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(II) Parlamentarische Versammlung



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IRIS Themen

Meinungsfreiheit und die Medien: Normsetzung des Europarates (II) Parlamentarische Versammlung

Dieses eBook gibt wertvolle Einblicke in die Arbeit der [Parlamentarischen Versammlung](#) des Europarates auf dem Gebiet „Meinungsfreiheit und die Medien“. Es fasst die zahlreichen Stellungnahmen der Parlamentarischen Versammlung zusammen, die seit Juni 1995 in nicht weniger als 49 offiziellen Dokumenten als Leitlinien für die Mitgliedsstaaten des Europarates erlassen wurden. Außerdem bietet das eBook einen direkten Zugang zu jedem dieser offiziellen Dokumente.

Im Einzelnen beinhaltet diese Publikation:

1. Einen [Überblick über alle Beiträge](#), einschließlich der Links zu den einzelnen Beiträgen und offiziellen Texten.
2. Eine [Liste der Autoren](#) der Beiträge.
3. Eine allgemeine [Beschreibung der Rolle und der Funktionsweise der Parlamentarischen Versammlung des Europarates](#) im Zusammenhang mit der Normsetzung zu - jedoch nicht notwendigerweise basierend auf - Art. 10 der Europäischen Menschenrechtskonvention.
4. Eine [Zusammenstellung von Kurzbeiträgen](#) aus unserer juristischen Datenbank, [IRIS Merlin](#), die die wesentlichen Bestandteile der einschlägigen Entschliefungen, Empfehlungen und anderer von der Parlamentarischen Versammlung erlassener Dokumente zusammenfasst. Jeder Beitrag stellt einen Link zu den offiziellen Dokumenten im Volltext zur Verfügung, die er behandelt.
5. Eine [Zusammenstellung aller Entschliefungen, Empfehlungen, etc. der Parlamentarischen Versammlung](#) im Volltext (im Zeitraum vom 23. Januar 1970 bis zum 12. März 2010), von den Herausgebern ergänzt um die in der [Zusammenstellung nicht enthaltenen und die zwischen 12. März 2010 und 25. Januar 2011](#) erlassenen einschlägigen Dokumente (auf Englisch).

Dieses eBook ist das geistige Werk von Tarlach McGonagle, der die Einleitung verfasst, zahlreiche IRIS Merlin Beiträge zum Thema „Meinungsfreiheit und die Medien“ ausgewählt sowie eine Liste der einschlägigen Texte und der Autoren der Beiträge zusammengestellt hat. Mein besonderer Dank gilt Tarlach McGonagle für sein Engagement und dafür, dass er den Anstoß zu diesem Projekt gegeben hat. Ich möchte außerdem den Autoren der IRIS Merlin Beiträge danken, die den Kern dieses eBooks darstellen. Außerdem gilt mein Dank Kim de Beer für ihre Geduld und Ausdauer bei der Bewältigung der zahlreichen Herausforderungen der Textformatierung. Schließlich geht mein Dank an die Kollegen der Abteilung „Medien, Informationsgesellschaft und Datenschutz“ des Europarates, die uns ihre Zusammenstellung

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der von der Parlamentarischen Versammlung verabschiedeten Originaltexte zur Verfügung gestellt haben.

Eine weitere Publikation, die sich mit den zahlreichen Prinzipien und normativen Maßgaben befasst, die der [Ministerrat des Europarates](#) erlassen hat, ist als **Meinungsfreiheit und die Medien: Normsetzung des Europarates, (I) Ministerkomitee** verfügbar.

Straßburg im Dezember 2011
Susanne Nikoltchev

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in absteigender chronologischer Reihenfolge

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Meinungsfreiheit und die Medien: Normsetzung des Europarates (II) Parlamentarische Versammlung

Von Tarlach McGonagle

Einleitung

Der Europarat ist eine zwischenstaatliche Organisation, die sich für die Wahrung der Menschenrechte, der Demokratie und des Rechtsstaats in ganz Europa einsetzt. Er umfasst derzeit 47 Mitgliedstaaten. Sein vorrangiges Ziel ist es, wie in seiner Satzung festgelegt, „einen engeren Zusammenschluss unter seinen Mitgliedern zu verwirklichen, um die Ideale und Grundsätze, die ihr gemeinsames Erbe sind, zu schützen und zu fördern und um ihren wirtschaftlichen und sozialen Fortschritt zu begünstigen“.² Er verfolgt dieses Ziel „mithilfe der Organe des Rates durch die Prüfung von Fragen gemeinsamen Interesses, durch den Abschluss von Abkommen und durch gemeinsames Handeln auf den Gebieten der Wirtschaft, des sozialen Lebens, der Kultur, der Wissenschaft, der Rechtspflege und der Verwaltung sowie durch Schutz und Weiterentwicklung der Menschenrechte und Grundfreiheiten“.³

I. Die Parlamentarische Versammlung

Die Parlamentarische Versammlung ist das Beratungsorgan des Europarates, während das Ministerkomitee als Exekutivorgan fungiert.⁴ Die Parlamentarische Versammlung umfasst derzeit 318 Mitglieder (und ebenso viele Stellvertreter) aus allen Mitgliedstaaten des Europarates.⁵ Die Mitglieder der Parlamentarischen Versammlung werden auf eine durch den jeweiligen Mitgliedstaat festgelegte Art und Weise ernannt, „sofern sie von den nationalen Parlamenten aus ihren eigenen Reihen gewählt oder aus dem Mitgliederkreis dieses Parlaments ernannt werden“.⁶ Darüber hinaus „muss das Gleichgewicht der politischen Parteien in jeder nationalen Delegation in fairer Weise demjenigen in den nationalen Parlamenten entsprechen“.⁷

Die Parlamentarische Versammlung wurde als Diskussionsforum für „Angelegenheiten aus ihrem Zuständigkeitsbereich“ und zur „Übermittlung ihrer Beschlüsse in Form von

² Artikel 1 Buchstabe a, Satzung des Europarates, SEV Nr. 1 (in der geänderten Fassung), London, verabschiedet am 5. Mai 1949; Inkrafttreten: 3 August 1949.

³ Artikel 1 Buchstabe b, *ibd.*

⁴ Die Parlamentarische Versammlung war ursprünglich als „Beratende Versammlung“ gedacht – siehe Kapitel V (z. B., Artikel 22-35) der Satzung des Europarates und für eine Erörterung der politischen Umstände, unter denen der Name in „Parlamentarische Versammlung“ abgeändert wurde (ohne entsprechende Abänderung der Satzung), siehe Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law: Towards a pan-European legal area* (Straßburg, Council of Europe Publishing, 2005), S. 57. Für einen allgemeinen Überblick über die Parlamentarische Versammlung, siehe: <http://assembly.coe.int/default.asp> (unter „Arbeitsweise“); Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 56-69.

⁵ Die Versammlung zählt folglich insgesamt 636 Mitglieder, zuzüglich „18 Beobachter“: Die Parlamente von Kanada, Israel und Mexiko haben bei der Versammlung einen Beobachterstatus. Siehe außerdem: „Assembly structure“, Abschnitt 3, betitelt „Observers“:

http://assembly.coe.int/Main.asp?Link=/AboutUs/APCE_structures.htm (zuletzt aufgerufen am 25. Januar 2011), und Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 61.

⁶ „Assembly structure“, Abschnitt 1, betitelt „Parliamentary representation“: http://assembly.coe.int/Main.asp?Link=/AboutUs/APCE_structures.htm (zuletzt aufgerufen am 25. Januar 2011). Siehe außerdem: Artikel 25, Satzung des Europarates.

⁷ *Ibd.*

Empfehlungen an das Ministerkomitee“ ins Leben gerufen.⁸ Das Ministerkomitee ist jedoch nicht verpflichtet, den Empfehlungen der Versammlung zu folgen.⁹ Die Versammlung „kann über alle Fragen, die der Aufgabe des Europarates entsprechen und in dessen Zuständigkeit fallen, beraten und Empfehlungen ausarbeiten [...]“.¹⁰ Diese Bestimmung ist von Bedeutung, da sie „[der Versammlung] eindeutig die Möglichkeit einräumt, ein breites Spektrum äußerst brisanter politischer Themen und anderer für die Zukunft Europas wesentlicher Fragen zu behandeln“.¹¹ Die Versammlung „soll ferner über jede Frage, die ihr vom Ministerkomitee zur Stellungnahme unterbreitet wird, beraten und kann dazu Empfehlungen ausarbeiten“.¹²

Der Parlamentarischen Versammlung fallen eine Vielzahl wichtiger Wahlfunktionen und -zuständigkeiten zu. Sie ernennt zum Beispiel den Generalsekretär und den Stellvertretenden Generalsekretär des Europarates,¹³ sie wählt die Richter des Europäischen Gerichtshofs für Menschenrechte¹⁴ und den Menschenrechtskommissar des Europarates.¹⁵ Die Versammlung spielt zudem eine äußerst wichtige Rolle bei der Überwachung der Einhaltung der von den Mitgliedstaaten des Europarates eingegangenen Menschenrechtsverpflichtungen.¹⁶

In der Praxis wird ein Großteil der (inhaltlichen) Arbeit der Parlamentarischen Versammlung auf der Ebene allgemeiner/„ständiger“ Ausschüsse erledigt.¹⁷ Die Versammlung kann „Komitees oder Ausschüsse einsetzen, die beauftragt sind, alle Fragen zu prüfen, die zu ihrer Zuständigkeit [...] gehören, Berichte vorzulegen, die auf ihre Tagesordnung gesetzten Angelegenheiten zu bearbeiten und Gutachten über jede Verfahrensfrage abzugeben“.¹⁸ Die Versammlung hat derzeit zehn Fachausschüsse:

- Politischer Ausschuss
- Ausschuss für Recht und Menschenrechte
- Ausschuss für Wirtschaft und Entwicklung
- Ausschuss für Soziales, Gesundheit und Familie
- Ausschuss für Migration, Flüchtlings- und Bevölkerungsfragen
- Ausschuss für Kultur, Wissenschaft und Bildung
- Ausschuss für Umwelt, Landwirtschaft und kommunale sowie regionale Angelegenheiten
- Ausschuss für die Gleichstellung von Frauen und Männern
- Ausschuss für die Einhaltung der von den Mitgliedstaaten des Europarates eingegangenen Verpflichtungen (Monitoring-Ausschuss)
- Ausschuss für die Geschäftsordnung, Immunitäten und institutionelle Angelegenheiten.

⁸ Artikel 22, Satzung des Europarates.

⁹ Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 65.

¹⁰ Artikel 23 Buchstabe a, Satzung des Europarates.

¹¹ Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 65-66.

¹² Artikel 23 Buchstabe a, Satzung des Europarates.

¹³ Artikel 36 Buchstabe b, Satzung des Europarates.

¹⁴ Artikel 22, Europäische Menschenrechtskonvention, *infra*.

¹⁵ Artikel 9, Entschließung (99) 50 des Ministerkomitees über den Menschenrechtskommissar des Europarates, verabschiedet am 7. Mai 1999.

¹⁶ Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 69; 118 *et seq.* Für eine Untersuchung der Rolle der Versammlung bei der Überwachung der Urteile des Europäischen Gerichtshofs für Menschenrechte, siehe: Andrew Drzemczewski, „The Parliamentary Assembly’s involvement in the supervision of the judgments of the Strasbourg Court“, 28 *Netherlands Quarterly of Human Rights*, 2010-2, S. 164-178.

¹⁷ *Ibid.*, S. 63. Für einen detaillierten Überblick über die Organisationsstruktur der Versammlung, siehe, *ibid.*, S. 61-65.

¹⁸ Artikel 24, Satzung des Europarates.

II. Normsetzung durch die Parlamentarische Versammlung

Die Parlamentarische Versammlung kann drei verschiedene Arten von Texten (Empfehlungen, EntschlieÙungen und Stellungnahmen) verabschieden, die keine Rechtsverbindlichkeit haben, sich aber als von politischem Einfluss erweisen können. Die Art der Texte kann wie folgt unterschieden werden:

- “Empfehlungen enthalten an das Ministerkomitee gerichtete Vorschläge, deren Umsetzung in den Zuständigkeitsbereich der Regierungen fällt.
- EntschlieÙungen legen Beschlüsse der Versammlung zu Fragen dar, zu deren Ausführung sie befugt ist, oder MeinungsäuÙerungen, für die sie die alleinige Verantwortung trägt.
- Die Versammlung gibt überwiegend Stellungnahmen zu Fragen ab, die ihr vom Ministerkomitee vorgelegt wurden, wie etwa die Aufnahme neuer Mitgliedstaaten in den Europarat, aber auch zu Konventionsentwürfen, dem Haushalt und der Umsetzung der Sozialcharta”.¹⁹

Es ist zu unterstreichen, dass EntschlieÙungen keiner ausdrücklichen Antwort durch das Ministerkomitee bedürfen, auch wenn letzteres auf sie verweisen kann, zum Beispiel im Rahmen der Kommunikation mit der Versammlung.²⁰

III. Normsetzung durch die Parlamentarische Versammlung zur Meinungsfreiheit und den Medien

Der Europarat hat eine Reihe internationaler Verträge und anderer normativer Vorgaben verabschiedet, bei denen Meinungsfreiheit und die Medien den Schwerpunkt bilden oder indirekt thematisiert werden. Während alle diese Vorgaben im Hinblick auf ihre allgemeinen Zielsetzungen und Ansätze weitgehend übereinstimmen, zeichnet sich jeder einzelne Text durch eigene besondere Ziele, Schwerpunkte, (Rechts)Status und verfahrensrechtliche Möglichkeiten aus. Dies führt zu einer beträchtlichen Vielfalt auf dem Gebiet der seitens des Europarates entwickelten Methoden zur Förderung der Meinungsfreiheit und der Medien.

Zu den wichtigsten Verträgen des Europarates, die Bestimmungen zur Meinungsfreiheit und den Medien enthalten, zählen: die Europäische Menschenrechtskonvention,²¹ das Europäische Übereinkommen über grenzüberschreitendes Fernsehen,²² die Europäische Charta der Regional- oder Minderheitensprachen,²³ das Rahmenübereinkommen zum Schutz nationaler Minderheiten,²⁴ das Übereinkommen über Computerkriminalität²⁵ und sein Zusatzprotokoll

¹⁹(Hervorhebung im Original) ‚Assembly procedure‘, Abschnitt 11, betitelt ‚Assembly texts‘: http://assembly.coe.int/Main.asp?Link=/AboutUs/APCE_Procedure.htm (zuletzt aufgerufen am 25. Januar 2011).

²⁰ Florence Benoît-Rohmer & Heinrich Klebes, *Council of Europe law, op. cit.*, S. 66.

²¹ Die Konvention zum Schutze der Menschenrechte und Grundfreiheiten, SEV Nr. 5, verabschiedet am 4. November 1950; Inkrafttreten: 3 September 1953.

²² SEV Nr. 132 (verabschiedet am 5. Mai 1989; Inkrafttreten: 1. Mai 1993), geändert durch ein Protokoll dazu, SEV Nr. 171, verabschiedet am 1. Oktober 1998; Inkrafttreten: 1. März 2002.

²³ SEV Nr. 148, verabschiedet am 5. November 1992; Inkrafttreten: 1. März 1998.

²⁴ SEV Nr. 157, verabschiedet am 1. Februar 1995; Inkrafttreten: 1. Februar 1998.

²⁵ SVE Nr. 185, verabschiedet am 23. November 2001; Inkrafttreten: 1. Juli 2004.

betreffend die Kriminalisierung mittels Computersystemen begangener Handlungen rassistischer oder fremdenfeindlicher Art²⁶ sowie das Übereinkommen über den Zugang zu amtlichen Dokumenten.²⁷

Der Europarat übt eine Vielzahl normsetzender Tätigkeiten im Hinblick auf die Meinungsfreiheit und die Medien aus, die nicht unmittelbar auf speziellen Verträgen beruhen. Maßgebliche Texte zur Normsetzung werden regelmäßig von unterschiedlichen Organen des Europarates wie zum Beispiel dem Ministerkomitee,²⁸ der Parlamentarischen Versammlung und der Europäischen Kommission gegen Rassismus und Intoleranz (EKRI) verabschiedet. Da diese Texte für die Mitgliedstaaten nicht rechtsverbindlich sind, informieren sie entweder über den gegenwärtigen normativen Zustand in Bezug auf den zugrunde liegenden Gegenstand oder die Richtung, welche die Instanz, die diese Texte verabschiedet, der zukünftigen Entwicklung von Gesetz und Politik geben möchte. Die Kenntnis dieser normsetzenden Texte und mithin auch ihr Einfluss nehmen kontinuierlich zu.

Eine Reihe zentraler Themen kehrt in den maßgeblichen offiziellen Texten der Parlamentarischen Versammlung, wie in diesem Band zusammengefasst, wieder. Hierzu zählen:

- Meinungsfreiheit
- Zugang zu Information
- Journalistische Freiheit
- Gesellschaftlicher Pluralismus, Toleranz und Dialog
- Minderheiten und die Medien
- Stereotype in den Medien
- Neue Medien und die Informationsgesellschaft
- Öffentlicher Auftrag von Medien
- Öffentliche/politische Debatte
- Medienpluralismus und -vielfalt
- Wahrung der Menschenrechte in einem digitalen Umfeld
- Jugendschutz, insbesondere in einer Online-Umgebung
- Schutz der Privatsphäre und Datenschutz.

²⁶ SEV Nr. 189, verabschiedet am 28. Januar 2003; Inkrafttreten: 1. März 2006.

²⁷ STCE Nr. 205, verabschiedet am 18. Juni 2009.

²⁸ Siehe: *Meinungsfreiheit und die Medien: Normsetzung durch das Ministerkomitee des Europarates - IRIS Themenreihe* (Bd. 1).

**ZUSAMMENSTELLUNG DER IRIS ARTIKEL
welche die wesentlichen Eckpunkte aller Erklärungen,
Empfehlungen, EntschlieÙungen sowie anderer Dokumente
beschreiben**

Anordnung in umgekehrter chronologischer Reihenfolge

Parlamentarische Versammlung: Schutz journalistischer Quellen betont

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Mit der Verabschiedung ihrer Empfehlung 1950 (2011) mit dem Titel „Schutz journalistischer Quellen“ am 25. Januar 2011 hat die parlamentarische Versammlung des Europarats (PACE) ein wiederkehrendes Thema in ihren Texten, die sich auf Meinungsfreiheit und Medien konzentrieren, wieder aufgegriffen.

Diese jüngste Überprüfung eines hochaktuellen Themas ist fest und ausdrücklich in einer zunehmenden Zahl bestehender, vom Europarat verabschiedeter Normen verankert: Artikel 10 der Europäischen Konvention zum Schutz der Menschenrechte und maßgebliche geltende Rechtsprechung, Empfehlung Nr. R (2000) 7 des Ministerkomitees zum Recht von Journalisten, ihre Informationsquellen nicht preiszugeben (siehe IRIS 2000-3/2) und Erklärung zum Schutz und zur Förderung von investigativem Journalismus (siehe IRIS 2007-10/2) sowie Entschließung 1729(2010) und Empfehlung 1916 (2010) der PACE, beide mit dem Titel „Schutz von Informanten“ (IRIS Extra, offen). Sie verweist auf das Übereinkommen des Europarats über Computerkriminalität und die EU-Richtlinie 2006/24/EG über die Vorratsspeicherung von Daten, die bei der Bereitstellung öffentlich zugänglicher elektronischer Kommunikationsdienste oder öffentlicher Kommunikationsnetze erzeugt oder verarbeitet werden, und Richtlinie 2002/58/EG ändert. Sie begrüßt auch die Aufmerksamkeit des Menschenrechtskommissars des Europarats für Fragen der Medienfreiheit im Allgemeinen, ruft gleichzeitig aber zu besonderer Aufmerksamkeit im Hinblick auf den Schutz der Vertraulichkeit journalistischer Quellen in seiner zukünftigen Arbeit auf.

Insbesondere bestätigt die PACE erneut, dass „die Vertraulichkeit der journalistischen Quellen nicht durch gesteigerte technische Möglichkeiten öffentlicher Behörden beeinträchtigt werden darf, die Verwendung mobiler Telekommunikationseinrichtungen und Internet-Medien durch Journalisten zu kontrollieren“ (Abs. 12). Das „Abfangen von Schriftwechsel, die Überwachung von Journalisten oder die Durchsuchung und Beschlagnahme von Informationen“ sind hier von zentraler Bedeutung. Darüber hinaus betont sie, dass „Anbieter von Internetdiensten und Telekommunikationsunternehmen nicht verpflichtet sein dürfen, Informationen preiszugeben, die unter Verletzung von Artikel 10 der Menschenrechtskonvention zu einer Identifizierung der journalistischen Quellen führen könnten“.

Die PACE stellt fest, dass die Verpflichtung, Quellen nicht preiszugeben, wenn die Informationen vertraulich beschafft wurden, häufig in journalistischen Berufs-/Ehrenkodices niedergelegt ist (Abs. 14). Sie stellt darüber hinaus fest, dass laufende Veränderungen in der Medien- und Kommunikationstechnik grundlegende Veränderungen in der journalistischen Praxis und der öffentlichen Verbreitung von Informationen im Allgemeinen gefördert haben (Abs. 11). Angesichts dieser Erkenntnisse erklärt sie, dass „das Recht der Journalisten, ihre Quellen nicht preiszugeben, ein Berufsprivileg ist, das Quellen dazu ermutigen soll, wichtige Informationen an Journalisten weiterzugeben, was sie ohne Zusage von Vertraulichkeit nicht tun würden“ (Abs. 15). Sie erläutert weiterhin, dass „ein vergleichbares Vertrauensverhältnis in Bezug auf Nicht-Journalisten wie zum Beispiel Privatpersonen mit eigener Website oder Web-Blog nicht besteht“ und dass „Nicht-Journalisten nicht das Recht von Journalisten in Anspruch nehmen können, ihre Quellen nicht preiszugeben“ (Abs. 15).

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Die PACE empfiehlt, das Ministerkomitee solle unter anderem die Mitgliedstaaten aufrufen, sofern sie es noch nicht getan haben, gesetzgeberische Maßnahmen zum Schutz der Vertraulichkeit journalistischer Quellen zu verabschieden (Abs. 17.1). Sie regt zudem an, entsprechende Leitlinien für Staatsanwälte und Polizisten sowie Schulungsmaterialien für die Justiz zu erarbeiten (Abs. 17.3). Sie befürwortet die Entwicklung eines gesonderten Pakets an Leitlinien für „öffentliche Behörden und Anbieter des privatwirtschaftlichen Sektors in Bezug auf den Schutz der Vertraulichkeit journalistischer Quellen im Zusammenhang mit dem Abfangen oder der Offenlegung von Computerdaten und Verkehrsdaten von Computernetzwerken [...]“ (Abs. 17.4).

- "Schutz journalistischer Quellen", Empfehlung 1950 (2011), Parlamentarische Versammlung des Europarats, 25. Januar 2011 <http://merlin.obs.coe.int/redirect.php?id=13098>

IRIS 2011-4/4

Parlamentarische Versammlung: Empfehlung und Entschließung zur Bekämpfung sexistischer Klischees in den Medien

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Am 25. Juni 2010 hat die parlamentarische Versammlung des Europarats (PACE) Entschließung 1751(2010) und Empfehlung 1931(2010) verabschiedet, die beide den Titel „Bekämpfung sexistischer Klischees in den Medien“ tragen.

