE ROLE AND POWERS OF
NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRI) AND OTHER
NATIONAL MECHANISMS” (STRASBOURG, 15 DECEMBER 2016)**

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On 15 December 2016, I participated as an international expert and rapporteur at the high-level seminar on freedom of expression and the role and powers of NHRIs and other national mechanisms, organized by the Council of Europe and the European Network of National Human Rights Institutions (ENNHRI).

The event started with an opening speech by the Secretary General of the Council of Europe, stressing the role of this organization in spreading and promoting human rights across Europe after 1945. It was particularly emphasized that the Council of Europe has been the framework where a solid human rights doctrine has been built by its several institutions thus providing States with a very clear legal framework to be properly implemented for the benefit of citizens. However, Mr. Jagland also noted that there still many areas for improvement and there is a growing need for turning good intentions imprinted on conventions and other instruments into reality.

In this context, 2017 was anticipated, potentially, as a very dangerous year. This was connected to growing risks in the area of freedom of expression, particularly when it comes to the introduction of new and disproportionate restrictions. These escalating problems may, to some extent, put our more precious values at risk.

On behalf of ENNHRI it was stressed the importance of NHRIs in supporting national human rights institutions as well as the role of Council of Europe's bodies such as the European Court of Human Rights. It was particularly outlined the role of NHRIs in creating what was described as a culture of human rights. The representative from ENNHRI also stressed the high expectations and good intentions associated to the event.

Session 1 was devoted to freedom of expression in the work and standards of the Council of Europe. In line with what had already been expressed in the opening speeches, it was underscored that the most important issue in this area is the progressive introduction of limits and restrictions to freedom of expression by States, ignoring the most important freedom of expression legal paradigm, based on the idea that freedom must be the rule, whereas restrictions must strictly be considered the exception. Principles and values commonly used to legitimize such restrictions are national security, protection of morals and religious feelings, as well as prevention of hate speech. Despite the fact that in some cases the protection of these values must be necessary in a democratic society, it was pointed out that they are being used in a very broad and discretionary manner in order to restrict freedom of expression in ways that would not be consistent with Council of Europe's standards.

In the course of the session it was also repeatedly stressed that limits and restrictions to freedom of expression are essentially imposed at the national level and thus this is the first and most important level to articulate a proper response. In this sense, several speakers advocated for the creation of a strong and *virtuous* network, based on NHRIs

and involving several supra-national bodies of the Council of Europe (including the Secretary General, the Court, the Venice Commission, the Commissioner and other new initiatives as the recently created platform to promote journalism and the safety of journalists) as well as the OSCE Representative on Freedom of the Media. Such network would engage in coordinated actions vis-a-vis any violation of the right to freedom of expression. In this area, it was also reminded that States should not only avoid disproportionate restrictions but also guarantee the adoption of positive measures enabling a positive environment for the exercise of that right. This includes a proper protection of the right to access to information, or freedom of information, particularly when the Council of Europe and several member States are currently marking the 250th anniversary of the adoption of the first law in this area in Sweden and Finland. During the session, it was also possible to take a look into the case of Bosnia Herzegovina, which is currently a good example in terms of broad protection (both from the legal and institutional perspectives) of the also known as the right to know.

Last but not least, all the speakers in this session outlined the current state of fragility of freedom of expression at the national level, which affects areas as important as editorial independence of media outlets, self-regulation, a proper understanding of the definition of journalism, and essentially the principles of the rule of law and democracy themselves.

Session 2 focused on how NHRIs can play a fundamental role, at the national level, regarding the issues raised during session 1. It was particularly stressed that NHRIs are of central importance when it comes to reacting vis-à-vis decisions taken by public bodies which cannot be necessarily be challenged before a court but they do have a clear impact on the human rights environment. Apart from this, discussants also stressed several areas where NHRIs use to have powers to intervene, which are also relevant from the point of view of the mentioned rights: supervision of access to information decisions, monitoring of maladministration and attacks on safety of journalists, dialogue with media outlets and civil society organizations.

All this being said, it was also noted that NHRIs are currently under threat in several Council of Europe member States. These attacks take the form of budget cuts, measures to undermine their independence, and other modalities of political interference.

Participants also agreed on the need to adopt a critical approach with regards to the current functioning and role of NHRIs. Several reflections were made advocating for more action in broader areas and the need to come closer to the citizen as the most important element in this debate. The creation of active task forces at the international level was suggested, as well as the consideration of better outreach and sensitization formulas in order to properly engage with citizens. In any case, cooperation with the national judicial bodies as well as being in the front line of the promotion of the European Court of Human Right's decisions were pointed as the most important tasks to continue to be pursued and eventually improved.

Additionally, a special acknowledgement was made regarding the need to consider how NHRIs can better intervene in cases where possible restrictions on the right to freedom of expressions come from private entities, particularly digital intermediaries such as online platforms, social media and similar actors.

The third session focused on how NHRIs can better cooperate and engage together in the protection of freedom of expression. It was noted that there is already a certain degree of informal engagement, involving participation and organization of events, exchange of information, as well as visits and reports from experts. In this area, the Venice Commission has played an important yet not exclusive role. The physical presence on the ground of experts representing the Council of Europe was noted as a particularly powerful instrument. This cooperation is of particular importance if we take into account that as a matter of fact NHRIs have become the mouthpieces of Council of Europe's institutions and standards at the national level, particularly in a moment when nationalism and populisms create a negative environment with regards to the acknowledgement of and respect for international, and particularly European commitments.

During the concluding session, representatives of both the Council of Europe and ENNHRI suggested the possibility of exploring the future involvement of NHRIs in Council of Europe's structures related to media freedom and Internet issues, as well as the organization of possible training activities for NHRIs with the support of the Council of Europe.