Die Entschließung konstatiert und verurteilt, dass Frauen Opfer sexistischer Klischees in den Medien seien. Sie seien unterrepräsentiert und Gegenstand andauernder sexistischer Klischees in den Medien, die sich auf das traditionelle gesellschaftliche Rollenverständnis gründeten. Damit werde die Gleichberechtigung der Geschlechter verhindert. Die sexistischen Klischees werden in unterschiedlicher Form wie Humor und überkommenen Vorstellungen befördert und unter dem Deckmantel der Meinungsfreiheit bagatellisiert und toleriert. In der Folge haben diese Klischees einen eindeutigen Einfluss auf die Bildung der öffentlichen Meinung und können den Einsatz geschlechtsspezifischer Gewalt fördern oder legitimieren.

Entsprechend der Entschließung haben die Medien eine besondere Verantwortung, unter anderem die Gleichstellung von Frauen und Männern zu fördern. Sexismus sollte in den Medien ebenso wenig Platz haben wie Rassismus oder andere Formen der Diskriminierung. Neben der positiven Rolle, die die Medien spielen können, stellt die Entschließung fest, dass Erziehung und Schulung absolut unabdingbar seien, um zu lernen, wie Klischees erkannt, verstanden und überwunden werden können.

Die Versammlung ruft die Mitgliedstaaten auf, Schulungs- und Erziehungsaktivitäten durch ein breites Spektrum an Maßnahmen zu stärken, zu denen unter anderem Aufklärung, Selbstkontrollmechanismen und Erziehung in Schulen gehören. Darüber hinaus fordert sie Maßnahmen, die Präsenz und Bedeutung von Frauen in den Medien zu fördern. Zudem ruft die Versammlung die nationalen Parlamente dazu auf, unter anderem rechtliche Maßnahmen zu verabschieden und angemessene Rechtsbehelfe in Fällen geschlechtsspezifischer Diskriminierung anzubieten. Schließlich ruft die Versammlung die Medien auf, das Bewusstsein von Journalisten für die Gleichstellung der Geschlechter in ihrer Arbeit zu stärken, die Gleichstellung der Geschlechter in Regulierungs- und Selbstregulierungsbehörden zu fördern und für eine klischeefreie Darstellung von Frauen und Männern einzutreten.

In einer nachfolgenden Empfehlung zu diesem Thema unterstreicht die Versammlung erneut, dass die Erziehung und die Medien eine Schlüsselrolle bei der Bekämpfung sexistischer Klischees spielen. Die Aufrechterhaltung des Nichtdiskriminierungsgrundsatzes ist nach Ansicht der Versammlung nicht ausreichend; positive Verpflichtungen für Staaten sind wichtig, das Recht auf Gleichstellung der Geschlechter zu garantieren. Daher fordert die Versammlung das Ministerkomitee auf, unter anderem einen europäischen Kodex guter Praxis und ein Handbuch zur Bekämpfung sexistischer Klischees für die Medien zu erarbeiten.

- Entschließung 1751(2010) der Parlamentarischen Versammlung zur Bekämpfung sexistischer Klischees in den Medien, verabschiedet am 25. Juni 2010
<http://merlin.obs.coe.int/redirect.php?id=13063>

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- Empfehlung 1931(2010) der Parlamentarischen Versammlung zur Bekämpfung sexistischer Klischees in den Medien, verabschiedet am 25. Juni 2010
<http://merlin.obs.coe.int/redirect.php?id=13064>

IRIS 2010-7/103

Parlamentarische Versammlung: Mögliche Rolle der Medien beim Schutz der Roma

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Die Parlamentarische Versammlung des Europarats (PACE) hat am 22. Juni 2010 ihre Entschließung 1740 (2010) und Empfehlung 1924 (2010), beide unter dem Namen „Die Lage der Roma in Europa und diesbezügliche Aktivitäten des Europarats“, verabschiedet. Hintergrund dieser Texte sind die unlängst festgestellten Fälle von Diskriminierung und Gewalt gegen Roma quer durch Europa. So hat die Parlamentarische Versammlung „angesichts der dringenden Notwendigkeit einer Verbesserung der Lage der Roma in den unterschiedlichsten Bereichen“ beschlossen, sich „zu gegebener Zeit eingehender mit diesem Thema zu befassen“ (Entschließung 1740 (2010), Abs. 25).

In beiden Texten werden verschiedene rechtliche, politische und anderweitige Maßnahmen sowie institutionelle Mechanismen - auf internationaler wie auch auf nationaler Ebene - geprüft, deren gemeinsames Ziel die Verbesserung der Lage der Roma ist. Die Entschließung ist umfangreicher und detaillierter als die Empfehlung; sie enthält eine Aufstellung der dringlichsten Probleme und gruppiert diese nach thematischen Gesichtspunkten. Zu den Schwerpunkten gehören Bildung, Wohnen, Beschäftigung und Gesundheit.

Sie enthält auch Maßnahmen, die für die Medien von Bedeutung sind. So fordert die Parlamentarische Versammlung den Europarat auf, unter anderem „ein positives Image von Vielfalt zu fördern sowie Klischees und Vorurteilen, darunter auch geschlechtsspezifischen, entgegenzuwirken, zum Beispiel anhand der vom Europarat entwickelten Dosta!-Kampagne“. Des Weiteren fordert sie die Mitgliedstaaten auf, „energisch auf rassistische Äußerungen von Beamten zu reagieren [...] und sich dem Problem der Hetze gegenüber Roma zu widmen, sei es in den Medien, in der Politik oder in der Bürgergesellschaft“ (Entschließung, Abs. 15.8).

In der Entschließung wird erklärt, dass „alle Aktionen zur Verbesserung der Lage der Roma in jeder Phase des Prozesses nur nach vorheriger Absprache und in Zusammenarbeit mit den Roma selbst“ erfolgen sollten (Abs. 15.9). Die Mitgliedstaaten werden zudem aufgefordert, „die Anwendung und Entwicklung der Kultur, der Sprache und der Lebensweise der Roma zu fördern“ (Abs. 15.11), was offensichtlich über die Medien erfolgen könnte - obgleich dies nicht ausdrücklich so im Text steht.

Die Empfehlung hingegen enthält keinerlei speziell auf die Medien ausgerichtete Maßnahmen.

- Die Lage der Roma in Europa und diesbezügliche Aktivitäten des Europarats, Resolution 1740 (2010), Parlamentarische Versammlung des Europarats, 22. Juni 2010
<http://merlin.obs.coe.int/redirect.php?id=12738>
- Die Lage der Roma in Europa und diesbezügliche Aktivitäten des Europarats, Empfehlung 1924 (2010), Parlamentarische Versammlung des Europarats, 22. Juni 2010
<http://merlin.obs.coe.int/redirect.php?id=12739>

IRIS 2010-10/5

Parlamentarische Versammlung: Empfehlung und EntschlieÙung zum Schutz von Informanten

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Am 29. April 2010 verabschiedete die parlamentarische Versammlung des Europarats (PACE) EntschlieÙung 1729(2010) und Empfehlung 1916(2010), beide mit dem Titel „Schutz von Informanten“.

Die EntschlieÙung erkennt zunächst die Bedeutung von Informanten (*whistle-blower*) an. Ihre Fähigkeit, Fehlverhalten zu unterbinden und eine Möglichkeit für Rechenschaft zu eröffnen sowie den Kampf gegen Korruption und Misswirtschaft zu unterstützen, sei ein Aktivposten sowohl im öffentlichen als auch im privaten Sektor. Leider lieÙen sich Informanten unter anderem aus Sorge vor Repressalien abschrecken.

Die Versammlung stellt fest, dass die meisten Mitgliedstaaten des Europarats keine umfassenden Gesetze zum Schutz von Informanten bieten, wenngleich viele von ihnen Vorschriften haben, die bestimmte Aspekte des *Whistle-Blowing* abdecken. Die EntschlieÙung verweist auf das Vereinigte Königreich und die Vereinigten Staaten von Amerika als Beispiele für Länder, in denen diesbezügliche Gesetze mit weitgehend zufriedenstellenden Ergebnissen erlassen wurden.

Eine angemessene Gesetzgebung sei erforderlich, um Informanten die nötige Sicherheit zu bieten, vor Fehlverhalten zu warnen, ohne ihre Existenz oder die ihrer Familien aufs Spiel zu setzen. Maßgebliche Gesetzgebung sollte eine sichere Alternative zu Stillschweigen beinhalten und Vorgehensweisen vermeiden, die potenziellen Informanten eine falsche Sicherheit vermittele. Die Versammlung ruft daher alle Mitgliedstaaten auf, ihre Gesetzgebung im Hinblick auf den Schutz von Informanten zu überprüfen, wobei mehrere Richtgrundsätze zu beachten seien.

Gesetzgebung zu *Whistle-Blowing* sollte in erster Linie umfassend sein und eine weit gefasste Definition geschützter Offenlegungen beinhalten. Darüber hinaus sollte sie einen weiten Rechtsbereich und sowohl den öffentlichen als auch den privaten Sektor abdecken. Zudem sollte sie sich darauf konzentrieren, eine sichere Alternative zu Stillschweigen anzubieten. Dies kann unter anderem dadurch erreicht werden, dass der Regierung und Entscheidungsträgern in Unternehmen entsprechende Anreize gegeben werden, interne *Whistle-Blowing* -Verfahren mit Schutzmechanismen einzuführen.

Die Versammlung betont darüber hinaus, dass in der gesellschaftlichen Einstellung zu *Whistle-Blowing* althergebrachte Assoziationen wie Untreue und Verrat überwunden werden müssen. Nach Meinung der Versammlung können Nichtregierungsorganisationen einen beträchtlichen Beitrag zu diesem Wandel leisten. Schließlich ruft die Versammlung den Europarat auf, ein wirksames internes *Whistle-Blowing* -Verfahren einzuführen, um ein gutes Beispiel zu geben.

In einer nachfolgenden Empfehlung zu diesem Thema unterstreicht die Versammlung die Bedeutung von *Whistle-Blowing* als Instrument, durch das mehr Rechenschaft erreicht und der Kampf gegen Korruption und Misswirtschaft gestärkt werden könne. Sie empfiehlt, das Ministerkomitee solle unter Berücksichtigung der vorstehenden Grundsätze ein Regelwerk zum Schutz von Informanten erarbeiten und die Erarbeitung eines Rahmenübereinkommens in Erwägung ziehen. Weiterhin empfiehlt sie, das Ministerkomitee solle die Mitgliedstaaten aufrufen, ihre bestehende Gesetzgebung auf Übereinstimmung mit diesem Regelwerk überprüfen.

- Entschließung 1729 (2010) der Parlamentarischen Versammlung zum Schutz von Informanten, verabschiedet am 29. April 2010 <http://merlin.obs.coe.int/redirect.php?id=13061>
- Empfehlung 1916 (2010) der Parlamentarischen Versammlung zum Schutz von Informanten, verabschiedet am 29. April 2010 <http://merlin.obs.coe.int/redirect.php?id=13062>

IRIS 2010-5/100

Parlamentarische Versammlung: Texte zur Bekämpfung der Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität

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Dem Vorbild des Ministerkomitees des Europarats folgend, hat die Parlamentarische Versammlung des Europarats kürzlich ihre Aufmerksamkeit der Bekämpfung der Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität gewidmet. Am 29. April 2010 verabschiedete sie die Entschließung 1728 (2010) und die Empfehlung 1915 (2010), beide mit dem Titel „Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität“. Wie die am 31. März 2010 verabschiedete Empfehlung des Ministerkomitees CM/Rec(2010)5 über Maßnahmen zur Bekämpfung der Diskriminierung aufgrund der sexuellen Orientierung oder der geschlechtlichen Identität (siehe IRIS 2010-8: 1/3) enthält der Text der Parlamentarischen Versammlung des Europarats eine Reihe von Bestimmungen zur freien Meinungsäußerung, zu Hetzreden und zu den Medien.

Die Entschließung 1728(2010) der Parlamentarischen Versammlung des Europarats betrachtet „physische und verbale Gewalt (Verbrechen aus Hass und Hetzreden)“ und „unzulässige Beschränkungen“ der freien Meinungsäußerung, der Versammlungs- und der Vereinigungsfreiheit als „große Probleme“ im Zusammenhang mit der Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität (Abs. 3, siehe aber auch Abs. 6). Auch die „Hetzreden bestimmter politischer, religiöser oder anderer gesellschaftlicher Führer“ und die Hetze, die durch die Medien oder das Internet verbreitet wird, bezeichnet sie als „besonders bedenklich“ (Abs. 7). Sie unterstreicht außerdem, „dass es die oberste Pflicht aller Behörden ist, nicht nur die in Menschenrechtsinstrumenten verankerten Rechte auf praktische und wirksame Weise zu schützen, sondern auch Sprechweisen zu vermeiden, die Diskriminierung oder Hass aus Intoleranz legitimieren und anstacheln“ (Abs. 7).

Diese Beobachtungen bilden den Ausgangspunkt einer Reihe von Aufgabenfeldern für Mitgliedstaaten des Europarats. So sollen sie beispielsweise dafür sorgen, dass die Grundrechte von Lesben, Schwulen, Bi- und Transsexuellen (LGBT-Personen) - etwa die Äußerungsfreiheit - im Einklang mit internationalen Menschenrechtsstandards respektiert werden (Abs. 16.1). Ein weiteres Beispiel ist, dass die Mitgliedstaaten „Hetzreden und diskriminierende Aussagen ächten und LGBT-Personen wirksam vor solchen Aussagen schützen, dabei aber die freie Meinungsäußerung respektieren“ sollten, wie von der Europäischen Menschenrechtskonvention und der darauf beruhenden Rechtsprechung garantiert (Abs. 16.4). Abschließend werden die Mitgliedstaaten in dieser spezifischen Hinsicht aufgerufen, „Antidiskriminierungs- und Sensibilisierungsprogramme zur Förderung von Toleranz, Respekt und Verständnis für LGBT-Personen einzuführen oder zu entwickeln“, die sich an bestimmte Zielgruppen richten, darunter auch die Medien (Abs. 16.12).

Die Empfehlung 1915(2010) der Parlamentarischen Versammlung des Europarats ihrerseits befasst sich nicht mit inhaltlichen Fragen, sondern mit der Identifizierung institutioneller Regelungen und prozeduraler Maßnahmen, die die weiter gefassten Ziele beider Texte der Parlamentarischen Versammlung und der Empfehlung des Ministerkomitees fördern könnten.

- „Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität“, Entschließung 1728(2010), Parlamentarische Versammlung des Europarates, 29. April 2010
<http://merlin.obs.coe.int/redirect.php?id=12740>
- „Diskriminierung aus Gründen der sexuellen Ausrichtung und der Geschlechtsidentität“, Empfehlung 1915(2010), Parlamentarische Versammlung des Europarates, 29. April 2010
<http://merlin.obs.coe.int/redirect.php?id=12741>

IRIS 2010-10/6

Parlamentarische Versammlung: Empfehlung zu Rechten des geistigen Eigentums in der digitalen Gesellschaft

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Die Parlamentarische Versammlung des Europarats (PACE) hat am 12. März 2010 die Empfehlung 1906 (2010) verabschiedet, in der eine Reihe von Folgen der Entwicklung der Internetgesellschaft benannt werden, die einer weiteren Untersuchung bedürfen. Diese Folgen werden hier näher beleuchtet.

Es wurde bislang noch keine Lösung entwickelt, die sich in ausreichendem Maße mit dem Schutz des Urheberrechts und verwandter Schutzrechte sowie mit der Bekämpfung von Piraterie im digitalen Umfeld befasst. Der Ausschuss für Kultur, Wissenschaft und Bildung hat einen Empfehlungsentwurf vorgelegt, um eine Diskussion über ein Modell für die Harmonisierung der Rechte von Urhebern, Investoren und Internetnutzern in Gang zu bringen. Die Parlamentarische Versammlung hat den Text nach der Veröffentlichung eines Berichts des Ausschusses für Wirtschaft und Entwicklung in einer leicht abgewandelten Form verabschiedet.

Hintergrund der Empfehlung ist die rasante Entwicklung der digitalen Gesellschaft. Noch nie zuvor war es so leicht, im interaktiven „Web 2.0“ Dateien auszutauschen. Ein Nebeneffekt dieses technologischen Fortschritts ist ein möglicher Interessenkonflikt im Internet. In dem Bericht des Ausschusses für Kultur, Wissenschaft und Bildung werden diese Interessen wie folgt beschrieben: Die Urheberrechtshaber verlangen eine angemessene Vergütung für die Nutzung ihrer Werke, wofür aber auch ein Zugang zu diesen Werken erforderlich ist. Darüber hinaus wollen die Investoren ihre Produktionskosten wieder einspielen, während sich die Internetnutzer inzwischen an den uneingeschränkten Zugang zu - überwiegend - freien Inhalten gewöhnt haben, was dazu führt, dass Urheberrechte sehr oft nicht gewahrt werden. Eine Konsequenz hiervon ist, dass die Kulturbranchen rapide sinkende Umsätze verzeichnen.

Dies ist aber nicht die einzige Folge. Die Parlamentarische Versammlung stellt fest, dass die Staaten in Ermangelung europäischer Standards eigene Gesetze zur Bekämpfung der Piraterie entwickeln. In der Empfehlung wird zudem darauf hingewiesen, dass diese Gesetze gegebenenfalls wichtige Rechte der Internetnutzer verletzen können, darunter den

Datenschutz und die Informationsfreiheit. Dies wiederum hat zur Entstehung von Gegenbewegungen geführt (die sogenannten Piratenparteien), die übermäßige Eingriffe des Staates in die Rechte der Nutzer bekämpfen.

Wie bereits erwähnt, wird in der Empfehlung betont, dass es mit dem gegenwärtigen Rechtsrahmen nicht möglich zu sein scheint, einen Interessenausgleich zwischen allen Beteiligten herzustellen. Da Demokratie, Menschenrechte und Rechtsstaatlichkeit von größter Bedeutung für den Europarat sind, kann dieser in der Entwicklung neuer oder Überarbeitung bestehender Standards eine wichtige Rolle übernehmen. Die Parlamentarische Versammlung nennt hierzu sieben Kernpunkte. Diese betreffen das Urheberrecht vor dem Hintergrund des technologischen, ökonomischen und sozialen Wandels.

Es soll ein flexibler Rahmen aufgebaut werden, der die Interessen der beteiligten Parteien berücksichtigt. Laut Empfehlung sollte das Ministerkomitee zu diesem Zweck Studien in Auftrag geben. Es sollte auch untersucht werden, inwieweit den Urhebern eine angemessene Vergütung garantiert werden kann. In diesem Zusammenhang sollten neue Geschäftsmodelle für das Angebot legaler Inhalte attraktiver gemacht werden.

Des Weiteren sollte eine Debatte zwischen den Akteuren in Gang gesetzt werden, um sich Gedanken über ein System von Ausnahmen und Beschränkungen zu machen, mit dem die Meinungs- und Informationsfreiheit sichergestellt werden kann. Ein weiterer in der Empfehlung angesprochener Punkt ist die Entwicklung von vertraglichen Initiativen für einen verbesserten Zugang zu Werken und ihren Inhalten. Die Umsetzbarkeit von obligatorischen kollektiven Verwertungssystemen sollte ebenfalls geprüft werden. Solche Systeme machen es möglich, den Zugang zu Werken zu gewährleisten, auch wenn die Klärung der Rechte schwierig ist (zum Beispiel bei verwaisten Werken, bei denen es nicht möglich ist, den Urheber zu ermitteln und dessen Zustimmung einzuholen).

Bezüglich der Einhaltung von Urheberrechtsregeln sollte auch der Status von Internet-Akteuren (wie Suchmaschinen) überprüft werden.

- Doc. 12101, Bericht des Ausschusses für Kultur, Wissenschaft und Bildung, 7. Januar 2010, Berichterstatter: Herr Arnaut
<http://merlin.obs.coe.int/redirect.php?id=12733>
- Doc. 12141, Stellungnahme des Ausschusses für Wirtschaft und Entwicklung, 10. Februar 2010, Berichterstatter: Herr Lambert
<http://merlin.obs.coe.int/redirect.php?id=12734>
- Empfehlung 1906 (2010) der Parlamentarischen Versammlung, Überdenken der Kreativrechte im Internetzeitalter, 12. März 2010
<http://merlin.obs.coe.int/redirect.php?id=12735>

IRIS 2010-10/4

Parlamentarische Versammlung: Neue Empfehlung zur Achtung der Medienfreiheit

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Aufgrund von Besorgnis wegen anhaltender Verletzungen und Bedrohungen der Medienfreiheit verabschiedete die Parlamentarische Versammlung des Europarats (PACE) Empfehlung 1897 (2010) mit dem Titel „Achtung der Medienfreiheit“. Die Empfehlung stellt eine wichtige erneute Bestätigung und/oder Fortschreibung einiger früherer PACE-Dokumente dar, im Folgenden:

(i) Entschließung 1535 (2007) – Bedrohung des Lebens und der Meinungsfreiheit von Journalisten (siehe IRIS 2007-5: 0/102).

- Die PACE stellt „mit großer Besorgnis“ fest, dass seit 2007 mindestens zwanzig Journalisten in Europa getötet wurden, und besteht darauf, dass der Europarat und seine Mitgliedstaaten „mehr tun müssen, um die Achtung der Medienfreiheit und der Sicherheit von Journalisten zu gewährleisten“. Sie begrüßt die Ernennung eines Berichterstatters zur Medienfreiheit im Rahmen der PACE und bringt ihre Anerkennung für die Arbeit des OSZE-Bbeauftragten für Medienfreiheit und verschiedener fachlicher Organisationen und Organisationen der Zivilgesellschaft zum Ausdruck. Sie „beklagt die Tatsache, dass [...] die Russische Föderation keine gründliche Ermittlung und Rechtsprechung im Mordfall Anna Politkovskaja abgeschlossen hat [...] und nicht sicherstellt, dass Journalisten frei und in Sicherheit arbeiten können“. Darüber hinaus „beklagt [sie] die Tatsache, dass das organisierte Verbrechen in einigen Mitgliedstaaten die Sicherheit von Journalisten bedroht, während Strafverfolgungsbehörden gegen derartige Bedrohungen unwirksam bleiben“.

(ii) Entschließung 1438 (2005) – Pressefreiheit und die Arbeitsbedingungen von Journalisten in Konfliktzonen

- Die PACE „beklagt“ den Verlust von Journalistenleben im Konflikt zwischen Russland und Georgien 2008. Wenngleich sie die Änderungen zu Art. 301 des *Türk Ceza Kanunu* (türkisches Strafgesetzbuch – TCK) „begrüßt“, „beklagt [sie] die Tatsache, dass die Türkei Art. 301 nicht abgeschafft oder die Ermittlungen im Mordfall Hrant Dink nicht abgeschlossen hat [...], insbesondere hinsichtlich möglicher Fehler seitens der Polizei und der Sicherheitskräfte“. Sie stellt fest, dass gegen Journalisten nach dem „leicht geänderten Art. 301“ strafrechtliche Klagen vorgebracht wurden.

(iii) Entschließung 1577 (2007) – Zur Entkriminalisierung von Verleumdung

- Die PACE „bekräftigt erneut, dass Verleumdungs- und Beleidigungsgesetze nicht dazu verwendet werden dürfen, kritische Kommentare und Ironie in den Medien zum Verstummen zu bringen“. Sie führt aus, dass Verleumdungs- und Beleidigungsgesetze keinen Schutz für „den Ruf einer Nation, des Militärs, historischer Personen oder einer Religion“ bieten dürfen. Sie ruft Regierungsmitglieder und Parlamentarier auf, sich politischer Einflussnahme zu enthalten, um kritische Medien zum Schweigen zu bringen, und stattdessen „in eine konstruktive Debatte in allen Medien einzutreten“.

Sie empfiehlt, das Ministerkomitee möge nationale Gesetzgebung und Praxis überprüfen, um zu gewährleisten, dass diese vollständig im Einklang mit der PACE-Empfehlung 1706 (2005) – Medien und Terrorismus – stehen (siehe IRIS 2005-8: 4). Ähnlich empfiehlt sie, das Ministerkomitee „möge die Regierungen aller Mitgliedstaaten und insbesondere die von Aserbaidschan, der Russischen Föderation und der Türkei dazu aufrufen, ihre Verleumdungs- und Beleidigungsgesetze und deren praktische Anwendung [in Übereinstimmung mit Entschließung 1577] überprüfen“. Sie ruft zur Sicherung eines fairen und gleichberechtigten Zugangs für politische Parteien und Kandidaten zu den Medien in Wahlkämpfen in allen Mitgliedstaaten (und insbesondere in Armenien, Aserbaidschan, Moldau, der Russischen Föderation, der Ukraine und Belarus) auf. Sie tritt zudem für eine Überprüfung der Gesetzgebung Armeniens zur Vergabe von Rundfunklizenzen ein.

(iv) Entschließung 1636 (2008) – Indikatoren für Medien in einer Demokratie (siehe IRIS 2009-1: 4)

- Die PACE ersucht den Generalsekretär des Europarats, Mittel bereitzustellen für die Erhebung von Informationen von Organisationen für Medienfreiheit, für deren systematische Analyse auf Grundlage der einzelnen Länder unter Einsatz der Indikatoren aus Entschließung 1636 sowie für die weite Verbreitung derartiger Informationen einschließlich regelmäßiger Aktualisierungen.

(v) Entschließung 1387 (2004) – Monopolisierung der elektronischen und Printmedien und eventueller Machtmissbrauch in Italien (siehe IRIS 2004-7: 3)

- Die PACE ersucht die Europäische Kommission für Demokratie durch Recht (Venedig-Kommission) um „eine Stellungnahme, ob und inwieweit die Gesetzgebung in Italien angepasst wurde, um die Stellungnahme der Kommission von 2005 zur Vereinbarkeit der „Gasparri-“ und „Frattini-“Gesetze mit den Standards des Europarats im Bereich der Meinungsfreiheit und der Medienfreiheit zu berücksichtigen (siehe IRIS 2005-8: 5).

(vi) Entschließung 1372 (2004) – Verfolgung der Presse in der Republik Belarus

- Die PACE „nimmt mit Besorgnis die offizielle Warnung zur Kenntnis, die das Justizministerium von Belarus am 13. Januar 2010 an die belarussische Journalistenvereinigung gerichtet hat, die deren international anerkannte Arbeit im Interesse von Journalisten, Medien und Medienfreiheit angreift“, und ersucht die Venedig-Kommission, die Vereinbarkeit der Warnung mit den allgemeinen Menschenrechtsnormen zu prüfen.

Schließlich lenkt die PACE die Aufmerksamkeit auf die Bedeutung von Medienfreiheit (und deren Förderung) für das Teilabkommen Staatengruppe des Europarats gegen Korruption (GRECO), die Agentur der Europäischen Union für Grundrechte und nationale Menschenrechtsinstitutionen.

- „Beachtung von Medienfreiheit“, Empfehlung 1897 (2010) (vorläufige Fassung),
Parlamentarische Versammlung des Europarats, 27. Januar 2010
<http://merlin.obs.coe.int/redirect.php?id=12250>

IRIS 2010-3/3

Parlamentarische Versammlung: Förderung geeigneter Internet- und Onlinemedien Dienste für Minderjährige

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Am 28. September 2009 hat die Parlamentarische Versammlung des Europarats die Empfehlung 1882 (2009) über die Förderung geeigneter Internet- und Onlinemedien Dienste für Minderjährige verabschiedet.

Die Versammlung stellt zunächst fest, dass der Europarat den Schutz von Kindern in der Informationsgesellschaft weiter vorantreiben sollte, insbesondere im Hinblick auf die Entwicklung ihrer Medienkompetenz und ihren Schutz vor schädlichen Inhalten. Der Wandel, den das Internet mit sich gebracht hat, stelle für die traditionellen Jugendschutzstandards eine Herausforderung dar. Die Standards der freien Meinungsäußerung hätten sich jedoch nicht geändert. Jede rechtliche Einschränkung zugunsten des Jugendschutzes müsse in einer demokratischen Gesellschaft notwendig sein.

Zu den Risiken, denen Minderjährige ausgesetzt sein können, zählten sowohl rechtswidrige Inhalte als auch rechtmäßige Inhalte, die jedoch für Minderjährige als ungeeignet eingestuft werden. Besonders besorgt äußert sich die Versammlung darüber, dass kinderpornografisches Material online verfügbar sei. Wer rechtswidrige Inhalte produziere oder verfügbar mache, müsse per Gesetz dafür verantwortlich gemacht werden. Die Versammlung ruft daher die Mitgliedstaaten dazu auf, unverzüglich das Übereinkommen über Datennetz-Kriminalität („*Cybercrime*- Konvention“) zu ratifizieren, das den Rechtsrahmen für die internationale Zusammenarbeit gegen rechtswidrige Verhaltensweisen und Inhalte im Internet festlegt. Rechtswidrig seien zum Beispiel Inhalte, die Frauen und Mädchen als Objekte darstellen. In bestimmten Fällen könne dies sowohl in der virtuellen als auch in der realen Welt zu geschlechtsspezifischer Gewalt führen. Ein weiteres Thema ist die wachsende Zahl sozialer Netzwerke in der Onlinewelt. Durch sie steige die Zahl der Minderjährigen, die Teile ihres Privatlebens öffentlich im Internet teilen. Dies könne zu Internetsucht und Mobbing führen.

Auflagen für Medieninhalte, die sich negativ auf Minderjährige auswirken können, sind bei den traditionellen Medien bereits geregelt. Minderjährige nutzen diese traditionellen Medien wie Fernsehen und Radio heute jedoch nicht mehr sehr stark. Die Minderjährigen nutzen vielmehr das Internet, in dem sie jederzeit und überall einfachen Zugang zu Materialien jedweder Art haben, und das zumeist ohne elterliche Kontrolle. Dies verringert die Wirksamkeit traditioneller medienpolitischer Jugendschutzmaßnahmen noch mehr.

Die Eltern spielen nach Auffassung der Versammlung eine wichtige Rolle beim Schutz Minderjähriger vor schädlichen Inhalten. Die staatlichen und sozialen Einrichtungen wie Schulen und Bibliotheken sollten die Eltern bei dieser Aufgabe unterstützen. Daher gibt die Versammlung den Mitgliedstaaten verschiedene Empfehlungen zum Schutz Minderjähriger vor schädlichen Inhalten. Die Versammlung ruft die Mitgliedstaaten auf, die technischen Möglichkeiten für einen besseren Schutz von Minderjährigen bei der Nutzung des Internets zu prüfen. Die Mitgliedstaaten sollen die Schaffung und Vermarktung geeigneter Dienste für Minderjährige fördern, zum Beispiel kostenlose Software für die Filterung schädlicher Inhalte durch die Eltern. Die Mitgliedstaaten sollen außerdem die Schaffung öffentlicher Qualitätsstandards und Klassifizierungen geeigneter Internet- und Onlinemedien Dienste für Minderjährige fördern. Diese Standards sollen sicherstellen, dass der Zugang zu schädlichen

Inhalten durch Alterskontrollsysteme wirksam eingeschränkt wird. Allgemein empfiehlt die Versammlung den Ländern, die Öffentlichkeit mit Kampagnen für die Risiken und Möglichkeiten für Minderjährige bei der Nutzung des Internets und die verfügbaren technischen Möglichkeiten für die Einschränkung schädlicher Inhalte zu sensibilisieren.

- Förderung geeigneter Internet- und Onlinemediendienste für Minderjährige, Empfehlung 1882 (2009), Parlamentarische Versammlung des Europarats, 28. September 2009 <http://merlin.obs.coe.int/redirect.php?id=11939>

IRIS 2009-10/3

Parlamentarische Versammlung: Die Finanzierung öffentlich-rechtlichen Rundfunks

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Am 25. Juni 2009 verabschiedete die Parlamentarische Versammlung des Europarats Empfehlung 1878 (2009) mit dem Titel „Die Finanzierung öffentlich-rechtlichen Rundfunks“.

In einer Zeit schwindender öffentlicher Akzeptanz für die Finanzierung öffentlich-rechtlichen Rundfunks unterstreicht die Versammlung erneut die wichtige Rolle des öffentlich-rechtlichen Rundfunks. Die Versammlung erklärt, öffentlich-rechtlicher Rundfunk bleibe ein wesentliches Element für Regierungen, die Bedürfnisse des Einzelnen und der Gesellschaft insgesamt an Informationen, Bildung und Kultur zu befriedigen. Öffentlich-rechtliche Rundfunkveranstalter gewährleisten Medienvielfalt und böten der Öffentlichkeit unvoreingenommene Informationen, die ihr in ihrer Gesamtheit zugänglich und erschwinglich sein sollten. Der hohe öffentliche Wert öffentlich-rechtlichen Rundfunks dürfe nicht aufgegeben werden.

Nach Ansicht der Versammlung ist die Struktur des öffentlich-rechtlichen Rundfunks an nationale oder regionale Gegebenheiten anzupassen. Daher sei es Aufgabe der nationalen Gesetzgeber, den spezifischen Auftrag, die Struktur und die Finanzierung öffentlich-rechtlicher Rundfunkveranstalter festzulegen. Die Versammlung ist wegen des Trends innerhalb der Europäischen Union (EU) besorgt, die Befugnisse nationaler Gesetzgeber in Bezug auf öffentlich-rechtlichen Rundfunk im Zuge von Binnenmarktverordnungen zu beschneiden. EG-Recht sollte nicht in die Befugnisse von Mitgliedstaaten eingreifen, öffentlich-rechtlichen Rundfunk an spezielle nationale Bedürfnisse anzupassen. Die Versammlung verweist auf das UNESCO-Übereinkommen zum Schutz und zur Förderung der Vielfalt kultureller Ausdrucksformen von 2005, in dem es ausdrücklich heißt, dass Mitgliedstaaten Maßnahmen ergreifen können, die auf öffentliche finanzielle Unterstützung und Förderung der Vielfalt von Medien, unter anderem auch durch öffentlich-rechtlichen Rundfunk abzielen. Die Europäische Union gehört zu den Unterzeichnern des Übereinkommens.

Die Versammlung ruft die Mitgliedstaaten auf, dafür zu sorgen, dass die öffentlich-rechtlichen Rundfunkveranstalter einen eindeutigen Auftrag und die langfristige Finanzierung zu dessen Erfüllung haben. Die Mitgliedstaaten sollten darüber hinaus die redaktionelle und betriebliche Unabhängigkeit öffentlich-rechtlicher Rundfunkveranstalter garantieren. Sie sollten unabhängig von nationalen Regierungen agieren können. Andererseits ist die Finanzierung öffentlich-rechtlichen Rundfunks im öffentlichen Interesse; daher müssen öffentlich-rechtliche Rundfunkveranstalter bestimmte Qualitätsstandards erfüllen. Nationale Gesetzgeber müssen die Verantwortlichkeit öffentlich-rechtlicher Rundfunkveranstalter gewährleisten, indem sie öffentliche Rechenschaftsmechanismen zur Qualitätskontrolle einführen.

Die Versammlung unterstreicht die Bedeutung öffentlich-rechtlichen Rundfunks und räumt dabei ein, dass das Umfeld, in dem sich öffentlich-rechtliche Rundfunkveranstalter bewegen,

verändert hat. Öffentlich-rechtliche Rundfunkveranstalter stehen im Wettbewerb mit kommerziellen Kanälen, Abrufmediendiensten und dem ständig steigenden Angebot an audiovisuellen Inhalten im Internet. Die Versammlung empfiehlt, öffentlich-rechtliche Rundfunkveranstalter sollten ebenfalls neue Technologien nutzen und neue Zusatzdienste wie Abrufmediendienste anbieten. Dadurch könnten sie ihre Verfügbarkeit steigern, was zu einer weiteren Reichweite insbesondere unter jungen Menschen führe.

Schließlich sollten die Mitgliedstaaten die Finanzierung öffentlich-rechtlichen Rundfunks an die neue audiovisuelle Medienumgebung anpassen. Gleichzeitig sollten sie aber nach wie vor auch die Grundprinzipien öffentlich-rechtlichen Rundfunks wie Vielfalt, Unabhängigkeit und Unvoreingenommenheit bewahren.

- *The Funding of Public Service Broadcasting, Recommendation 1878 (2009), Parliamentary Assembly of the Council of Europe, 25 June 2009*
(Die Finanzierung öffentlich-rechtlichen Rundfunks, Empfehlung 1878 (2009), Parlamentarische Versammlung des Europarats, 25. Juni 2009)
<http://merlin.obs.coe.int/redirect.php?id=11798>

IRIS 2009-8/3

Parlamentarische Versammlung: Standpunkt zur Regulierung der audiovisuellen Medien

Andrew McIntosh

Vorsitzender des Unterausschusses für Medien und Berichterstatter der parlamentarischen Versammlung des Europarates für Medienfreiheit

Zwanzig Jahre sind seit der ersten Veröffentlichung des Europäischen Übereinkommens zum grenzüberschreitenden Fernsehen (ECTT) vergangen, die den Stand des Rundfunks zur damaligen Zeit widerspiegelte und Standards für die Medienregulierung und für die Förderung der Meinungsfreiheit durch die Mitgliedstaaten des Europarates festsetzte.

Seither hat sich der technologische Fortschritt bei den audiovisuellen Medien mit der Digitalumstellung, der Zunahme von Video-on-Demand (VoD) und jüngst mit der Aussicht auf eine Verschmelzung von Computer- und Telekommunikationstechnik beschleunigt. Regulierung, wie sie noch praktikabel war, als einige wenige Rundfunkveranstalter für ein Massenpublikum ausstrahlten, ist weder mehr möglich noch wünschenswert: Die Zahl der Rundfunkveranstalter ist stark gestiegen und das Publikum hat eine viel größere Auswahl.

Die EU hat darauf mit ihrer neuen Richtlinie für audiovisuelle Mediendienste (AVMD-Richtlinie) reagiert, und der Europarat erarbeitet ein Protokoll zur Novellierung der ECTT, das sich voraussichtlich auch auf audiovisuelle Mediendienste erstrecken wird. Mit ihrer Empfehlung 1855 (2009) hat sich nun auch die Parlamentarische Versammlung in die Debatte eingeschaltet. Die Empfehlungen der Versammlung sind durch eine ausführliche Begründung untermauert, in der die Argumente detailliert ausgeführt werden.

Die Parlamentarische Versammlung ist der Auffassung, das Übereinkommen solle eher die Grundprinzipien aus Art. 10 der Europäischen Menschenrechtskonvention (EMRK) zur Informations- und Meinungsfreiheit als die Belange des EG-Binnenmarkts berücksichtigen. Sie möchte die Rundfunkregulierung angemessen auf audiovisuelle Abrufdienste, nicht jedoch auf das Internet angewandt sehen, dessen besonderer Status in den neuen Möglichkeiten für die Meinungsfreiheit liegt. Die Versammlung ist der Ansicht, dies gelte auch dann noch, wenn das Internet die Fähigkeit entfaltet, sowohl Bilder und Töne als auch Text zu übertragen.

Die Parlamentarische Versammlung möchte die Rolle und Unabhängigkeit des öffentlich-rechtlichen Rundfunks schützen und stärken, der in einigen der jüngeren Mitgliedstaaten besonderer Unterstützung bedarf. Sie möchte auch, dass nationale Regulierungsbehörden von der Regierung, von politischen Parteien und von kommerziellem Einfluss unabhängig sind.

Die Parlamentarische Versammlung will die Rechte der Mitgliedstaaten schützen, damit sie ihre eigenen Standards für Rundfunkinhalte festlegen können, ohne sie jedoch anderen aufzuerlegen. Sie möchte, dass Regulierungsbehörden in Europa über die Instrumente und Mittel verfügen, um Streitigkeiten zwischen den Mitgliedstaaten beizulegen.

Die Empfehlung behandelt darüber hinaus weitergehende Themen als die ECTT. Die Parlamentarische Versammlung des Europarates unterstützt die Erklärung des Ministerkomitees vom Februar 2008 zur Zuweisung des neuen Frequenzspektrums, das durch die Digitalumstellung verfügbar ist: Es sollte die Möglichkeit genutzt werden, den öffentlich-rechtlichen Rundfunk zu verbessern und eine hohe Qualität im gesamten Rundfunk zu erreichen.

Die Parlamentarische Versammlung fordert daher diejenigen, die das Protokoll zur Änderung der ECTT entwerfen, dazu auf, diese Gedanken in ihren endgültigen Entwurf zu integrieren. Sie ruft darüber hinaus die Ministerkonferenz zu Medien und neuen Kommunikationsdiensten, die im Mai 2009 in Reykjavik stattfinden wird, dazu auf, diese Bedenken und diese Grundsätze in ihren Entscheidungen zu erwägen.

- *The regulation of audiovisual media services, Recommendation 1855 (2009), Parliamentary Assembly of the Council of Europe, 27 January 2009*
(Die Regulierung audiovisueller Mediendienste, Empfehlung 1855 (2009), Parlamentarische Versammlung des Europarates, 27. Januar 2009)
<http://merlin.obs.coe.int/redirect.php?id=11603>

Parlamentarische Versammlung: Indikatoren für Medien in einer Demokratie

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Die Parlamentarische Versammlung des Europarats (PACE) hat am 3. Oktober 2008 Resolution 1636 (2008) und Empfehlung 1848 (2008) verabschiedet. Beide Dokumente heißen „Indikatoren für Medien in einer Demokratie“ und beziehen sich auf den gleichnamigen Bericht.

Die Resolution unterstreicht die Bedeutung der Freiheit der Meinung, der Information und der Medien in einer demokratischen Gesellschaft und stellt eine Liste von „27 Grundprinzipien“ auf, die sie als geeignete Grundlage für eine Analyse der Mediensituation in den Mitgliedstaaten des Europarates erachtet. Diese Checkliste umfasst zahlreiche Freiheiten von Medien und Journalisten, die von anderen maßgeblichen Dokumenten des Europarates garantiert oder gefördert werden.

Viele der Grundprinzipien betreffen den Schutz der journalistischen Tätigkeit, darunter die Rechte und Sicherheiten für Journalisten: Schutz vor physischen Bedrohungen oder Angriffen; keine unangemessene Registrierung oder andere staatlich verordnete Anforderung als Voraussetzung für die Ausübung einer journalistischen Tätigkeit (darunter etwa auch die Verweigerung von Einreise- oder Arbeitsgenehmigungen für ausländische Journalisten); Achtung der Vertraulichkeit von journalistischen Quellen; Freiheit der Verbreitung von Inhalten in der Sprache ihrer Wahl; Vereinigungsfreiheit (einschließlich gewerkschaftlicher Tätigkeiten und Tarifverhandlungen); angemessene Arbeitsbedingungen (einschließlich Sozialversicherung). Analog hierzu beziehen sich andere „Grundprinzipien“ auf die Zugänglichkeit und Verfügbarkeit von Informationen, insbesondere auf die Vermeidung unangemessener Einschränkungen durch Gesetze zum Schutz der Privatsphäre bzw. von Staatsgeheimnissen oder aufgrund exklusiver Berichterstattungsrechte.

Betont wird darüber hinaus auch die Bedeutung des Zugangs zu den Medien, beispielsweise für politische Parteien. Umgekehrt wird auch für die Medien selbst der „faire und gleichberechtigte Zugang zu Vertriebskanälen“ unterstrichen. Ein weiterer Schwerpunkt ist die Transparenz der Medienbesitzstrukturen und Finanzierungsquellen, der Regulierungs- und Lizenzierungsprozesse sowie der journalistischen Tätigkeiten. Ein immer wiederkehrendes Motiv der Resolution ist die Verhinderung der politischen oder finanziellen Einflussnahme auf redaktionelle Inhalte (insbesondere bei öffentlich-rechtlichen Sendern). Für den Mediensektor werden Selbstregulierungsmechanismen und journalistische Ethikregeln befürwortet. Die Empfehlung ist dagegen knapper gefasst und stellt einige konkrete Forderungen an das Ministerkomitee, darunter: die Befürwortung der in der Resolution aufgeführten Grundprinzipien; ihre Berücksichtigung bei der Überprüfung der Mediensituation in den Mitgliedstaaten; die Erstellung von Indikatoren für ein funktionierendes Mediuemfeld in einer Demokratie auf der Grundlage besagter Liste; die regelmäßige Erstellung von Berichten mit Länderprofilen über die jeweilige Mediensituation in den Mitgliedstaaten.

- Indikatoren für Medien in einer Demokratie, Resolution 1636 (2008), Parlamentarische Versammlung des Europarates, 3. Oktober 2008
<http://merlin.obs.coe.int/redirect.php?id=15510>

- Indikatoren für Medien in einer Demokratie, Empfehlung 1848 (2008), Parlamentarische Versammlung des Europarates, 3. Oktober 2008
<http://merlin.obs.coe.int/redirect.php?id=11512>
- Indikatoren für Medien in einer Demokratie, Bericht, Parlamentarische Versammlung des Europarates, Ausschuss für Kultur, Wissenschaft und Bildung (Berichtersteller: Dr. Wolfgang Wodarg), Doc. 11683, 7. Juli 2008
<http://merlin.obs.coe.int/redirect.php?id=11514>

IRIS 2009-1/4

Parlamentarische Versammlung: EntschlieÙung zu europäischen muslimischen Gemeinschaften in der Auseinandersetzung mit dem Extremismus

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Am 15. April 2008 verabschiedete die Parlamentarische Versammlung des Europarats (PACE) einstimmig die EntschlieÙung 1605 (2008) mit dem Titel „Europäische muslimische Gemeinschaften in der Auseinandersetzung mit dem Extremismus“. Angesichts der jüngsten Serie von Angriffen in Europa und anderswo in der Welt, die von Terroristen begangen und mit islamischem Fundamentalismus gerechtfertigt wurden, rief die PACE die Mitgliedstaaten des Europarats sowie die europäischen muslimischen Organisationen und Führer auf, entsprechend zu reagieren.

Insbesondere rief die PACE europäische Regierungen dazu auf, unter anderem Islamophobie zu verurteilen, entschlossen gegen Hassreden vorzugehen, bei der Durchsetzung von Antiterrormaßnahmen die Achtung der Menschenrechte zu gewährleisten sowie den gesellschaftlichen Zusammenhalt und die Integration von Einwanderern und Bürgern mit Migrationshintergrund zu fördern. Gestützt auf einen Bericht von João Bosco Mota Amaral, dem Berichtersteller des Ausschusses für politische Angelegenheiten, warnte die Versammlung davor, den Islam als Religion mit islamischem Fundamentalismus als Ideologie zu verwechseln (Abs. 2), welcher von Mota Amaral als „eine Ideologie mit einem politischen Auftrag, die ein Gesellschaftsmodell propagiert, das nicht mit den Werten der Menschenrechte und Demokratie, auf denen europäische Staaten gründen, vereinbar ist“, beschrieben wird. Die Versammlung betonte darüber hinaus, wie wichtig es sei, die eigentlichen Gründe für Extremismus wie Armut, Diskriminierung und soziale Ausgrenzung anzugehen (Abs. 5). Besonderer Nachdruck wurde auf die Rechte von Frauen gelegt, sprich auf die Überwindung von Diskriminierung und Gewalt gegen Frauen und von kulturellem Relativismus, der diskriminierende Praktiken und Menschenrechtsverletzungen auf ihre Kosten rechtfertigt (Abs. 9.4 – 9.7).

Außerdem rief die PACE muslimische Organisationen, Führer und Meinungsbildner zu einer eindeutigen Verurteilung von Extremismus und Terror auf. In diesem Zusammenhang spiele die Rolle der Medien eine wichtige Rolle: Muslimische Führer sollten darauf achten, dass muslimische Wirklichkeit und Ansichten in den Medien fair dargestellt werden und sie sollten sicherstellen, dass auch über moderate Muslime berichtet wird (Abs. 11.8). Sie müssen darüber hinaus in Zusammenarbeit mit entsprechenden Medienorganisationen daran arbeiten, ethische Richtlinien für die Medien im Kampf gegen Islamophobie und für kulturelle Toleranz und Verständigung zu entwickeln (Abs. 11.9).

In der entsprechenden Empfehlung an den Ministerrat (Empfehlung 1831 (2008)) bittet die PACE darum, den Aktivitäten im Bereich des interkulturellen Dialogs Vorrang einzuräumen (Abs. 4.1), für die Integration von Einwanderern und Personen mit Migrationshintergrund

ausreichende Ressourcen zur Verfügung zu stellen (Abs. 4.2) und die Zusammenarbeit im Bereich des interkulturellen und interkonfessionelle Dialogs mit den Vereinten Nationen, der EU, der Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE) und den Organisationen der Islam-Konferenz zu verstärken (Abs. 4.4). Die Versammlung bat darüber hinaus darum, dass die Europäische Kommission gegen Rassismus und Intoleranz (ECRI) und der Menschenrechtskommissar des Europarats spezielle Untersuchungen zur Situation von muslimischen Gemeinschaften in Europa durchführen mögen (Abs. 4.5). Schließlich begrüßte sie die jüngste Absichtserklärung zur Zusammenarbeit zwischen dem Europarat und der *Alliance of Civilizations* (AoC) der Vereinten Nationen und befürwortete die Unterzeichnung eines Memorandums zwischen den beiden Organisationen (Abs. 2 und 4.3).

- *European Muslim communities confronted with extremism, Resolution 1605 (2008) (Provisional edition), Parliamentary Assembly of the Council of Europe, 15 April 2008* (Europäische muslimische Gemeinschaften in der Auseinandersetzung mit dem Extremismus, Entschließung 1605 (2008) (vorläufige Fassung), Parlamentarische Versammlung des Europarats, 15. April 2008)
<http://merlin.obs.coe.int/redirect.php?id=11253>
- *European Muslim communities confronted with extremism, Recommendation 1831 (2008) (Provisional edition), Parliamentary Assembly of the Council of Europe, 15 April 2008* (Europäische muslimische Gemeinschaften in der Auseinandersetzung mit dem Extremismus, Empfehlung 1831 (2008) (vorläufige Fassung), Parlamentarische Versammlung des Europarats, 15. April 2008)
<http://merlin.obs.coe.int/redirect.php?id=11255>

IRIS 2008-7/3

Parlamentarische Versammlung: Neue Texte zum Thema freie Meinungsäußerung

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Im Juni 2007 hat die Parlamentarische Versammlung des Europarats (PACE) drei Texte, die sich auf wichtige Aspekte der freien Meinungsäußerung beziehen, verabschiedet. Im Einzelnen handelt es sich dabei um (in chronologischer Reihenfolge): die Entschließung 1563 (2007) „Bekämpfung des Antisemitismus in Europa“, die Empfehlung 1804 (2007) „Staat, Religion, Säkularität und Menschenrechte“ und die Empfehlung 1805 (2007) „Blasphemie, Beleidigung aus religiösen Gründen und Hetzreden gegen Personen aufgrund ihrer Religion“.

Die Entschließung 1563 sieht eine umfassende Palette von Strategien zur Bekämpfung von Antisemitismus in Europa vor. Der Schwerpunkt liegt auf der wirksamen Durchsetzung (nationaler) Gesetze, die „antisemitische oder andere Hetzreden unter Strafe stellen“; der Verfolgung politischer Parteien, die antisemitisches Gedankengut verbreiten; der Kriminalisierung von rassistisch motiviertem öffentlichem Leugnen von Völkermord, von Verbrechen gegen die Menschlichkeit und Kriegsverbrechen und auf der Verschärfung gesetzlicher Bestimmungen, wonach in Strafverfahren antisemitische Tatmotive als straferschwerend zu berücksichtigen sind. Darüber hinaus wird auf die Notwendigkeit eines Dialogs zwischen Kulturen und Religionen hingewiesen und betont, dass Toleranz gefördert werden muss - unter anderem durch Schaffung eines entsprechenden Bewusstseins an Schulen bzw. in der Öffentlichkeit sowie durch Gedenkveranstaltungen. Die Entschließung spricht darüber hinaus gezielt die Medien an. So werden etwa die staatlichen Stellen aufgefordert, „die Medien zu unterstützen, wenn es darum geht, Selbstdisziplin zu wahren, Toleranz und gegenseitigen Respekt zu fördern und antisemitischen Klischees und Vorurteilen, die in die Alltagssprache eingegangen sind, entgegenzutreten“ (Abs. 12.13) und „die Mechanismen der Selbstkontrolle in den Medien auszubauen, die darauf ausgerichtet sind, Antisemitismus und andere Formen von Hetzreden zu unterbinden“ (Abs. 12.14).

Die Empfehlung 1804 unterstreicht eine wichtige Aussage der PACE ihrer Entschließung 1510 (2006) mit dem Titel „Freie Meinungsäußerung und Respekt für religiöse Überzeugungen“ (siehe IRIS 2006-8: 3), dass nämlich die freie Meinungsäußerung, wie sie durch Art. 10 der Europäischen Menschenrechtskonvention (EMRK) garantiert wird, „nicht weiter eingeschränkt werden darf, um die zunehmende Sensibilität bestimmter religiöser Gruppen zu befriedigen“. Ausgehend von dieser Feststellung heißt es: „Auch wenn wir anerkanntermaßen dazu verpflichtet sind, andere zu respektieren und grundlose Beleidigungen zu unterbinden, versteht es sich von selbst, dass das Recht auf freie Meinungsäußerung nicht eingeschränkt werden kann, um bestimmte Dogmen oder religiöse Überzeugungen einzelner religiöser Gemeinschaften zu schützen“ (Abs. 19).

Vor diesem Hintergrund empfiehlt die PACE dem Ministerkomitee des Europarats (MK) unter anderem: die ungehinderte Ausübung der Religionsfreiheit durch religiöse Gemeinschaften sicherzustellen; „eine Einmischung in religiöse Angelegenheiten nicht zuzulassen, sondern religiöse Organisationen als Teil der Zivilgesellschaft zu betrachten“ und diesen bei der Förderung des Friedens, der Toleranz, des interkulturellen Dialogs und der Ziele und Werte des Europarats im Allgemeinen eine „aktive Rolle zukommen zu lassen“; zu prüfen, wie im interkulturellen Dialog eine religiöse Dimension entwickelt werden kann - auch etwa in Form

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organisierter Treffen mit „religiösen Führern und Vertretern humanistischer und philosophischer Kreise“ und durch das Erforschen und Verbreiten bewährter Praktiken auf diesem Gebiet.

Auch die Empfehlung 1805 nimmt ausdrücklich auf die Entschließung 1510 (2006) „Freie Meinungsäußerung und Respekt für religiöse Überzeugungen“ und auf die jüngsten Arbeiten der Venedig-Kommission des Europarats Bezug. In der Empfehlung wird die Auffassung vertreten, dass „in einer demokratischen Gesellschaft religiöse Gruppen wie andere Gruppen gehalten sind, kritische öffentliche Äußerungen über ihre Tätigkeiten, Lehren und Überzeugungen hinzunehmen, sofern diese Kritik keiner bewussten und grundlosen Beleidigung oder einer Hetzrede gleichkommt und keine Anstiftung zur Störung des öffentlichen Friedens oder Anstiftung zu Gewalt oder Diskriminierung gegen Angehörige einer bestimmten Religion darstellt. Sind Sensibilitätsgrenzen überschritten worden, sollte durch öffentliche Debatten, im Dialog und über verfeineres Kommunikationsgeschick der religiösen Gruppen und der Medien versucht werden, die Sensibilität auf ein vernünftiges Maß zurückzubringen“ (Abs. 5).

Die wichtigsten Empfehlungen an das MK beinhalten unter anderem, dass durch Gesetzgebung und Übung in den einzelnen Ländern gewährleistet ist,

- „dass über Fragen im Zusammenhang mit Religion und Weltanschauung eine offene Debatte geführt werden kann, ohne dabei eine bestimmte Religion zu bevorzugen [...]“;
- „dass der Aufruf zu Hass, Diskriminierung oder Gewalt gegen Personen oder Gruppen von Personen, aufgrund ihrer Religion oder aufgrund anderer Motive, unter Strafe gestellt wird“;
- „dass Handlungen, die geeignet sind, die öffentliche Ordnung bewusst und nachhaltig zu stören, und die im Zusammenhang mit Religion zu öffentlicher Gewalt aufrufen, verboten werden, soweit sich dies in einer demokratischen Gesellschaft als notwendig erweist [...]“;
- „dass Gesetze und Verfahren dahingehend überarbeitet werden, dass Blasphemie nicht mehr als Religionsbeschimpfung unter Strafe gestellt wird“ (Abs. 17.2).

Ferner ruft die Empfehlung die staatlichen Stellen dazu auf, ihren Einfluss geltend zu machen, um zu gewährleisten, dass die verschiedenen religiösen und säkularen Gruppen vermehrt in den Dialog der relevanten Kreise sowie in die anderen auf Ebene der Vereinten Nationen durchgeführten Maßnahmen eingebunden werden und dass die Gesetze und Verfahren in den Vertragsstaaten des Internationalen Übereinkommens zur Beseitigung jeder Form von Rassendiskriminierung „Personen mit einer bestimmten Religionszugehörigkeit nicht bevorzugt zu behandeln“ (Abs. 17.6). Darüber hinaus werden staatliche Stellen aufgefordert, „jede Art von Todesdrohungen oder Gewaltaufrufe von Religionsführern und -gruppen gegen Personen, die von ihrem Recht auf freie Meinungsäußerung in religiösen Dingen Gebrauch gemacht haben“, offiziell zu verurteilen (Abs. 17.7). Daneben werden die staatlichen Stellen aufgefordert, ihre Bemühungen zur Förderung von Toleranz in Zusammenarbeit mit der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) zu verstärken (Abs. 17.8).

- *„Combating anti-Semitism in Europe“, Resolution 1563 (2007) (Provisional edition), Parliamentary Assembly of the Council of Europe, 27 June 2007* („Bekämpfung des Antisemitismus in Europa“, Entschließung 1563 (2007) (vorläufig) Parlamentarische Versammlung des Europarats, 27. Juni 2007)

- „Staat, Religion, Säkularität und Menschenrechte“, Empfehlung 1804 (2007) (vorläufig), Parlamentarische Versammlung des Europarats, 29. Juni 2007
- „Blasphemie, religiöse Beleidigungen und Hetzreden gegen Personen aufgrund ihrer Religion“, Empfehlung 1805 (2007) (vorläufig), Parlamentarische Versammlung des Europarats, 29. Juni 2007
<http://merlin.obs.coe.int/redirect.php?id=15921>

IRIS 2007-8/106

Parlamentarische Versammlung: Entschließung zur Verhütung von Internetkriminalität (Cybercrime) gegen staatliche Institutionen

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Am 28. Juni 2007 verabschiedete die Parlamentarische Versammlung des Europarats (PACE) die Entschließung 1565 (2007) zum Thema wie Internetkriminalität (Cybercrime) gegen staatliche Institutionen in Mitglied- und Beobachterstaaten zu verhindern sei. Der Text war vom Ausschuss für Recht und Menschenrechte ausgearbeitet und dem Politischen Ausschuss sowie dem Ausschuss für Wirtschaft und Entwicklung zur Stellungnahme unterbreitet worden. Die Entschließung behandelt eine Reihe von Themen. An erster Stelle geht es um das Thema der politisch motivierten Datennetz-Angriffe gegenüber staatlichen Institutionen. Hier unterstützt die Entschließung das Übereinkommen über Computerkriminalität SEV-Nr. 185 des Europarats und unterstreicht die Zusammenarbeit zwischen den Staaten, dem privaten Sektor und den nichtstaatlichen Organisationen (NGOs), um die Ziele der Konvention zu fördern.

Die Entschließung der Parlamentarischen Versammlung des Europarats legt dar, dass politisch motivierte Angriffe gegen militärische oder staatliche Internetseiten immer häufiger vorkämen und ausgeklügelter seien. Tatsächlich sei es zum ersten Mal zu kriminellen Datennetz-Angriffen gegen einen Staat als Ganzes gekommen, indem versucht wurde, die Funktionsweise der lebenswichtigen Infrastruktur der Republik Estland zum Erliegen zu bringen. Der Politische Ausschuss bemerkte in seiner Stellungnahme, dass dieser Angriff besonders bösartig gewesen sei, weil er die digitale Infrastruktur des Landes stillzulegen vermochte, die Internetseiten der wichtigsten staatlichen Institutionen zum Erliegen brachte, Estlands größte Bank, *Hansabanka*, gefährdete und die Internetseiten verschiedener Tageszeitungen überschwemmte. Die Entschließung zielt insbesondere auf die Verhütung derjenigen Internetkriminalität ab, die die immer kritischere IT-Infrastruktur der betroffenen Staaten destabilisieren kann. Der Politische Ausschuss bemerkt ebenfalls, dass es politisch motivierte Angriffe gäbe und dass diese auch Fernseh- und Radiosender, Online-Tageszeitungen und staatliche Internetseiten einschließen würden.

In der Entschließung der PACE werden die Mitglied- und Beobachterstaaten aufgefordert, verschiedene Maßnahmen zur Verhinderung solcher Angriffe wie auf Estland zu ergreifen. Zu diesen Maßnahmen würden zählen die Entwicklung eines Rahmens zur Erleichterung der dringlichen politischen Konsultationen und des Informationsaustauschs, und zwar auf allen erforderlichen Ebenen in den betreffenden Ländern, wenn es zu ausgedehnten Datennetz-Angriffen kommt; die Entwicklung von Konzepten und Strategien auf der Grundlage einschlägiger technischer Studien, um die kritischen Infrastrukturen zu schützen und die erforderlichen menschlichen, finanziellen und technischen Ressourcen zur Verfügung zu

stellen; und die engere Einbindung des privaten Sektor, insbesondere durch die Bildung von öffentlich-privaten Partnerschaften für eine effizientere und sektorübergreifende internationale Zusammenarbeit gegen Internetkriminalität. Neben dem Ansprechen dieser Art der gegen staatliche Institutionen gerichteten Internetkriminalität wird in der EntschlieÙung die Bedeutung der Ratifizierung und Umsetzung der Cybercrime-Konvention unterstrichen. Auch wird auf das *Übereinkommen des Europarats zur Verhütung des Terrorismus SEV-Nr. 196* verwiesen, die ein zusätzliches Instrument im Kampf gegen Internet-Terrorismus darstelle und sich auch gegen die Nutzung des Internets für terroristische Zwecke richte.

- Resolution 1565 (2007) "How to prevent cybercrime against state institutions in member and observer states?", provisional edition, 28 June 2007 (EntschlieÙung 1565 (2007) "Wie kann man Internetkriminalität (Cybercrime) gegen staatliche Institutionen in Mitglied- und Beobachterstaaten verhindern?", vorläufige Ausgabe, 28. Juni 2007) <http://merlin.obs.coe.int/redirect.php?id=10935>

IRIS 2007-9/102

Parlamentarische Versammlung: Das Bild der Frau in der Werbung

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Die Parlamentarische Versammlung des Europarats (PACE) ist unzufrieden mit der erniedrigenden Einstellung der Werbeindustrie gegenüber Frauen und dem daraus resultierenden verzerrten Frauenbild. Die Tatsache, dass ungefähr die Hälfte der Weltbevölkerung in einer demütigenden und herabwürdigenden Art und Weise abgebildet wird und dass Frauen als Konsumware oder einfach als Lustobjekte dargestellt werden, ist nach Ansicht der Versammlung in bestimmten Fällen als Angriff auf die Menschenwürde zu betrachten. Dass die Gesundheit insbesondere junger Mädchen durch manipulative Werbung und das daraus entstehende „Schönheitsideal“ negativ beeinflusst werden kann (etwa durch Magersucht), unterstreicht diese Besorgnis nur noch.

Um das grundsätzliche Ziel zu erreichen, dass jede Frau „ihr wahres Bild vor dem Hintergrund der Welt, in der sie ihr alltägliches Leben lebt,“ sehen können sollte, hat die PACE eine EntschlieÙung zu diesem Thema verabschiedet. In dieser EntschlieÙung betont sie, dass die Meinungsfreiheit auch für die Werbeindustrie ein Grundrecht sei. Es sei jedoch möglich, angemessene Maßnahmen gegen die herabwürdigende Darstellung von Frauen bei gleichzeitiger Wahrung der Meinungsfreiheit zu ergreifen.

Auf Grundlage des Übereinkommens der Vereinten Nationen vom 18. Dezember 1979 zur Beseitigung jeder Form von Diskriminierung der Frau (CEDAW) empfiehlt die PACE den Mitgliedern des Europarats, drei Arten von Maßnahmen zu erwägen. Vor allen Dingen müssen entsprechende nationale Gesetze verabschiedet werden, um weiteren Schaden von der Würde der Frauen abzuwenden. Des Weiteren sollte der Förderung von Selbstregulierung mehr Nachdruck verliehen werden. In der EntschlieÙung wird verlangt, dass nationale Ethikkodexe rechtsverbindlich sind und von Behörden durchgesetzt werden, die einzig für diesen Zweck benannt wurden. Und schließlich hat die PACE vorgeschlagen, dass die Mitgliedstaaten, wie sie es nennt, „Erziehungsmaßnahmen“ ergreifen. Diese Maßnahmen bieten ein Training, das den Menschen helfen sollte, kritisch auf Werbung reagieren zu können. In dem Dokument wird eine Reihe möglicher Maßnahmen aufgezeigt, unter anderem Trainingsprogramme in (Werbe)-Schulen, Pressekampagnen für öffentliches Bewusstsein, Beschwerdestellen und ein Preis für die „Werbung, die am wirksamsten mit sexistischen Stereotypen aufräumt“.

In einer nachfolgenden Empfehlung zu der Angelegenheit hat die PACE das Ministerkomitee aufgefordert, unter anderem einen europäischen Verhaltenskodex aufzustellen. Durch die Behandlung des Problems sowohl auf nationaler als auch auf europäischer Ebene hofft die PACE, die weit verbreiteten Probleme, die sich aus erniedrigender Werbung ergeben, zu überwinden.

- Parlamentarische Versammlung des Europarats, Entschließung 1557 (2007), vorläufige Fassung, „Das Bild der Frau in der Werbung“, 26. Juni 2007
<http://merlin.obs.coe.int/redirect.php?id=10931>
- Parlamentarische Versammlung des Europarats, Empfehlung 1799 (2007), vorläufige Fassung, „Das Bild der Frau in der Werbung“, 26. Juni 2007
<http://merlin.obs.coe.int/redirect.php?id=10933>

IRIS 2007-9/101

Parlamentarische Versammlung: Bedrohungen für das Leben und die Meinungsfreiheit von Journalisten

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Am 25. Januar 2007 verabschiedete die parlamentarische Versammlung des Europarats (PACE) die Entschließung 1535 (2007) und die Empfehlung 1783 (2007), die beide mit „Bedrohungen für das Leben und die Meinungsfreiheit von Journalisten“ überschrieben sind und sich auf einen gleichnamigen Bericht gründen. Die Dokumente entstanden aus der tiefen Besorgnis der PACE wegen einer kürzlichen Serie von Morden an Journalisten sowie Übergriffen und Drohungen (sogar Todesdrohungen) gegen Journalisten in verschiedenen Mitgliedstaaten des Europarats.

Die Entschließung betont die grundlegende Bedeutung der Meinungs- und Informationsfreiheit in den Medien für die Demokratie und weist darauf hin, dass Letztere in Gefahr gerate, wenn Journalisten um ihr Leben und ihre Sicherheit fürchten müssten. Sie unterstreicht die Komplementarität von Meinungsfreiheit und Religionsfreiheit und erklärt: „Gewaltsame Übergriffe und Drohungen von irgendwelchen Gruppen unter Berufung auf ihre Religion gegen Meinungsäußerungen in schriftlicher, mündlicher oder bildlicher Form haben in den Demokratien Europas keinen Platz“ (Abs. 4). Sie erinnert an die Verantwortung der staatlichen Behörden, die Morde an Journalisten wie auch Übergriffe und Drohungen gegen sie vollständig zu untersuchen. Sie fordert zu Verhältnismäßigkeit bei der Anwendung rechtlicher Beschränkungen der Meinungsfreiheit auf.

Die Entschließung plädiert darüber hinaus für die Verabschiedung spezifischer Maßnahmen durch nationale Parlamente, darunter eine genaue Überwachung der kriminaltechnischen Ermittlungen sowie Haftbarmachung von Behörden, sollten diese ihrer Untersuchungs- und Strafverfolgungspflicht nicht nachkommen, für die Abschaffung von „Gesetzen, die die Meinungsfreiheit unverhältnismäßig einschränken und geeignet sind, missbraucht zu werden, um zu extremem Nationalismus und Intoleranz aufzustacheln“ (Abs. 10.2), für Folgemaßnahmen bei ergebnislosen Untersuchungen (auch bei Fällen verschwundener Journalisten) sowie für die Entwicklung wirksamer Strategien zur Gewährleistung der Sicherheit von Journalisten. In der Folge des Mordes an Hrant Dink drängt sie auf die Abschaffung von Art. 301 des türkischen Strafgesetzbuches über die „Beleidigung des Türkentums“, nach dem Dink und weitere Journalisten verfolgt wurden, und erklärt: „Das Fortbestehen eines solchen Gesetzes, welches die Meinungsfreiheit begrenzt, verleiht

juristischen und sonstigen Angriffen auf Journalisten den Anstrich der Rechtmäßigkeit“ (Abs.13).

Die Empfehlung ist prägnanter und konzentriert sich auf konkrete Maßnahmen, die für das Ministerkomitee vorgesehen sind: eine Verurteilung von Angriffen auf Journalisten angesichts der jüngsten Zunahme solcher Angriffe in Europa; ein Aufruf an die zuständigen Behörden, wirksam gegen Drohungen gegen Journalisten vorzugehen und eine Strategie zum Schutz von Journalisten zu entwickeln, die von solch schwerwiegenden Bedrohungen betroffen sind; den zuständigen Lenkungsausschuss anzuweisen, hierzu politische Leitlinien zu entwickeln; „einen Mechanismus zur Aufdeckung und Analyse von Angriffen gegen Journalisten sowie von anderen schweren Verstößen gegen die Medienfreiheit in Europa einzurichten, in der Absicht, für die Mitgliedstaaten politische Empfehlungen zu entwickeln, wie Journalisten und die Medienfreiheit besser zu schützen seien, mit regelmäßiger Berichterstattung zu diesem Thema an die Versammlung“ (Abs. 2.4 - siehe auch Entschließung 1535 (2007), Abs. 14); entsprechende Themen und Ansätze des Europarats auf Ebene der Vereinten Nationen zu fördern.

- Bedrohungen für das Leben und die Meinungsfreiheit von Journalisten), Entschließung 1535 (2007), Parlamentarische Versammlung des Europarats, 25. Januar 2007
<http://merlin.obs.coe.int/redirect.php?id=12222>
- Bedrohungen für das Leben und die Meinungsfreiheit von Journalisten, Empfehlung 1783 (2007), Parlamentarische Versammlung des Europarats, 25. Januar 2007
<http://merlin.obs.coe.int/redirect.php?id=12225>
- Bedrohungen für das Leben und die Meinungsfreiheit von Journalisten, Bericht, Parlamentarische Versammlung des Europarats, Komitee für Kultur, Wissenschaft und Bildung (Berichtersteller: Andrew McIntosh), Dok. 11143, 23. Januar 2007
<http://merlin.obs.coe.int/redirect.php?id=12226>

IRIS 2007-5/102

Parlamentarische Versammlung: Aufrufe zur Entkriminalisierung der Verleumdung

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Am 4. Oktober 2007 hat die Parlamentarische Versammlung des Europarats die Entschließung 1577 (2007) und die Empfehlung 1814 (2007) veröffentlicht, beide mit dem Titel „Zur Entkriminalisierung der Verleumdung“.

In der Entschließung 1577 verweist die Parlamentarische Versammlung erneut auf die Bedeutung, die sie der freien Meinungsäußerung für Journalisten als wesentlichem Merkmal der Demokratie immer wieder beigemessen hat (siehe IRIS 2003-2/2 und IRIS 2007-5/102). Die Entschließung erkennt das rechtmäßige Ziel der Gesetze gegen Verleumdung an (z. B. zum Schutz des Rufes und der Rechte anderer), drängt aber darauf, diese nur „mit äußerster Zurückhaltung anzuwenden, da sie die freie Meinungsäußerung ernsthaft einschränken können“. In der Praxis würden Gesetze gegen Verleumdung „missbraucht“, um kritische Medien mundtot zu machen. Die missbräuchliche Anwendung der Gesetze gegen Verleumdung führe zu „einer echten Selbstzensur der Medien und (...) einem langfristigen Verlust der demokratischen Debatte und der Verbreitung allgemeiner Informationen“.

Die Entschließung begrüßt das Eintreten des OSZE-Vertreters für die Freiheit der Medien zugunsten der Entkriminalisierung der Verleumdung (siehe IRIS 2006-10/2), merkt aber auch „mit großer Sorge an, dass das Gesetz in vielen Ländern für Verleumdung Gefängnisstrafen

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vorsieht und dass einige Länder diese auch noch in der Praxis anwenden - zum Beispiel Aserbeidschan und die Türkei“. Sie verweist auf die abschreckende Wirkung, die Gefängnisstrafen und unangemessen hohe Schadenersatzsummen in Verleumdungsverfahren auf Journalisten haben können.

Diese und andere Überlegungen haben die Parlamentarische Versammlung veranlasst, die Mitgliedstaaten des Europarates unter anderem dazu aufzurufen:

- „Gefängnisstrafen für Verleumdung unverzüglich abzuschaffen“;
- sicherzustellen, dass die Strafverfolgung von Verleumdungen nicht „missbraucht“ wird;
- genaue gesetzliche Definitionen für Verleumdung zu formulieren, um eine willkürliche Anwendung der Gesetze zu vermeiden;
- „sicherzustellen, dass das Zivilrecht einen wirksamen Schutz der Würde von Personen vorsieht, die von Verleumdung betroffen sind“;
- „Aufrufe zu Gewalt, Hass oder Diskriminierung sowie die Bedrohung von Einzelnen oder Personengruppen aufgrund ihrer Rasse, Farbe, Sprache, Religion, Nationalität oder nationaler oder ethnischer Herkunft unter Strafe zu stellen, sofern dies vorsätzlich geschieht“, wie in der Allgemeinen Grundsatzerklärung Nr. 7 der Europäischen Kommission gegen Rassismus und Intoleranz vorgesehen;
- „nur für Gewaltaufrufe, Hassreden und die Leugnung von Völkermord Haftstrafen vorzusehen“;
- die nationale Gesetzgebung in Einklang mit der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte zu bringen, indem: gesetzliche Bestimmungen für den erhöhten Schutz öffentlicher Personen abgeschafft werden und der Schutz vertraulicher Quellen von Journalisten gewährleistet wird;
- „angemessene und verhältnismäßige Höchstbeträge für Schadenersatz in Verleumdungsfällen festgesetzt werden, sodass das Überleben des beklagten Medienunternehmens nicht gefährdet wird“.

Die Entschließung ruft außerdem zu spezifischen Gesetzesänderungen in Frankreich und in der Türkei auf.

In der Empfehlung 1814 ruft die Parlamentarische Versammlung das Ministerkomitee des Europarats dazu auf:

- alle Mitgliedstaaten des Europarats dringend aufzufordern, ihre Verleumdungsgesetze zu überprüfen und „wo nötig“ im Einklang mit der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte zu ändern, „um jedes Risiko des Missbrauchs und der ungerechtfertigten Verfolgung auszuschließen“.
- den Lenkungsausschuss Medien und neue Kommunikationsdienste (CDMC) anzuweisen, an seine eigenen Arbeiten in diesem Bereich anzuknüpfen (siehe IRIS 2006-5/5 und IRIS 2006-10/105) und einen „Empfehlungsentwurf für die Mitgliedstaaten vorzubereiten, der detaillierte Regelungen zur Verleumdung enthält, um den Missbrauch der Strafverfolgung auszumerzen“;
- den CDMC und den Lenkungsausschuss Menschenrechte (CDDH) anzuweisen, die Empfehlung des Ministerkomitees Nr. R (97) 20 zur „Hassrede“ (siehe IRIS 1997-10/4) zu überarbeiten „oder Richtlinien vorzubereiten, die die neuen Entwicklungen in diesem Bereich berücksichtigen“, insbesondere in der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte.

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- „Zur Entkriminalisierung der Verleumdung“, Entschließung 1577 (2007), Parlamentarische Versammlung des Europarats, 4. Oktober 2007
<http://merlin.obs.coe.int/redirect.php?id=15500>
- „Zur Entkriminalisierung der Verleumdung“, Empfehlung 1814 (2007), Parlamentarische Versammlung des Europarats, 4. Oktober 2007
<http://merlin.obs.coe.int/redirect.php?id=15501>

IRIS 2007-10/104

Parlamentarische Versammlung: Empfehlung zu Minderheitensprachen, Rundfunk und interinstitutioneller Kooperation

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Am 17. November 2006 verabschiedete die parlamentarische Versammlung des Europarats (PACE) die Empfehlung 1773 (2006) mit dem Titel „Leitlinien 2003 zur Verwendung von Minderheitensprachen in den Rundfunkmedien und die Standards des Europarats: Notwendige Stärkung der Kooperation und Synergie mit der OSZE“.

Die Empfehlung unterstreicht die Bedeutung sprachlicher Vielfalt und sprachlicher Rechte für Gesellschaften im Allgemeinen wie auch ihre spezielle Bedeutung für Personen, die zu Minderheiten gehören, für die Entwicklung ihrer Kultur und Identität und für den Genuss (gleichberechtigten) Zugangs zu Informationen. Die Bedeutung des Beitrags der Medien zur Förderung von Demokratie und Bekämpfung von Intoleranz wird ebenfalls unterstrichen.

Diese Prioritäten werden alle in einer Reihe von normativen Instrumenten wie der Europäischen Charta der Regional- oder Minderheitensprachen (ECMRL) und dem Rahmenübereinkommen zum Schutz nationaler Minderheiten (FCNM) bestätigt, auf die sich die Empfehlung stützt. Zusätzlich wird auf die eindeutige thematische Relevanz der Leitlinien zur Verwendung von Minderheitensprachen im Rundfunk verwiesen (siehe IRIS 2004-1: 3 und IRIS 2004-3: 2). Die eigenen Dokumente der PACE, insbesondere Empfehlung 1623 (2003) „Rechte nationaler Minderheiten“, die unter anderem zur Abschaffung von „Beschränkungen für die Einrichtung und den Betrieb von privaten Rundfunkmedien in Minderheitensprachen“ aufruft, werden in Erinnerung gerufen (siehe IRIS 2004-1: 4). Darüber hinaus wird der gegenseitig ergänzende Charakter der Instrumente des Europarats und der Organisation für Sicherheit und Zusammenarbeit in Europa (OSZE), die darauf abzielen „zu garantieren, dass Minderheiten ihre eigene Sprache verwenden können und dass diese Sprachen von den Medien ausgestrahlt werden“, betont.

Im rechtswirksamen Teil des Textes empfiehlt die PACE, der Ministerrat möge

- seine Anstrengungen verstärken, die weitere Unterzeichnung und Ratifizierung der ECMRL, des FCNM sowie des europäischen Übereinkommens über grenzüberschreitendes Fernsehen „ohne Vorbehalte und einschränkende Erklärungen“ durch Staaten sicherzustellen;

- Staaten auffordern „zu gewährleisten, dass Menschen, die einer nationalen Minderheit angehören oder Regional- oder Minderheitensprachen verwenden, in Übereinstimmung mit Art. 11 der ECMRL [„Medien“] und Art. 9 des FCNM [der sich mit Meinungsfreiheit und Medienzugang befasst] einen ausgewogenen Zugang zu öffentlich-rechtlichen Rundfunkmedien und ein tatsächliches Recht zur Einrichtung und zum Betrieb von privaten Rundfunkmedien“ haben, wie bereits dargelegt durch die Tätigkeit der zuständigen Überwachungsorgane der beiden Vereinbarungen sowie relevante Empfehlungen und Entschlüsse der PACE und die Leitlinien 2003 zur Verwendung von Minderheitensprachen in den Rundfunkmedien;

- die Leitlinien 2003 bei der Überwachung der Umsetzung von ECMRL und FCNM „regelmäßig berücksichtigen“;

- „den zuständigen Ausschuss bei der Überarbeitung des europäischen Übereinkommens über grenzüberschreitendes Fernsehen anweisen, Art. 10 [„Kulturelle Ziele“] des Übereinkommens zu ändern, um mehrsprachige audiovisuelle Werke wie auch audiovisuelle Werke, die in Regional- oder Minderheitensprachen produziert wurden, stärker zu fördern“.

Die Empfehlung schließt mit einem Hinweis auf das „Potenzial für verstärkte Kooperation und Kontakte“ zwischen dem Europarat und dem OSZE-Hochkommissar für nationale Minderheiten und einer Ermutigung zu „weiteren Synergien, unter anderem durch praktische Projekte von gemeinsamem Interesse, in die Vertreter der Zivilgesellschaft mit eingebunden werden könnten“. Dieses Ziel verbesserter Kooperation und Synergien zwischen dem Europarat und der OSZE im Hinblick auf nationale Minderheiten findet sich auch in der Erklärung des Warschauer Gipfels der Staats- und Regierungschefs der Mitgliedstaaten des Europarats vom Mai 2005.

- *The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance cooperation and synergy with the OSCE, Recommendation 1773 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 17 November 2006* (Leitlinien 2003 zur Verwendung von Minderheitensprachen im Rundfunk und die Standards des Europarats: Notwendige Stärkung der Kooperation und Synergie mit der OSZE, Empfehlung 1773 (2006) (vorläufige Fassung), Parlamentarische Versammlung des Europarats, 17. November 2006)
<http://merlin.obs.coe.int/redirect.php?id=10578>
- *Guidelines on the use of Minority Languages in the Broadcast Media, October 2003* (Leitlinien zur Verwendung von Minderheitensprachen im Rundfunk), Oktober 2003)
<http://merlin.obs.coe.int/redirect.php?id=10580>

IRIS 2007-2/2

Parlamentarische Versammlung: Bild von Asylsuchenden, Aussiedlern und Flüchtlingen in den Medien

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Am 5. Oktober 2006 hat die Parlamentarische Versammlung des Europarats (PACE) die Empfehlung 1768 (2006) mit dem Titel „Das Bild von Asylsuchenden, Migranten und Flüchtlingen in den Medien“ verabschiedet, die auf einem ausführlichen Bericht mit dem gleichen Titel basiert.

Die Empfehlung hat ihre Wurzeln in Art. 10 der Europäischen Menschenrechtskonvention (EMRK) und erinnert ausdrücklich an die Hauptpunkte der PACE-Resolution 1510 (2006) mit dem Titel „Freie Meinungsäußerung und Respekt für religiöse Überzeugungen“ (siehe IRIS 2006-8: 2), derzufolge die Meinungsfreiheit „nicht stärker eingeschränkt werden darf, um die zunehmende Sensibilität bestimmter religiöser Gruppen zu befriedigen“. Darüber hinaus verweist sie auf die Verantwortlichkeit der Medien, nicht nur den positiven Beitrag von Asylsuchenden, Migranten und Flüchtlingen zur Gesellschaft hervorzuheben, sondern diese auch vor der Verbreitung negativer Klischees zu schützen. In diesem Zusammenhang erinnert die Resolution an die Arbeit der Parlamentarischen Versammlung des Europarats zu entsprechenden Themen, die Arbeit der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) sowie die beiden Empfehlungen des Ministerkomitees über Hetzreden (Empfehlung Nr. R (97) 20) und über die Förderung einer Kultur der Toleranz in den Medien (Empfehlung Nr. R (97) 21, siehe IRIS 1997-10: 4). Darüber hinaus unterstreicht sie die Bedeutung der Darstellung von Asylsuchenden, Migranten und Flüchtlingen in den Medien

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und der Berichterstattung über ihre Ansichten und über Themen, die für sie von Interesse sein können.

Eine Reihe von Resolutionen wendet sich an bestimmte Parteien. Erstens wird empfohlen, dass das Ministerkomitee:

- den Lenkungsausschuss für Medien und neue Kommunikationsdienste (CDMC) dazu auffordert, die Arbeitsweise von Medien-Beschwerdestellen und die Abläufe der Beschwerdeverfahren in den Mitgliedstaaten zu untersuchen und Empfehlungen aufzustellen, wobei besonders Schwierigkeiten im Zusammenhang mit der Gewährung von Entschädigungen berücksichtigt werden sollen;
- der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) bei ihren Kontrollarbeiten „volle Unterstützung und entsprechende Ressourcen“ zur Verfügung stellt und sie dazu auffordert, die Politik und Rechtsprechung der Mitgliedstaaten im Hinblick auf Rassismus und Intoleranz in den Medien zu untersuchen, eine „Medienbeobachtungsstudie zur Berichterstattung über Fremdenfeindlichkeit, Rassismus und Intoleranz in den Medien“ einzurichten und einen Bericht über die Effektivität der Gesetze gegen die Aufstachelung zum Hass auszuarbeiten;
- durch den „Eurimage[sic!]-Fonds und das Europäische Übereinkommen über die Gemeinschaftsproduktion von Kinofilmen die Produktion von Filmen fördert, die sich mit wichtigen Themen für Migranten, Flüchtlinge und Asylsuchende befassen und von Personen aus diesem Gesellschaftskreis produziert werden“.

Zweitens werden die Mitgliedstaaten des Europarates dazu aufgefordert, Standards der freien Meinungsäußerung aufrechtzuerhalten, die gemäß Art. 10 EMRK entwickelt wurden, und zugleich den Gesetzen gegen Volksverhetzung bzw. Aufstachelung zum Hass, gegen Gewalt und Diskriminierung Nachdruck zu verschaffen (bzw. entsprechende Gesetze zu verabschieden, sofern sie noch nicht existieren). Mitgliedstaaten sind außerdem dazu aufgefordert, „Strafgesetze unter anderem gegen das öffentliche Verbreiten bzw. Verfügbarmachen von Material mit rassistischem Inhalt oder Zweck sowie gegen dessen Herstellung oder Aufbewahrung zu verabschieden und umzusetzen“; dasselbe gilt für „Gesetze zur Bestrafung der Anführer von rassistischen Gruppen“. Ferner sollen die Mitgliedstaaten „öffentliche Gelder für Organisationen streichen, die derartige Aktivitäten unterstützen“. Weitere Maßnahmen beziehen sich auf: die Verabschiedung und/oder Umsetzung von nationalen Gesetzen zur Vermeidung exzessiver Konzentrationen in der Medienlandschaft; (sofern erforderlich) die Unterzeichnung und Ratifizierung des Europäischen Übereinkommens über das grenzüberschreitende Fernsehen, der Cybercrime-Konvention und des Zusatzprotokolls über die Kriminalisierung von Akten rassistischer oder fremdenfeindlicher Natur, die durch Computersysteme begangen werden; die Einführung oder Unterstützung der Charta europäischer politischer Parteien für eine nicht-rassistische Gesellschaft durch alle demokratischen Parteien.

Die Medien selbst sind aufgefordert, Verhaltensnormen mit spezifischen Leitlinien auszuarbeiten, um Klischeebildung und Intoleranz entgegenzutreten; die Aufnahme von Gewissenskláuseln in journalistische Verträge zu fördern; effiziente nationale Beschwerdeverfahren einzuführen, die bei Klagen über Medienbeiträge anzuwenden sind, die „intolerante, rassistische oder fremdenfeindliche Haltungen gegenüber Migranten, Asylsuchenden oder Flüchtlingen“ unterstützen; das Einverständnis von Flüchtlingen oder Asylsuchenden einzuholen, bevor Material verwendet wird, das zur Identifizierung ihres Status als Flüchtling oder Asylsuchendem führt, und davon abzusehen, bei Berichten über Gesetzesverstöße auf die Herkunft oder Nationalität der Person zu verweisen, es sei denn, dies ist aus bestimmten Gründen gerechtfertigt.

Schließlich sind die Mitgliedstaaten und Medien dazu aufgefordert: die Anstellung von Migranten und Flüchtlingen in den Medien zu unterstützen, u. a. durch die Bereitstellung

spezieller Ausbildungsprogramme; „die Ausbildung und Sensibilisierung von Medienfachleuten zu Themen im Zusammenhang mit einer multikulturellen, pluralistischen Gesellschaft und der Bedeutung von Intoleranz, Integration und Gleichberechtigung für alle zu erleichtern, zu finanzieren und zu fördern“; Ausschreibungen und Preise für die beste Berichterstattung über entsprechende Themen zu unterstützen und „die Produktion und Ausstrahlung von Sendungen für und von Migranten und Flüchtlingen zu fördern und zu finanzieren, u. a. in ihrer eigenen Sprache, und die Präsenz von Migranten und Flüchtlingen in der Gesellschaft durch ihre Einbeziehung in herkömmliche Fernsehprogramme und zu Hauptsendezeiten zu fördern“. Es wird ebenfalls auf die Bedeutung der lokalen Medien bei der Förderung von Integration und Kooperation zwischen jungen Menschen und den Medien hingewiesen, um das Bewusstsein für eine multikulturelle und pluralistische Gesellschaft zu schärfen.

- *The image of asylum-seekers, migrants and refugees in the media, Recommendation 1768 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 5 October 2006* (Das Bild von Asylsuchenden, Migranten und Flüchtlingen in den Medien, Empfehlung Nr. 1768 (2006) (Vorübergehende Ausgabe), Parlamentarische Versammlung des Europarates, 5. Oktober 2006)
<http://merlin.obs.coe.int/redirect.php?id=10476>
- *The image of asylum-seekers, migrants and refugees in the media, Report by the Committee on Migration, Refugees and Population (Rapporteur: Mrs Tana de Zulueta), Parliamentary Assembly of the Council of Europe, Doc. 11011, 10 July 2006* (Das Bild von Asylsuchenden, Migranten und Flüchtlingen in den Medien, Bericht des Komitees für Migranten, Flüchtlinge und Bevölkerung (Berichterstatterin: Frau Tana de Zulueta), Parlamentarische Versammlung des Europarates, Dok. 11011, 10. Juli 2006)
<http://merlin.obs.coe.int/redirect.php?id=10478>

IRIS 2006-10/6

Parlamentarische Versammlung: Resolution über die freie Meinungsäußerung und den Respekt für religiöse Überzeugungen

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Am 28. Juni 2006 hat die Parlamentarische Versammlung des Europarats (PACE) die Resolution 1510 (2006) mit dem Titel „Freie Meinungsäußerung und Respekt für religiöse Überzeugungen“ verabschiedet. Sie unterstreicht die zentrale Bedeutung sowohl der Meinungsfreiheit als auch der Gedanken-, Gewissens- und Religionsfreiheit, die unter dem Schutz von Artikel 10 und 9 der Europäischen Menschenrechtskonvention (EMRK) stehen, für demokratische Gesellschaften. Außerdem betont sie die Realität der kulturellen und religiösen Vielfalt in den Mitgliedstaaten des Europarats und fügt hinzu, dass diese Vielfalt eine „Quelle gegenseitiger Bereicherung, nicht von Spannungen“ und die Basis für interkulturellen Dialog, Verständigung und Respekt sein solle (Absatz 5).

Aufgrund dieser - und weiterer ähnlicher - Erwägungen stellt die Resolution fest, dass die Gedanken- und Meinungsfreiheit in einer demokratischen Gesellschaft „die offene Diskussion über Fragen der Religion und des Glaubens“ einschließen müsse (Absatz 3). Weiter heißt es: „Angriffe auf Personen aufgrund ihrer Religion oder Rasse dürfen nicht erlaubt sein, aber Blasphemiegesetze dürfen auch nicht dazu benutzt werden, die Meinungs- und Gedankenfreiheit zu beschneiden“ (Absatz 3). Die Resolution erwähnt die historische Tendenz von Gesetzen, die Blasphemie und Kritik an religiösen Praktiken und Dogmen unter Strafe stellen, den wissenschaftlichen und gesellschaftlichen Fortschritt zu behindern (Absatz 7), und merkt an, dass die „kritische Diskussion“ und die künstlerische Freiheit

traditionell dazu beigetragen hätten, den individuellen und gesellschaftlichen Fortschritt zu fördern (Absatz 9). „Kritische Diskussion, Satire, Humor und künstlerischer Ausdruck brauchen daher einen höheren Grad an Meinungsfreiheit, und der Einsatz von Übertreibungen darf nicht als Provokation gewertet werden“, heißt es (Absatz 9).

Absatz 11 der Resolution stellt einige der wichtigsten Prinzipien aus der einschlägigen Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte dar. Insbesondere wird festgestellt, dass politische Äußerungen und Diskussionen über Themen von öffentlichem Interesse nur eng begrenzten Einschränkungen unterworfen werden dürfen, während die Staaten bei der Regulierung einen größeren Ermessensspielraum haben, wenn eine Äußerung dazu „geeignet ist, intime persönliche moralische Überzeugungen oder eine Religion anzugreifen“. Weiterhin heißt es in der Resolution: „Was geeignet ist, einen erheblichen Angriff gegen Personen einer bestimmten religiösen Überzeugung darzustellen, ist zeitlich und örtlich starken Schwankungen unterworfen“.

Absatz 12 der Resolution enthält die Hauptaussage: Die in Artikel 10 EMRK verankerte Meinungsfreiheit „darf nicht weiter eingeschränkt werden, um die zunehmende Sensibilität bestimmter religiöser Gruppen zu befriedigen“, aber „Hetzreden gegen religiöse Gruppen sind nicht vereinbar mit den Grundrechten und -freiheiten, die von der Konvention und der Rechtsprechung des Gerichtshofs garantiert werden“.

Die Parlamentarische Versammlung ruft die nationalen Parlamente auf, über Fragen der Meinungsfreiheit und des Respekts für religiöse Überzeugungen zu diskutieren, und fordert ihre Mitglieder auf, ihr entsprechende Berichte zukommen zu lassen (Absatz 13). Sie spricht sich für Diskussionen innerhalb und zwischen den Religionsgemeinschaften aus und fügt hinzu, der interreligiöse Dialog solle dazu dienen, „ein gemeinsames Verständnis und einen Verhaltenskodex für religiöse Toleranz zu entwickeln“ (Absatz 14). Sie würde Diskussionen zwischen Medienfachleuten über die Frage begrüßen, welche Antworten die Medienethik speziell auf die relevanten Fragen geben könnte, und schlägt vor, dass „Pressebeschwerdestellen, Medienombudsleute oder andere Selbstregulierungseinrichtungen [...] über mögliche Schritte gegen Angriffe auf religiöse Überzeugungen diskutieren“ (Absatz 15). Die Parlamentarische Versammlung fördert auch den interkulturellen und interreligiösen Dialog unter Einbeziehung der Zivilgesellschaft und der Medien (Absatz 16) und die aktiven Anstrengungen von Gremien des Europarats zur Verhinderung von „Hetzreden, die sich gegen verschiedene religiöse und ethnische Gruppen richten“ (Absatz 17). Abschließend bekräftigt die Resolution die Entschlossenheit der Parlamentarischen Versammlung, relevante Fragen in Zukunft nochmals zu prüfen (Absatz 18).

- *Freedom of expression and respect for religious beliefs, Resolution 1510 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 28 June 2006* (Freie Meinungsäußerung und Respekt vor religiösen Überzeugungen, Resolution 1510 (2006) (Vorläufige Ausgabe), Parlamentarische Versammlung des Europarats, 28. Juni 2006)
<http://merlin.obs.coe.int/redirect.php?id=10272>

Parlamentarische Versammlung: Entschließung zur Bekämpfung von Nazi-Ideologie

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Am 12. April 2006 verabschiedete die parlamentarische Versammlung des Europarats (PACE) die Entschließung 1495 (2006) mit dem Titel „Kampf gegen das Wiederaufleben der Nazi-Ideologie“.

Eine der zentralen Prämissen lautet, dass das moderne Europa „als eine völlige Ablehnung nationalsozialistischer Ideen und Grundsätze begriffen wurde, um eine Wiederholung derartig entsetzlicher Verbrechen, wie sie vom Nazi-Regime im Namen „rassischer Überlegenheit“ begangen wurden, für immer auszuschließen“. Die Entschließung besagt, dass der Europarat „als älteste politische Organisation Europas, gegründet zum Schutz und zur Förderung von Demokratie, Menschenrechten und Rechtsstaatlichkeit, eine besondere Verantwortung hat, um ein Wiederaufleben der Nazi-Ideologie zu verhindern“.

Sie besagt weiterhin, dass die PACE „wegen einiger Entwicklungen, die darauf hindeuten, dass das öffentliche Bewusstsein um die Gefährlichkeit der Nazi-Ideologie und ihre Ablehnung durch die Gesellschaft abnimmt, außerordentlich besorgt ist“. Sie sei insbesondere besorgt wegen der Schändung von Gedenkstätten und Gräbern von „Soldaten der Anti-Hitler-Koalition“, „Versuchen, diejenigen, die auf Seiten der Nazis am Krieg teilgenommen haben, zu rehabilitieren, zu rechtfertigen und gar zu glorifizieren [...]“ sowie wegen der Verwendung von Nazi-Symbolen und wegen der Leugnung oder der Verharmlosung von Verbrechen, die vom Nazi-Regime begangen wurden, insbesondere des Holocausts.

Die PACE ist ebenfalls besorgt wegen „politischer und gesellschaftlicher Phänomene, die, obwohl sie keinen direkten Bezug auf das Nazi-Regime nehmen, im Lichte dieser Ideologie betrachtet werden sollten“. Dazu gehören „die wachsende Zahl von Fällen rassischer, ethnischer und religiöser Intoleranz im täglichen Leben, einschließlich der Entweihung jüdischer Friedhöfe und Anschläge auf religiöse Einrichtungen“, „Versuche, durch die Medien ein negatives Bild bestimmter ethnischer oder religiöser Gruppen zu zeichnen“ und „wachsende Unterstützung für politische Parteien und Bewegungen mit fremdenfeindlichem Programm“.

Die PACE ruft zu einer stärkeren Koordinierung der Anstrengungen auf, um die Neubelebung der Nazi-Ideologie, „Fremdenfeindlichkeit, Intoleranz und Hass aus rassistischen und ethnischen Gründen, politischen und religiösen Extremismus und jegliche Form totalitärer Handlungen“ zu bekämpfen. Sie sieht dabei eine führende Rolle für den Europarat. Sie begrüßt laufende Aktivitäten verschiedener Gliederungen des Europarats, insbesondere seitens der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI), drängt jedoch darauf, dass die Entwicklung solcher Aktivitäten einen weiteren Bereich von gesellschaftlichen Akteuren einschließen sollte.

- *Combating the resurrection of Nazi ideology, Resolution 1495 (2006) (Provisional edition), Parliamentary Assembly of the Council of Europe, 12 April 2006* (Kampf gegen das Wiederaufleben der Nazi-Ideologie, Entschließung 1495 (2006) (Vorläufige Fassung), parlamentarische Versammlung des Europarats, 12. April 2006)
<http://merlin.obs.coe.int/redirect.php?id=10120>

Reaktion zwischenstaatlicher Organisationen auf umstrittene Karikaturen

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Im vergangenen Monat beherrschten Berichte über die dramatischen Folgen der Veröffentlichung von umstrittenen 12 Karikaturen die Nachrichten. Die Karikaturen waren erstmals in einer dänischen Zeitung erschienen. Unter den Karikaturen befanden sich Darstellungen des Propheten Mohammed.

Über die Umstände der Veröffentlichung und der anschließenden Nachdrucke der Karikaturen sowie die darauf einsetzende Welle des Protests, der Drohungen, Gewalt und diplomatischen Schachzüge ist hinreichend berichtet worden, sie sollen hier nicht wiederholt werden. Der Schwerpunkt liegt vielmehr auf der internationalen Reaktion auf die Ereignisse, die durch eine Auswahl an formellen Stellungnahmen einer Reihe zwischenstaatlicher Organisation verdeutlicht wird. Die hier betrachteten Stellungnahmen stammen (in chronologischer Reihenfolge) vom Vizepräsidenten der Europäischen Kommission Frattini (VP Eur. Kom.), vom OSZE-Beauftragten für Medienfreiheit (OSCE RFOM), vom Generalsekretär des Europarats (CoE SG), vom Präsidenten der parlamentarischen Versammlung des Europarats (PACE President) sowie von den UN-Sonderberichterstattern für Rassismus, Rassendiskriminierung, Fremdenfeindlichkeit und verwandte Intoleranz, für Religions- oder Glaubensfreiheit und für das Recht auf Meinungsfreiheit und freie Meinungsäußerung (UN SRs) (gemeinsame Stellungnahme).

Diese Reaktionen waren weitgehend übereinstimmend und konzentrierten sich auf vier wesentliche Punkte:

(i) Es wird anerkannt, dass die religiösen Gefühle von Muslimen durch die Veröffentlichung der Karikaturen verletzt wurden. Besonders eindringlich brachten dies die drei UN-Sonderberichterstatter zum Ausdruck, die erklärten, sie „missbilligen die Abbildung des Propheten Mohammed zutiefst und sind von der schweren Beleidigung, die diese den Mitgliedern der muslimischen Gemeinde zugefügt haben, erschüttert“.

(ii) „Die Gewalt, die Zerstörung und der Hass bei einigen der Proteste“ (CoE SG), „die Gewalt, die Einschüchterung und die Boykottaufrufe“ (VP Eur. Kom.) sowie „die Todesdrohungen gegen Journalisten und die Einschüchterung von Medien wie auch die Todesfälle, Drohungen und sonstigen Formen von Gewalt [...], welche häufig gegen Personen gerichtet sind, die für die Veröffentlichungen weder verantwortlich sind noch diese beeinflussen können“ (UN SRs), werden scharf verurteilt.

(iii) Es wird zu „Toleranz und Dialog“ (UN SRs) und zu multilateralem Handeln „auf der Grundlage von Dialog und gegenseitiger Achtung“ (CoE SG) aufgerufen, um die ausufernden Spannungen zu entschärfen. Den Austausch von Erfahrungen und Informationen, einen beständigen Dialog und „die Wertschätzung der unterschiedlichen Kulturen und Religionen, die uns umgeben,“ nannte der PACE-Präsident den Schlüssel für die Unterstützung eines demokratischen Pluralismus und von Toleranz auf längere Sicht. In gleichem Maße unterstrichen die UN-Sonderberichterstatter die Bedeutung „weitgehender redaktioneller Freiheit“ für die Presse, „um einen freien Nachrichten- und Informationsfluss zu fördern“, ohne jedoch „Stereotypen und Vorurteile zu verwenden, welche tief verwurzelte religiöse Gefühle verletzen“, um einen „konstruktiven und friedlichen Dialog zwischen unterschiedlichen Gemeinschaften“ zu erleichtern und „gegenseitiges Verständnis zu fördern“.

(iv) Es wird bekräftigt, dass das Recht auf Meinungsfreiheit (wie durch internationale Vereinbarungen garantiert) besondere Pflichten und Verantwortung mit sich bringt (UN SRs,

CoE SG) und daher unter Achtung der Religions- und Glaubensfreiheit ausgeübt werden sollte (UN SRs, VP Eur. Kom.). Das Recht auf Meinungsfreiheit, wie unter anderem vom Europäischen Gerichtshof für Menschenrechte interpretiert, schließt den Schutz der Äußerung von verletzenden Ansichten ein (CoE SG). Wie jedoch der Generalsekretär des Europarats deutlich machte, „macht das Recht auf verletzende Äußerungen diese nicht richtig. Redakteure und Journalisten sind verantwortlich dafür, Feingefühl dafür zu beweisen, was veröffentlicht werden sollte und was nicht. Die Veröffentlichung von Karikaturen hat möglicherweise keinerlei rechtliche Grenzen überschritten, sie hat aber auf jeden Fall gegen ethische Standards, die sich auf die gegenseitige Achtung und Anerkennung religiöser Überzeugungen anderer Menschen gründen, verstoßen.“ Der Vizepräsident der Europäischen Kommission wies darauf hin, dass die Freiheit zu kritisieren, unter anderem auch durch Satire, ebenfalls durch die Meinungsfreiheit abgedeckt sei.

Der OSZE-Beauftragte für Medienfreiheit erklärte seinerseits, dass „das Recht zur Infragestellung jeglicher Überzeugungen eine geschätzte Tradition in demokratischen Staaten ist“. Darüber hinaus erklärte er, wenn die OSZE auch verantwortlichen Journalismus bevorzuge, so sei sie doch nicht der Ansicht, dass Regierungen hier eine Rolle übernehmen sollten. Dabei führte er an, „staatliche Einmischung in die Tätigkeit der Medien“ würde „den Grundverpflichtungen der 55 OSZE-Teilnehmerstaaten widersprechen“. Er empfahl stattdessen, dass „sich mit Veröffentlichungen, die für gewisse Teile der Gesellschaft verletzend sind, Selbstkontrollen für ethische Fragen der seriösen Presse, z.B. Presseräte, befassen sollten“.

- *European Commission: "Statement by Vice-President Franco Frattini on cartoons published by a Danish newspaper", Press Release IP/06/114, 2 February 2006* (Europäische Kommission: „Erklärung von Vizepräsident Franco Frattini zu den von einer dänischen Zeitung veröffentlichten Karikaturen“, Pressemitteilung IP/06/114, 2. Februar 2006)
<http://merlin.obs.coe.int/redirect.php?id=15091>
- *OSCE Representative on Freedom of the Media, "OSCE Media Freedom Representative defends papers' right to publish controversial cartoons, asks for mutual respect for traditions", Press Release, 3 February 2006* (OSZE-Beauftragter für Medienfreiheit, „OSZE-Beauftragter für Medienfreiheit verteidigt Recht von Zeitungen auf die Veröffentlichung umstrittener Karikaturen und bittet um gegenseitige Achtung von Traditionen“, Pressemitteilung, 3. Februar 2006)
<http://merlin.obs.coe.int/redirect.php?id=10002>
- *Council of Europe, "Council of Europe Secretary General on controversy regarding the caricatures of Prophet Mohammad", Press Release, 6 February 2006* (Europarat, „Generalsekretär des Europarats zum Streit über die Karikaturen des Propheten Mohammed“, Pressemitteilung, 6. Februar 2006)
<http://merlin.obs.coe.int/redirect.php?id=10003>
- *United Nations, "Human rights experts call for tolerance and dialogue in wake of controversy over representations of Prophet Muhammad", Press Release, 8 February 2006* (Vereinte Nationen, „Menschenrechtsexperten rufen im Zusammenhang mit dem Streit über die Abbildungen des Propheten Mohammed zu Toleranz und Dialog auf“, Pressemitteilung, 8. Februar 2006)
<http://merlin.obs.coe.int/redirect.php?id=10005>
- *Parliamentary Assembly of the Council of Europe, "PACE President on controversy over caricatures: `Rights come with responsibilities - but violence is never ever justified'", Press Release, 9 February 2006* (Parlamentarische Versammlung des Europarats, „PACE-Präsident zum Karikaturenstreit: ‚Rechte bedeuten auch Pflichten - Gewalt ist aber nie gerechtfertigt‘“, Pressemitteilung, 9. Februar 2006)
<http://merlin.obs.coe.int/redirect.php?id=10006>

Parlamentarische Versammlung: Empfehlung zu Medien und Terrorismus

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Am 20. Juni 2005 verabschiedete die Parlamentarische Versammlung des Europarats (PACE) die Empfehlung Nr. 1706 (2005) mit dem Titel „Medien und Terrorismus“. Die Empfehlung knüpft an die Entschließung 1271 (2002) und die Empfehlung 1550 (2002) der Versammlung an, die beide den Titel *Combating terrorism and respect for human rights* (Terrorismusbekämpfung und Achtung der Menschenrechte) tragen. Sie bezieht sich explizit auf die Erklärung des Ministerkomitees zur Meinungs- und Informationsfreiheit in den Medien im Kontext der Terrorismusbekämpfung (siehe IRIS 2005-3: 3).

Die Empfehlung 1706 (2005) betont, dass das Recht auf Meinungs- und Informationsfreiheit auch das Recht der Öffentlichkeit umfasst, über Angelegenheiten von öffentlichem Belang informiert zu werden, auch über Terroranschläge und -drohungen sowie über die Reaktionen, die solche Anschläge und Drohungen bei staatlichen Stellen und internationalen Organisationen hervorrufen. Sie erinnert an die Verantwortung der Medien, bei der Vermeidung von Angstspiralen zu helfen, zu einer fundierten öffentlichen Diskussion über den Terrorismus, das durch ihn verursachte Leid und den Kontext, in dem er stattfindet, beizutragen und die nötige Achtung vor „der Privatsphäre und Menschenwürde von Terrorismusopfern und ihren Familien“ zu zeigen.

Sie ruft die Medienschaffenden (und deren Verbände) auf, Verhaltensregeln für den Umgang mit dem Terrorismus aufzustellen, spezielle Schulungsprogramme zu organisieren, um die Branche für die Notwendigkeit einer angemessenen Berichterstattung über den Terrorismus zu sensibilisieren, für eine stärkere Zusammenarbeit zu sorgen, damit es nicht zu Konkurrenzkämpfen um eine Sensationsberichterstattung über den Terrorismus kommt, „keine schockierenden Bilder von Terroranschlägen zu verbreiten, die die Privatsphäre und Menschenwürde von Opfern verletzen oder zu dem einschüchternden Effekt solcher Anschläge auf die Öffentlichkeit sowie auf die Opfer und ihre Familien beitragen“, und in ihren Berichten und Kommentaren kein Öl auf das Feuer unterschwelliger gesellschaftlicher Spannungen zu gießen.

Die Versammlung empfiehlt dem Ministerkomitee, die Mitglied- und Beobachterstaaten des Europarats darum zu bitten, die Öffentlichkeit und die Medien regelmäßig über staatliche Antiterrorstrategien und -maßnahmen zu informieren. Ebenso fordert die Versammlung das Ministerkomitee auf, auf Staaten so einzuwirken, dass sie die Terrorismusbekämpfung nicht als Vorwand nutzen, um „die mediale Verbreitung von Informationen und Meinungen über den Terrorismus und über die Reaktion staatlicher Stellen auf Terroranschläge und -drohungen“ zu verbieten oder übermäßig einzuschränken.

Abschließend fordert die Versammlung das Ministerkomitee auf, „die Behandlung des Terrorismus in den europäischen Medien zu beobachten“ und dabei besonders die oben genannte Erklärung des Ministerkomitees zu beachten. Sie fordert auch dazu auf, „unter der Leitung und in enger Zusammenarbeit mit“ Medienverbänden, der UNESCO und anderen Organisationen ein Handbuch für die journalistische Berichterstattung über Terrorismus und Gewalt zu erstellen und „Arbeiten für ein weiteres Protokoll zum Übereinkommen über Datennetz-Kriminalität zu initiieren, das einen Rahmen schafft für die Sicherheitszusammenarbeit zwischen Mitglied- und Beobachterstaaten zur Verhinderung von Datennetz-Terrorismus in Form groß angelegter Angriffe auf Computersysteme und

durch Computersysteme, die die nationale oder öffentliche Sicherheit oder den wirtschaftlichen Wohlstand eines Staates bedrohen“.

Die Empfehlung basiert auf einem längeren Bericht des Ausschusses für Kultur, Wissenschaft und Bildung der Parlamentarischen Versammlung, der den gleichen Titel trägt.

- *Media and terrorism, Recommendation 1706 (2005), Parliamentary Assembly of the Council of Europe, 20 June 2005* (Medien und Terrorismus, Empfehlung 1706 (2005), Parlamentarische Versammlung des Europarates, 20. Juni 2005)
<http://merlin.obs.coe.int/redirect.php?id=9763>
- *Media and terrorism, Report of the Committee on Culture, Science and Education (Rapporteur: Mr. Josef Jarab), Parliamentary Assembly of the Council of Europe, 20 May 2005, Doc. 10557* (Medien und Terrorismus, Bericht des Ausschusses für Kultur, Wissenschaft und Bildung (Berichtersteller: Josef Jarab), Parlamentarische Versammlung des Europarates, 20. Mai 2005, Doc. 10557)
<http://merlin.obs.coe.int/redirect.php?id=9765>

IRIS 2005-8/3

Parlamentarische Versammlung: Pressefreiheit und Journalisten in Konfliktgebieten

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Die Parlamentarische Versammlung des Europarates verabschiedete am 28. April 2005 die Entschließung 1438 (2005) und die Empfehlung 1702 (2005), die beide den Titel „Pressefreiheit und Arbeitsbedingungen von Journalisten in Konfliktgebieten“ tragen.

Der Titel dieser Texte weist auf die ihnen zugrunde liegenden, kontextspezifischen Belange hin. Meinungs- und Informationsfreiheit gewinnen an Bedeutung, wenn sie in Kriegs- oder Konfliktgebieten oder in Regionen ohne Recht und Gesetz bedroht sind. Das gleiche gilt für die Sicherheit und die Unabhängigkeit von Journalisten und anderen Medienschaffenden.

Die Parlamentarische Versammlung des Europarates „bedauert die zahlreichen Morde, Entführungen und Fälle des Verschwindens von in Konfliktgebieten oder an gefährlichen Themen arbeitenden Journalisten und betrachtet diese als gravierende Angriffe auf die Meinungs- und Informationsfreiheit in den Medien“. Sie fordert die umgehende Freilassung von Geiseln in Konfliktgebieten. Sie „würdigt“ Bemühungen aus Nichtregierungskreisen zur Unterstützung von Journalisten und Medien in Konfliktgebieten und „begrüßt“ die Charta zur Sicherheit von Journalisten in Kriegs- und Krisengebieten der Organisation Reporter ohne Grenzen.

Die Parlamentarische Versammlung des Europarates fordert alle Mitglied- und Beobachterstaaten des Europarates auf zu: „Achtung des Rechts auf Meinungs- und Informationsfreiheit“, „Unterlassung der Beschränkung des Einsatzes von Kommunikationsmitteln [...]“, „Ausbildung ihrer Streit- und Polizeikräfte zum Schutz und zur Unterstützung von Journalisten“, „Vereinfachung des Zugangs zum Zielland durch die Ausstellung erforderlicher Visa und anderer Reisedokumente für Journalisten“, sowie „Achtung der Vertraulichkeit journalistischer Quellen“. Die Parlamentarische Versammlung des Europarates ersucht sie darüber hinaus „zu gewährleisten, dass Journalisten sicher in ihren Hoheitsgebieten arbeiten können“ und „sämtliche Gewalttaten und Unfälle mit tödlichem Ausgang zu untersuchen, von denen Journalisten betroffen sind und die sich in ihrem Hoheitsgebiet oder außerhalb dessen ereignen, und an denen ihre Streit- oder Sicherheitskräfte möglicherweise beteiligt waren, einschließlich durch Beschuss aus den eigenen Reihen verursachter Fälle“.

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Weitere Schwerpunkte der Entschließung sind Schulungsprogramme, professionelle Pflichten von Medien, eingebetteter Journalismus und die Vertraulichkeit bestimmter Informationen zu laufenden Militäroperationen.

Die Empfehlung 1702 schlägt ihrerseits vor, dass das Ministerkomitee bedeutsame Vorfälle in Konfliktgebieten innerhalb der Mitgliedstaaten des Europarates überprüft und sich zudem in Zusammenarbeit mit den Vereinten Nationen mit diesen Vorfällen befasst.

- „Pressefreiheit und Arbeitsbedingungen von Journalisten in Konfliktgebieten“, Entschließung 1438 (2005), Parlamentarische Versammlung des Europarates, 28. April 2005
<http://merlin.obs.coe.int/redirect.php?id=13020>
- „Pressefreiheit und Arbeitsbedingungen von Journalisten in Konfliktgebieten“, Empfehlung 1702 (2005), Parlamentarische Versammlung des Europarates, 28. April 2005
<http://merlin.obs.coe.int/redirect.php?id=13021>

IRIS 2005-5/102

Parlamentarische Versammlung: Neue EntschlieÙung übt Kritik an der Medienkonzentration in Italien

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Am 24. Juni 2004 hat die Parlamentarische Versammlung des Europarats (PACE) ihre EntschlieÙung 1387 (2004) mit dem Titel „Die Monopolisierung der elektronischen Medien und der eventuelle Machtmissbrauch in Italien“ gefasst.

Ausgangspunkt der EntschlieÙung ist, dass die „Konzentration politischer, wirtschaftlicher und medialer Macht“ in den Händen des italienischen Ministerpräsidenten Silvio Berlusconi den Pluralismus in den Medien, wie er durch Artikel 10 der Europäischen Menschenrechtskonvention garantiert wird, gefährdet. Sie kritisiert, dass mehrere italienische Regierungen in Folge daran gescheitert seien, die anhaltenden Konflikte zwischen politischen Interessen und Interessen der Medien (eigentümer) mit gesetzgeberischen oder anderen Maßnahmen wirksam zu lösen.

Insbesondere wird darauf hingewiesen, dass einer der Kernvorschläge des Frattini-Gesetzentwurfs (einer der derzeit vorliegenden Gesetzentwürfe), nämlich dass die Verantwortung nur bei den Managern (der Unternehmen) liegen sollte und nicht bei den Eigentümern, den viel beachteten Interessenkonflikt um den italienischen Ministerpräsidenten nicht zufrieden stellend löst. Der italienische Fernsehmarkt sei praktisch ein Duopol geworden, da Mediaset, ein Unternehmen des Ministerpräsidenten, und die RAI, der öffentlich-rechtlichen Sender, „zusammen über etwa 90 % der Fernsehzuschauer und über mehr als drei Viertel der Ressourcen in dem Sektor verfügen“ eine Situation, die Anlass zu kartellrechtlichen Bedenken gibt. Weitere Details über die Zusammensetzung dieses Duopols finden sich in Absatz 5 des Beschlusses und in dem ausführlichen Bericht mit dem gleichen Titel, auf dem die EntschlieÙung basiert.

Skeptisch ist die Parlamentarische Versammlung gegenüber der Prognose, das kürzlich verabschiedete Gasparri-Gesetz (siehe IRIS 2004-6: 12) werde „einfach durch die Vervielfachung der Fernsehkanäle im Zuge der Digitalisierung“ mehr Pluralismus garantieren. Missbilligend wird vermerkt, dass das neue Gesetz es „Mediaset offenkundig erlaubt, sogar noch weiter zu expandieren, da es den Anbietern die Möglichkeit bietet, ein Monopol auf einem bestimmten Sektor zu haben, ohne die kartellrechtliche Grenze für das gesamte integrierte Kommunikationssystem jemals zu erreichen“.

Darüber hinaus weist die Parlamentarische Versammlung darauf hin, dass die bestehende Situation der RAI nicht den Prinzipien der Unabhängigkeit entspricht, die in ihrer Empfehlung 1641 (2004) zum öffentlich-rechtlichen Rundfunk (siehe IRIS 2004-3: 3) festgelegt sind, und dass dieser Zustand daher beseitigt werden sollte.

Die EntschlieÙung fordert das italienische Parlament unter anderem auf, die bereits kritisierten Interessenkonflikte umgehend durch geeignete gesetzliche Maßnahmen zu lösen und mit gesetzgeberischen oder anderen rechtlichen Mitteln sicherzustellen, dass die Medien im Sinne der Erklärung des Ministerkomitees über die Freiheit der politischen Diskussion in den Medien von politischer Einflussnahme frei bleiben (siehe IRIS 2004-3: 3). Außerdem fordert die EntschlieÙung das italienische Parlament zur Änderung des Gasparri-Gesetzes auf, um die Prinzipien der Empfehlung des Ministerkomitees Nr. R (99) 1 über die Maßnahmen zur Förderung des Pluralismus in den Medien (siehe IRIS 1999-2: 5)

umzusetzen, und zwar vor allem durch (a) „Vermeidung der Entstehung beherrschender Stellungen auf den relevanten Märkten innerhalb des integrierten Kommunikationssystems“, (b) „Einführung spezifischer Maßnahmen, um das bestehende Duopol von RAI und Mediaset zu beenden“, und (c) „Einführung spezifischer Maßnahmen, die sicherstellen, dass die Digitalisierung inhaltliche Vielfalt garantiert“.

Die EntschlieÙung der Parlamentarischen Versammlung fordert die Europäische Kommission für Demokratie durch Recht des Europarats (Venedig-Kommission) zu einer Stellungnahme über die Vereinbarkeit des Gasparri-Gesetzes und des Frattini-Gesetzentwurfs mit den Standards des Europarats (insbesondere der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte) in Bezug auf die freie MeinungsäuÙerung und den Pluralismus in den Medien auf.

Ferner verweist die EntschlieÙung darauf, dass auch andere internationale Einrichtungen, darunter das Europäische Parlament (siehe IRIS 2004-6: 6) und der OSZE-Repräsentant für die Freiheit der Medien, kürzlich ihre Bedenken hinsichtlich des Pluralismus in den italienischen Medien zum Ausdruck gebracht haben.

- *Monopolisation of the electronic media and possible abuse of power in Italy, Resolution 1387 (2004) (Provisional Edition), Parliamentary Assembly of the Council of Europe, 24 June 2004* (Monopolisierung der elektronischen Medien und eventueller Machtmissbrauch in Italien, Beschluss 1387 (2004) (vorläufige Ausgabe), Parlamentarische Versammlung des Europarats, 24. Juni 2004)
<http://merlin.obs.coe.int/redirect.php?id=9182>
- *Monopolisation of the electronic media and possible abuse of power in Italy, Report of the Committee on Culture, Science and Education (Rapporteur: Mr. Paschal Mooney), Parliamentary Assembly of the Council of Europe, 3 June 2004, Doc. 10195 (see also the Opinion of the Committee on Legal Affairs and Human Rights, (Rapporteur: Mr. Abdülkadir Ates), 22 June 2004, Doc. 10228)* (Monopolisierung der elektronischen Medien und eventueller Machtmissbrauch in Italien, Bericht des Ausschusses für Kultur, Wissenschaft und Bildung (Berichterstatter: Paschal Mooney), Parlamentarische Versammlung des Europarats, 3. Juni 2004, Dok. 10195 (siehe auch die Stellungnahme des Ausschusses für rechtliche Angelegenheiten und Menschenrechte (Berichterstatter: Abdülkadir Ates), 22. Juni 2004, Dok. 10228))
<http://merlin.obs.coe.int/redirect.php?id=9184>

IRIS 2004-7/2

Parlamentarische Versammlung: Neue Empfehlung zum öffentlich-rechtlichen Rundfunk

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Am 27. Januar 2004 verabschiedete die Parlamentarische Versammlung des Europarates (PACE) die Empfehlung Nr. 1641 (2004) mit dem Titel „Öffentlich-rechtlicher Rundfunk“. Darin fordert sie das Ministerkomitee des Europarats auf, „ein neues großes Grundsatzpapier zum öffentlich-rechtlichen Rundfunk zu beschließen“, das (i) den jüngsten Entwicklungen in diesem Bereich Rechnung trägt und (ii) „Normen und Mechanismen der Verantwortung für die Zukunft des öffentlich-rechtlichen Rundfunks“ festlegt. Diese Aufgabe könne bei der bevorstehenden Ministerkonferenz zur Massenmedienpolitik im ukrainischen Kiew in Angriff genommen werden.

Die Empfehlung spricht sich für eine konzertierte Aktion der verschiedenen Strukturen des Europarats aus, um „eine ordnungsgemäße Überwachung und Unterstützung und nötigenfalls auch entsprechenden Druck zu gewährleisten, damit die Mitgliedstaaten geeignete gesetzgeberische, politische und praktische Maßnahmen zur Förderung des öffentlich-rechtlichen Rundfunks ergreifen“. Darüber hinaus ruft die Empfehlung das Ministerkomitee dazu auf, „spezifische Maßnahmen in Erwägung zu ziehen“, um die Gesetzgebung zum öffentlich-rechtlichen Rundfunk in Aserbaidschan, Georgien, Russland und der Ukraine an „europäische Standards“ anzugleichen. Zum Schutz des Rechts auf freie Meinungsäußerung wird zudem eine enge Zusammenarbeit mit anderen internationalen Organisationen befürwortet. Das Ministerkomitee wird aufgefordert, darauf hinzuwirken, dass (i) audiovisuelle Dienstleistungen bei den Verhandlungen im Rahmen der Welthandelsorganisation (WTO) und des Allgemeinen Übereinkommens über den Handel mit Dienstleistungen (GATS) (siehe IRIS 2003-6: 5) als „mehr als nur eine Ware“ und (ii) der öffentlich-rechtliche Rundfunk beim Weltgipfel Informationsgesellschaft (WSIS) (siehe IRIS 2004-2: 2, IRIS 2003-6: 2, IRIS 2003-3: 4 und IRIS 2002-2: 3) als Schlüsselmerkmal der Informationsgesellschaft anerkannt werden.

Ferner schlägt die Empfehlung Nr. 1641 Aktionslinien für die Regierungen der Mitgliedstaaten vor, um ihren Einsatz für den Erhalt eines starken und dynamischen unabhängigen öffentlich-rechtlichen Rundfunks, aber auch für seine Anpassung an die Anforderungen des digitalen Zeitalters zu bekräftigen“, geeignete Rahmenbedingungen für die Funktion, Anpassung und Modernisierung des öffentlich-rechtlichen Rundfunks zu definieren sowie an den digitalen Medien ausgerichtete Aus- und Fortbildungsprogramme für Journalisten zu konzipieren.

Die Empfehlung stützt sich auf einen umfangreichen Bericht gleichen Titels.

- *Public service broadcasting* (Öffentlich-rechtlicher Rundfunk), Empfehlung Nr. 1641 (Vorläufige Ausgabe), Parlamentarische Versammlung des Europarats, 27. Januar 2004)

IRIS 2004-3/3

Parlamentarische Versammlung: Konzentration auf die freie Meinungsäußerung von Minderheiten

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Am 29. September 2003 verabschiedete die Parlamentarische Versammlung des Europarates (PACE) die Empfehlung 1623 (2003) mit dem Titel „Rechte nationaler Minderheiten“. Die Empfehlung erläutert nicht nur den derzeitigen Stand des Rahmenübereinkommens zum Schutz nationaler Minderheiten und der Europäischen Charta für Regional- und Minderheitensprachen und schlägt verschiedene Möglichkeiten vor, mit denen die Umsetzung des Rahmenabkommens verbessert werden könnte, sondern konzentriert sich auch auf einige andere Themen, wie zum Beispiel die freie Meinungsäußerung.

Absatz 7 der Empfehlung wiederholt die frühere Forderung der Versammlung (in der Empfehlung 1589 (2003), „Freie Meinungsäußerung in den Medien Europas“ (siehe IRIS 2003-2: 2)), dass "alle europäischen Staaten Beschränkungen für die Einrichtung und den Betrieb privater Medien, die in Minderheitensprachen senden, aufheben sollten", da diese Beschränkungen gegen Artikel 10 der Europäischen Menschenrechtskonvention verstießen.

In Absatz 11 (iv) fordert die Versammlung die beteiligten Staaten dazu auf, „der fairen Umsetzung von Artikel 9 des Rahmenübereinkommens (freie Meinungsäußerung) besonderes Augenmerk zu schenken, indem sie die unzulässigen Beschränkungen für den privaten Rundfunk und die Veröffentlichung schriftlicher Nachrichten in Minderheitensprachen aufheben“.

Die Empfehlung betrifft auch andere Themen, die für Angehörige nationaler Minderheiten von Interesse sind: uneingeschränkte Sprachverwendung „in Gegenden, in denen sie in erheblicher Zahl leben“, parlamentarische Vertretung und voller Schutz der „verletzlichen Roma-Minderheiten“. Die Empfehlung geht auf einen gleichnamigen Bericht zurück, der ebenfalls 2003 vom PACE-Ausschuss für rechtliche Angelegenheiten und Menschenrechte erstellt wurde (Berichtersteller: Boriss Cilevics). In Bezug auf die freie Meinungsäußerung für Minderheiten untersucht der Bericht (Dok. 9862) eine Reihe von länderspezifischen Fällen und beschreibt die entscheidenden Bedenken, die unter anderem vom Beratenden Ausschuss für das Rahmenübereinkommen im Laufe der Berichterstattungs- und Beobachtungsverfahren festgestellt wurden. Für die Überwachung der Umsetzung des Rahmenübereinkommens ist nach Artikel 24-26 das Ministerkomitee des Europarats mit Unterstützung des Beratenden Ausschusses zuständig.

Zum fünften Jahrestag des Inkrafttretens des Rahmenübereinkommens organisierte der Beratende Ausschuss kürzlich eine Konferenz mit dem Titel „Den Rahmen ausfüllen“. Einer der drei bei der Konferenz parallel veranstalteten Workshops war dem Thema „Angehörige nationaler Minderheiten und die Medien“ gewidmet. Der Workshop behandelte Themen wie die Darstellung Angehöriger nationaler Minderheiten in den Medien und die Förderung der Toleranz und des interkulturellen Dialogs sowie den Zugang von Angehörigen nationaler Minderheiten zu den Medien.

- *"Rights of national minorities", Recommendation 1623 (2003), Parliamentary Assembly of the Council of Europe, 29 September 2003* (Rechte nationaler Minderheiten,

Empfehlung 1623 (2003), Parlamentarische Versammlung des Europarates, 29. September 2003)

<http://merlin.obs.coe.int/redirect.php?id=8777>

- *"Rights of national minorities", Report of the Committee on Legal Affairs and Human Rights (Rapporteur: Boriss Cilevics), Parliamentary Assembly of the Council of Europe, 9 July 2003, Doc. 9862* (Rechte nationaler Minderheiten, Bericht des Ausschusses für rechtliche Angelegenheiten und Menschenrechte (Berichtersteller: Boriss Cilevics), Parlamentarische Versammlung des Europarates, 9. Juli 2003, Dok. 9862)
<http://merlin.obs.coe.int/redirect.php?id=8777>
- *"Filling the Frame", Conference to mark the 5th Anniversary of the entry into force of the Framework Convention for the Protection of National Minorities, Strasbourg, 30-31 October 2003, Special File* (Den Rahmen ausfüllen, Konferenz zum 5. Jahrestag des Inkrafttretens des Rahmenübereinkommens zum Schutz nationaler Minderheiten, Straßburg, 30.31. Oktober, Sonderdossier)

IRIS 2004-1/6

Parlamentarische Versammlung: Neue Empfehlung zum Recht auf freie Meinungsäußerung in den Medien Europas

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Am 28. Januar 2003 verabschiedete die Parlamentarische Versammlung des Europarats ihre Empfehlung Nr. 1589 (2003) mit dem Titel „Meinungsfreiheit in den Medien Europas“.

Die Empfehlung listet Probleme auf, die gegenwärtig das Recht auf freie Meinungsäußerung und die Freiheit der Medien in Europa gefährden. Jedes einzelne dieser Probleme wird erörtert und mit konkreten Beispielen aus Mitgliedstaaten des Europarats veranschaulicht. Zu den dringlichsten Problemen gehören die von verschiedenen Seiten an Journalisten (insbesondere Enthüllungsjournalisten) verübte Gewalt (zum Teil mit tödlichem Ausgang) - die schlimmste und extremste Form der Zensur -, die strafrechtliche Verfolgung und Inhaftierung von Journalisten sowie weitere legale Formen der Nötigung, etwa Rufmord oder die Auferlegung von überhöhten Geldstrafen, die die Befürworter des Rechts auf freie Meinungsäußerung in ihrer Freiheit einschränken; des Weiteren die staatliche Einmischung in den Betrieb von Medien im Allgemeinen und nationalen/öffentlich-rechtlichen Rundfunkanstalten im Besonderen; unangemessene Strukturen für den öffentlich-rechtlichen Rundfunk; unzulänglicher Rechtsschutz für journalistische Quellen; ein veraltetes Medienrecht; die Entstehung von Medienkonzentrationen; ein unzulängliches Gewaltenteilungsprinzip zur Vermeidung von Interessenkonflikten bei der Ausübung von politischen Ämtern und einer Beteiligung an den Medien sowie andere die Medien betreffende Maßnahmen, die scheinbar als Anti-Terror-Strategien eingeführt wurden.

Mittels dieser Empfehlung ruft die Parlamentarische Versammlung des Europarats dazu auf, sich mit neuem Elan für das vom Europarat gesteckte Ziel des Rechts auf freie Meinungsäußerung einzusetzen und bittet das Ministerkomitee um die Veröffentlichung der Ergebnisse der in diesem Bereich durchgeführten Beobachtungen. Sie bittet das Ministerkomitee, Mitgliedstaaten (in denen es angebracht erscheint) darauf zu drängen, die oben angeführten Probleme aktiv zu beseitigen. In der Empfehlung wird das Ministerkomitee auch gebeten, Staaten dazu zu veranlassen, ihr Medienrecht zu überarbeiten, um es mit den einschlägigen Standards und Empfehlungen des Europarats in Einklang zu bringen, die Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte zu Artikel 10 der

Menschenrechtskonvention einzuarbeiten, sowie seine ordentliche Umsetzung und diesbezüglich angemessene Schulung für die Richter zu gewährleisten.

Die Empfehlung baut auf einem Bericht desselben Titels auf, der vom Ausschuss der Parlamentarischen Versammlung über Kultur, Wissenschaft und Bildung unter Berichterstattung von Frau Tytti Isohookana-Asunmaa erstellt worden war. Der Bericht beschreibt Kernprobleme in Bezug auf die Meinungsfreiheit, die seit der Verabschiedung der Empfehlung Nr. 1506 (2001) über die Meinungs- und Informationsfreiheit der Medien in Europa durch die Parlamentarische Versammlung noch nicht beseitigt wurden. Die Probleme sind im Bericht dargelegt und durch konkrete Beispiele aus unterschiedlichen Mitgliedstaaten des Europarats veranschaulicht (genau wie in der Empfehlung, hier jedoch ausführlicher). Der Bericht geht dann zu den einzelnen Länderberichten über und hebt die kritischen Themen in Zusammenhang mit der Meinungs- und Medienfreiheit in den jeweils behandelten Ländern hervor.

- *Freedom of expression in the media in Europe, Recommendation 1589 (Provisional Edition), Parliamentary Assembly of the Council of Europe, 28 January 2003* (Meinungsfreiheit in den Medien Europas, Empfehlung Nr. 1589 (Vorläufige Ausgabe), Parlamentarische Versammlung des Europarats, 28. Januar 2003)
<http://merlin.obs.coe.int/redirect.php?id=1237>
- *Freedom of expression in the media in Europe, Report of the Committee on Culture, Science and Education (Rapporteur: Mrs. Tytti Isohookana-Asunmaa), Parliamentary Assembly of the Council of Europe, 14 January 2003, Doc. 9640 revised* (Meinungsfreiheit in den Medien Europas, Bericht des Ausschusses für Kultur, Wissenschaft und Bildung (Berichterstatteerin: Frau Tytti Isohookana-Asunmaa), Parlamentarische Versammlung des Europarats, 14. Januar 2003, überarbeitetes Dok. Nr. 9640)
<http://merlin.obs.coe.int/redirect.php?id=1238>
- *Freedom of expression and information in the media in Europe, Recommendation 1506 (2001), Parliamentary Assembly of the Council of Europe, 24 April 2001* (Meinungs- und Informationsfreiheit für die Medien in Europa, Empfehlung Nr. 1506 (2001), Parlamentarische Versammlung des Europarats, 24. April 2001)
<http://merlin.obs.coe.int/redirect.php?id=1239>

IRIS 2003-2/1

Parlamentarische Versammlung: Digitale Spaltung und Bildung

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Die Parlamentarische Versammlung des Europarates verabschiedete am 18. November 2002 die Empfehlung 1586 (2002) zur digitalen Spaltung und Bildung. Diese wurde verabschiedet, um das Gleichgewicht (unter anderem durch die Annahme von Gesetzestexten) zwischen „der Notwendigkeit zur Entlohnung der Rechteinhaber geistigen Eigentums für die Nutzung ihrer Werke und der Notwendigkeit für die Gesellschaft, einige dieser Werke einer breiteren Öffentlichkeit zugänglich zu machen“ im digitalen Zeitalter wiederherzustellen.

Die Parlamentarische Versammlung des Europarates empfiehlt, dass das Ministerkomitee des Europarates mit anderen internationalen Organisationen zusammenarbeitet, die sich ebenfalls mit dem Zugang zu Online-Inhalten befassen, „um das Prinzip der öffentlichen Dienstleistung im digitalen Umfeld einzuführen und insbesondere Regeln für die Nutzung derartiger Materialien zu Bildungszwecken und anderen gesellschaftlich wichtigen Zwecken zu erarbeiten“. Sie fordert das Ministerkomitee auf, folgenden Themen im Rahmen maßgeblicher Regelungen besondere Aufmerksamkeit zu schenken:

- „a. Versorgung der Bürger mit einem Minimum an grundlegenden Informationen als öffentlicher Dienstleistung;
 - b. Zugangsbeschränkung lediglich aus Gründen des Datenschutzes oder der Vertraulichkeit, Sicherheit und Strafverfolgung;
 - c. Bereitstellung von mit geschultem Personal besetzten öffentlichen Zugangsportalen;
 - d. Entwicklung spezieller Instrumente zur konkreten Förderung des Zugangs für Behinderte;
 - e. Harmonisierung, Erläuterung und Nutzerfreundlichkeit der einzelstaatlichen und internationalen Urheberrechtsbestimmungen für digitale Inhalte;
 - f. Förderung der Produktion von kulturell und pädagogisch geeigneten digitalen Inhalten;
 - g. Vereinfachung der qualitativen Bewertung digitaler Informationen“.
- „Digitale Spaltung und Bildung“, Empfehlung 1586 (2002), Parlamentarische Versammlung des Europarates, 18. November 2002
<http://merlin.obs.coe.int/redirect.php?id=13025>

IRIS 2003-1/102

Parlamentarische Versammlung: Empfehlung zur Darstellung der Frau in den Medien

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Die Parlamentarische Versammlung des Europarates verabschiedete am 24. April 2002 die Empfehlung 1555 (2002) mit dem Titel „Die Darstellung der Frau in den Medien“. Diese

Empfehlung ist Teil einer Reihe von Empfehlungen und EntschlieÙungen der Parlamentarischen Versammlung des Europarates zur Förderung der Gleichstellung von Mann und Frau.

Der Schwerpunkt der Empfehlung liegt auf der mit negativen Stereotypen belasteten sowie sexistischen Darstellung von Frauen in den Medien. Die Parlamentarische Versammlung des Europarates stellt fest, dass Frauen häufig mit Privatsphäre, Haushalt und Familienleben verbunden oder als Sexobjekte dargestellt werden. Sie merkt des Weiteren an, dass, obwohl sich das Frauenbild gegenwärtig wandelt, dieser Wandel sich in den Medien nicht immer widerspiegelt.

Während die Parlamentarische Versammlung des Europarates die Tatsache begrüÙt, dass einige europäische Regierungen, Frauengruppen und zwischenstaatliche Einrichtungen Fortschritte hinsichtlich einer geänderten Darstellung von Frauen in den Medien erzielen, bedauert sie, dass gewisse europäische Staaten kaum Fortschritte vorweisen. Die Parlamentarische Versammlung des Europarates stellt fest, dass „die Darstellung von Frauen in den Medien einiger Länder Osteuropas und in der Gemeinschaft Unabhängiger Staaten verhältnismäßig negativ ist“.

Die Parlamentarische Versammlung des Europarates ersucht die Mitgliedstaaten des Europarates, Maßnahmen zur Förderung der Gleichstellung von Mann und Frau sowie zur Änderung der Darstellung von Frauen in den Medien zu ergreifen. Sie fordert unter anderem die Einführung des Begriffs „Sexismus“ in die Gesetzgebung und dessen Verurteilung „in gleichem Maße wie die Verurteilung von Rassismus“. Der Begriff würde definiert als „Verneinung der gleichen Würde für alle Menschen aufgrund der Tatsache, dass sie dem männlichen oder dem weiblichen Geschlecht angehören“. Die Parlamentarische Versammlung des Europarates ruft die Mitgliedstaaten ferner zur Annahme von Gesetzen zur „Gleichstellung der Geschlechter in den Medien“ auf.

Die Parlamentarische Versammlung des Europarates fordert des Weiteren Maßnahmen zur Finanzierung sowie zur Einführung neuer Gleichstellungsprojekte in den Medien und unterstützt die Gründung von Zentren zur Beobachtung einzelstaatlicher Medien einschließlich der neuen Informations- und Kommunikationstechnologien. Sie befürwortet den Einsatz positiver Diskriminierung, um Frauen auf jeder Stufe des Entscheidungsprozesses in den Medien einzubeziehen. Schließlich empfiehlt die Parlamentarische Versammlung des Europarates, dass das Ministerkomitee des Europarates auf der Gleichstellung von Mann und Frau beruhende, international gültige ethische Standards ausarbeitet.

- „Die Darstellung der Frau in den Medien“, Empfehlung 1555 (2002) der Parlamentarischen Versammlung des Europarates, verabschiedet am 24. April 2002 <http://merlin.obs.coe.int/redirect.php?id=13024>

Parlamentarische Versammlung: Forderung nach Protokoll zur Cybercrime-Konvention

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In ihrer Empfehlung 1543 (2001) hat die Parlamentarische Versammlung des Europarats (PACE) ihre Forderung wiederholt, zu dem kürzlich verabschiedeten Übereinkommen über Datennetz-Kriminalität ("Cybercrime-Konvention") unverzüglich ein Protokoll über die Verbreitung rassistischer Äußerungen im Internet zu formulieren (siehe IRIS 2001-5: 3, IRIS 2001-7: 2, IRIS 2001-9: 4 and IRIS 2001-10: 3).

Die Parlamentarische Versammlung ist wiederholt dafür eingetreten, den Straftatbestand der Verbreitung rassistischer Propaganda mit Hilfe der Computertechnologie in den Anwendungsbereich des Übereinkommens einzubeziehen. Dies ergibt sich unter anderem aus ihrer Stellungnahme Nr. (IViR) 226 (2001) und ihrem Dokument Nr. 9263 ("Rassismus und Fremdenfeindlichkeit in Datennetzen", Bericht des Komitees für Rechtsangelegenheiten und Menschenrechte vom 12. Oktober 2001).

Zur Durchsetzung der in der Stellungnahme Nr. 226 (2001) dargestellten Ziele, also der unverzüglichen Formulierung eines Protokolls zu dem Übereinkommen, das die Verbreitung rassistischer Propaganda und das rechtswidrige Hosting von Hassbotschaften definiert und kriminalisiert, hat die PACE empfohlen, dass das Ministerkomitee: „i. dem Expertenkomitee zur Kriminalisierung rassistischer oder fremdenfeindlicher Handlungen mit Hilfe von Computernetzen (PC-RX), das zur Formulierung eines Zusatzprotokollentwurfs zum Übereinkommen über DatennetzKriminalität angewiesen wurde, ausreichende Mittel zur Verfügung stellt, damit es seine Aufgabe bis zum Ablauf seines Mandats am 30. April 2002 erfüllen kann. Das Komitee muss seine Arbeit so rechtzeitig beenden, dass das Zusatzprotokoll baldmöglichst nach Inkrafttreten des Übereinkommens in Kraft treten kann. ii. das rechtswidrige Hosting im Mandat dieses Komitees ausdrücklich erwähnt; iii. die Mittel bezeichnet, mit deren Hilfe es möglich ist, rassistische Sites aus dem Internet zu entfernen und die wirksame Verfolgung der Verantwortlichen zu fördern."

- *"Racism and xenophobia in cyberspace", Recommendation 1543 (2001) of the Parliamentary Assembly of the Council of Europe, adopted by the Standing Committee (acting on behalf of the Assembly) on 8 November 2001* („Rassismus und Fremdenfeindlichkeit in Datennetzen“, Empfehlung 1543 (2001) der Parlamentarischen Versammlung des Europarats, am 8. November 2001 (stellvertretend für die Versammlung) vom Ständigen Ausschuss verabschiedet)
<http://merlin.obs.coe.int/redirect.php?id=15925>

IRIS 2002-1/3

Parlamentarische Versammlung: Empfehlung zur Medienerziehung

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Die Parlamentarische Versammlung des Europarates verabschiedete am 27. Juni 2000 die Empfehlung 1466 (2000) mit dem Titel „Medienerziehung“. Diese definiert die Medienerziehung der Bürger als „Unterrichtsmethoden mit dem Ziel der Entwicklung von Medienkompetenz, die als eine kritische und urteilsfähige Haltung gegenüber den Medien zu verstehen ist, durch die Bürger in die Lage versetzt werden, sich anhand der verfügbaren Information ausgewogen eine eigene Meinung bilden zu können“.

Die Parlamentarische Versammlung des Europarates erwartet, dass die über neue Technologien verfügbare Informationsfülle neue Herausforderungen mit sich bringen und gesellschaftliche Auswirkungen haben wird. Diese Herausforderungen ergeben sich nicht nur aus dem Umfang, sondern bereits aus der Kommunikation selbst, da mediale Realität nicht der tatsächlichen Wirklichkeit entspricht. Dies gilt insbesondere für Kinder und Jugendliche, die großes Interesse am „Umgang mit neuen Technologien haben“ und die leicht damit zurechtkommen, wohingegen ihre wertorientierte Urteilsfähigkeit noch nicht vollständig entwickelt ist.

Im weiteren Sinne stellt die Parlamentarische Versammlung des Europarates fest, dass die Medien „Meinungen und Verhalten in der Gesellschaft beeinflussen können“. Freien und unabhängigen Medien „fällt eine erhebliche Macht beim Voranbringen eines demokratischen Wandels zu, wohingegen sie in den Händen totalitärer Kräfte zu wirkungsvollen Instrumenten zum Schüren von Rassenhass und Vermitteln von Stereotypen werden können“. Soziale Ausgrenzung kann zudem aus der Unfähigkeit resultieren, über die Medien zu kommunizieren oder „deren Inhalt kritisch zu beurteilen“.

Die Parlamentarische Versammlung des Europarates sieht daher einen dringenden Bedarf für die Entwicklung der Medienerziehung zur Förderung „einer aktiven, kritischen und urteilsfähigen Nutzung der Medien“. Durch Medienerziehung lernen die Menschen, Nachrichten zu interpretieren und zu erzeugen, die am besten geeigneten Medien für die Kommunikation auszuwählen und letztlich einen größeren Einfluss auf das Medienangebot und die Medienproduktion zu nehmen. Ferner befähigt sie sie zur Ausübung ihres Rechts auf Meinungsfreiheit und Information und wirkt sich positiv auf ihre persönliche Entwicklung aus. Des Weiteren begünstigt sie aktives demokratisches Bürgerverhalten und politisches Bewusstsein.

Medienerziehung sollte sich „sowohl an die Erwachsenen von heute als auch von morgen richten“, um sie in die Lage zu versetzen, „mit dem Tempo der modernen Entwicklung mitzuhalten“ und „sie dabei zu unterstützen, ihrer Elternrolle besser gerecht zu werden“. Die Parlamentarische Versammlung des Europarates empfiehlt daher unter anderem, dass das Ministerkomitee des Europarates Medienerziehung als ein wichtiges Arbeitsgebiet betrachtet und einen ganzheitlichen europäischen Ansatz zur Medienerziehung fördert.

Die Parlamentarische Versammlung des Europarates empfiehlt darüber hinaus, dass das Ministerkomitee die Mitgliedstaaten des Europarates zur Förderung der Ausarbeitung und Entwicklung von (i) Medienkompetenzprogrammen für Kinder, Jugendliche und Erwachsene und von (ii) Fortbildungsprogrammen für Lehrer im Bereich der Medienerziehung auffordert. Sie beansprucht zudem die Zusicherung eines sowohl quantitativ als auch qualitativ

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zufriedenstellenden Angebots an Bildungsprogrammen durch die verschiedenen Medien sowie die Förderung von Medienerziehung im Rahmen dieser Programme.

- „Medienerziehung“, Empfehlung 1466 (2000) der Parlamentarischen Versammlung des Europarates, verabschiedet am 27. Juni 2000
<http://merlin.obs.coe.int/redirect.php?id=13022>

IRIS 2000-7/100

Parlamentarische Versammlung: EntschlieÙung zur Informationsgesellschaft und zur digitalen Welt

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Die Parlamentarische Versammlung des Europarates verabschiedete am 26. Mai 1999 die EntschlieÙung 1191 (1999) mit dem Titel „Informationsgesellschaft und eine digitale Welt“. Diese EntschlieÙung ist die Fortführung der Empfehlung 1332 (1997) der Parlamentarischen Versammlung des Europarates zu den wissenschaftlichen und technischen Aspekten der neuen Informations- und Kommunikationstechnologien (siehe IRIS 1997-7/1).

Schwerpunkt der EntschlieÙung ist die zunehmende Bedeutung der Informationsgesellschaft und der digitalen Welt, die durch die sich rasant entwickelnden Informations- und Kommunikationstechnologien geprägt ist. Zur Gewährleistung der demokratischen Entwicklung der Informationsgesellschaft fordert die Parlamentarische Versammlung des Europarates zu einem angemessenen Gleichgewicht zwischen den verschiedenen Komponenten der digitalen Welt auf.

Die Parlamentarische Versammlung des Europarates hebt hervor, welche Bedeutung die Gewährleistung der Verbesserung „der Qualität der Informations- und Kommunikationstechnologien einnimmt, wobei gleichzeitig das gesteigerte Wohlergehen der Bürger angestrebt wird“. Daher fordert die Parlamentarische Versammlung die Mitgliedstaaten des Europarates und die Europäische Union auf, Maßnahmen zur Verbesserung und zur Förderung der Nutzung der digitalen Welt unter anderem in bildungspolitischen, kulturellen und wirtschaftlichen Zusammenhängen zu ergreifen.

Die Parlamentarische Versammlung des Europarates fordert einen für alle Bürger offenen Zugang zu Netzwerken und die Einrichtung von webbasierten europäischen Bildungsnetzwerken. Sie betont die Notwendigkeit von Breitbandanschlüssen und zuverlässigen Computern mit hoher Datenverarbeitung, um den Zugang zu diesen Netzwerken zu vereinfachen. Die von der Parlamentarischen Versammlung des Europarates vorgeschlagenen Maßnahmen beinhalten die Förderung von E-Commerce, die Interoperabilität digitaler Bibliotheken, digitale Sicherheit und die Erstellung von Standards für die Zusammenarbeit interner und externer IT-Systeme („Collaborative Computing“).

Der Parlamentarischen Versammlung des Europarates zufolge sind eine angemessene Gesetzgebung und die Reform von Strafverfolgungsbehörden erforderlich, um die unabwendbare Flut von Computerkriminalität einzugrenzen; daneben soll zur Nutzung der neuen Informations- und Kommunikationstechnologien ermutigt und ethische Grundsätze und Verhaltenskodizes gefördert werden. Letztlich fordert die Parlamentarische Versammlung des Europarates die Ausarbeitung von „Plänen und Methoden“ zur „Bewältigung“ digitaler Krisen wie zum Beispiel des Jahr 2000-Computerproblems („Millenium- Bug“)-.

- „Informationsgesellschaft und eine digitale Welt“, EntschlieÙung 1191 (1999) der Parlamentarischen Versammlung des Europarates, verabschiedet am 26. Mai 1999 <http://merlin.obs.coe.int/redirect.php?id=13023>

Parlamentarische Versammlung: Empfehlung zu Informations- und Kommunikationstechnologien

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Am 23. Juni 1997 hat die Parlamentarische Versammlung des Europarats eine Empfehlung zu den wissenschaftlichen und technologischen Aspekten der neuen Informations- und Kommunikationstechnologien verabschiedet. Die Versammlung hält es für notwendig, die Kluft zu überbrücken, die sie zwischen "dem hohen Entwicklungsstand der neuen Informations- und Kommunikationstechnologien und der Bereitschaft der Gesellschaft für sie" sieht. Dazu empfiehlt sie dem Ministerkomitee, sein Arbeitsprogramm zu analysieren und den Veränderungen Rechnung zu tragen, die durch die neuen Informations- und Kommunikationstechnologien ausgelöst werden. Darüber hinaus fordert sie das Komitee auf, die Arbeit der für den 11.-12. Dezember in Thessaloniki geplanten europäischen Ministerkonferenz zur Massenmedienpolitik zum Thema Informations- und Kommunikationstechnologie zu unterstützen und sich für die Harmonisierung der einschlägigen Gesetzgebung auf europäischer und internationaler Ebene einzusetzen. Die Empfehlung umfaßt auch Maßnahmen zur Erleichterung des allgemeinen Zugangs zu allen Diensten der Informations- und Kommunikationstechnologie. Hierzu zählt unter anderem der Vorschlag der Versammlung, fiskalische Maßnahmen zu ergreifen, die Kompatibilität zwischen verschiedenen Netzen zu fördern, indem eine internationale Zusammenarbeit bei der Normung angestrebt wird, und die Entwicklung digitaler Technologien und Breitbandnetze anzukurbeln.

Einen großen Teil ihrer Empfehlungen widmet die Versammlung der Forschungsförderung im Bereich der Informations- und Kommunikationstechnologie. Hierunter fallen Forschungsarbeiten zur Entwicklung spezifischer Technologien zum Schutz der Privatsphäre (besonders wichtig im Hinblick auf verschlüsselte Dienste) sowie die Forschung im Bereich der Technologien für Echtzeit-Großsimulationen und Visualisierungen, der Virtual-Presence-Technologien sowie der superintelligenten Netze.

- *Recommendation 1332 on the scientific and technical aspects of the new information and communications technologies adopted by the Parliamentary Assembly on its 17th Sitting on 23 June 1997* (Empfehlung zu den wissenschaftlichen und technologischen Aspekten der neuen Informations- und Kommunikationstechnologien, von der Parlamentarischen Versammlung des Europarats in seiner 17. Sitzung vom 23. Juni 1997 verabschiedet) <http://merlin.obs.coe.int/redirect.php?id=15927>

IRIS 1997-7/1

Parlamentarische Versammlung: Auswirkungen der neuen Informations- und Kommunikationstechnologien auf die Demokratie

Tarlach McGonagle

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Die Parlamentarische Versammlung des Europarates verabschiedete am 22. April 1997 ihre Entschließung 1120 (1997) zu den Auswirkungen der neuen Informations- und Kommunikationstechnologien auf die Demokratie.

In Anerkennung der Tatsache, dass der technische Fortschritt für die Öffentlichkeit soziale, kulturelle, wirtschaftliche, bildungspolitische, staatsbürgerliche und andere Vorteile mit sich bringt, ist die Parlamentarische Versammlung des Europarates bestrebt, das Potenzial der

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neuen Informations- und Kommunikationstechnologien zu nutzen. In dieser Entschließung plädiert sie dafür, Maßnahmen zu finden, um, unter anderem, „die Kommerzialisierung und Zerstückelung politischer Meldungen“, „die Marginalisierung parlamentarischer Verfahren“ sowie „soziale Diskriminierung“ zu vermeiden. Sie ist zudem bemüht, aktive „elektronische Bürgerschaft“ zu fördern.

Die Parlamentarische Versammlung des Europarates ersucht die Parlamente der einzelnen Staaten, Gesetzesinitiativen zu ergreifen, um die potenziellen Vorteile der neuen Informations- und Kommunikationstechnologien für die Öffentlichkeit zu maximieren und „den technischen Fortschritt mit der Achtung demokratischer Grundsätze und der Menschenrechte zu vereinbaren“. Sie warnt vor der Einführung „komplizierter und nicht umsetzbarer Regelungen, die der Entwicklung der neuen Informations- und Kommunikationstechnologien im Wege stehen würden“. Sie drängt darauf, dass ein angemessenes Gleichgewicht „zwischen der Achtung der Freiheiten, dem Schutz persönlicher Daten und der Verbrechensbekämpfung“ gefunden werden müsse.

Die Parlamentarische Versammlung des Europarates fordert die Parlamente der einzelnen Staaten zudem zum politischen Handeln auf, darunter zur Organisation frühzeitiger Schulungen im Bereich der neuen Informations- und Kommunikationstechnologien sowohl in öffentlichen als auch in privaten Bildungssystemen, zur Bereitstellung allgemein zugänglicher und kostengünstiger Computereinrichtungen und zur Förderung „angemessener legislativer Maßnahmen auf nationaler Ebene, durch die ein Rechtsrahmen für den Schutz personenbezogener Daten, Jugendschutz sowie die Achtung ethischer Grundsätze und der Menschenrechte geschaffen wird“.

- Entschließung 1120 (1997) zu den Auswirkungen der neuen Kommunikations- und Informationstechnologien auf die Demokratie, Parlamentarische Versammlung des Europarates, 22. April 1997
<http://merlin.obs.coe.int/redirect.php?id=13019>

IRIS 1997-5/100

Parlamentarische Versammlung: Empfehlungen zu Einwanderern, ethnischen Minderheiten und Medien

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 30. Juni 1995 hat die Parlamentarische Versammlung des Europarates dem Ministerkomitee des Europarates und den Mitgliedstaaten des Europarates eine Reihe von Aktionen empfohlen um sicherzustellen, daß Einwanderer und ethnische Minderheiten umfassend und unparteiisch in den Medien dargestellt werden. Die vorgeschlagenen Maßnahmen zielen auf einen verantwortlichen Ansatz durch Medienfachleute und auf einen verbesserten Zugang für Einwanderer und ethnische Minderheiten auf allen Ebenen. Die Parlamentarische Versammlung ist der Auffassung, daß die Medien ein wichtiges Instrument darstellen, um Einwanderer über ihr Heimatland, seine Kultur und Sprache zu informieren; nach Meinung der Parlamentarischen Versammlung können die Medien ebenfalls dazu beizutragen, Verbindungen zwischen den Einwanderern und dem Gastland zu schmieden. Die Medien bieten den Einwanderer ebenfalls die Möglichkeit, mit ihrem Herkunftsland in Verbindung zu bleiben; sie sind darüber hinaus ein Ausdrucksmittel, mit dessen Hilfe die Einwanderer mit Mitgliedern ihrer Gemeinschaft kommunizieren können.

- *Recommendation 1277 (1995) of 30 June 1995 on migrants, ethnic minorities and media.* (Empfehlung 1277 (1995) vom 30. Juni 1995 zu Einwanderern, ethnischen Minderheiten und Medien.)
<http://merlin.obs.coe.int/redirect.php?id=15929>

IRIS 1995-8/5

Parlamentarische Versammlung: Empfehlungen zur Kraft des visuellen Bildes

Ad van Loon

Europäische Audiovisuelle Informationsstelle

Am 30. Juni 1995 hat die Parlamentarische Versammlung des Europarates dem Ministerkomitee des Europarates und den Mitgliedstaaten des Europarates eine Reihe von Aktionen empfohlen, um den Auswirkungen der Gewalt in den Medien, insbesondere ihre Darstellung in Fernsehen, Video, Film, Werbung, Fotografie und Computerprogrammen entgegenzuwirken.

Gemeinsam mit erzieherischen Maßnahmen auf dem Gebiet der Medienwachsamkeit gelten Selbstbeschränkung und die Anwendung von Verhaltensvorschriften durch Fernsehprogrammgestalter, Nachrichtenredakteure, Filmemacher sowie durch Hersteller und Vertreiber von Filmen, Videospielen und Computerprogrammen als geeignete Maßnahmen.

- *Recommendation 1276 (1995) of 30 June 1995 on the power of the visual image.* (Empfehlung 1276 (1995) vom 30. Juni 1995 zur Kraft des visuellen Bildes)
<http://merlin.obs.coe.int/redirect.php?id=15931>

IRIS 1995-8/6

**Recommendations and Resolutions
adopted by the Parliamentary Assembly of the Council of Europe
in the field of media and new communication services**

**Media and Information Society Division
Directorate General of Human Rights and Legal Affairs**

Strasbourg, September 2010

**Recommendations and Resolutions of the Parliamentary Assembly
in the field of media and new communication services**

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CONSULTATIVE ASSEMBLY
OF THE
COUNCIL OF EUROPE

TWENTY-FIRST ORDINARY SESSION

Resolution 428 (1970)²⁹

containing a declaration on mass communication media and human rights

The Assembly,

²⁹ *Assembly debate* on 23 January 1970 (18th Sitting) (see Doc. 2687, report of the Legal Affairs Committee).
Text adopted by the Assembly on 23 January 1970 (18th Sitting).

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1. Having considered the proceedings of the Symposium on human rights and mass communication media held in Salzburg in September 1968;
2. Expressing its satisfaction with the results of the Symposium which have contributed to the solution of problems in this field;
3. Having regard to its recommendation on mass communication media and human rights proposing that the Committee of Ministers take action on a number of specific points;
4. Considering that, besides action to be taken by the Council of Europe, certain principles affirmed at the Salzburg Symposium should be embodied in a special declaration,
5. Adopts the declaration on mass communication media and human rights hereafter:

Declaration on mass communication media and human rights

A. Status and independence of the press and the other mass media

1. The press and the other mass media, though generally not public institutions perform an essential function for the general public. In order to enable them to discharge that function in the public interest, the following principles should be observed:
2. The right to freedom of expression shall apply to mass communication media.
3. This right shall include freedom to seek, receive, impart, publish and distribute information and ideas. There shall be a corresponding duty for the public authorities to make available information on matters of public interest within reasonable limits and a duty for mass communication media to give complete and general information on public affairs.
4. The independence of the press and other mass media from control by the state should be established by law. Any infringement of this independence should be justifiable by courts and not by executive authorities.
5. There shall be no direct or indirect censorship of the press, or of the contents of radio and television programmes, or a news of information conveyed by other media such as news reels shown in cinemas. Restrictions may be imposed within the limits authorised by Article 10 of the European Convention on Human Rights. There shall be no control by the state of the contents of radio and television programmes, except on the grounds set out in paragraph 2 of that Article³⁰.

³⁰ Article 10 of the European Convention on Human Rights:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

6. The internal organisation of mass media should guarantee the freedom of expression of the responsible editors. Their editorial independence should be preserved.
7. The independence of mass media should be protected against the dangers of monopolies. The effects of concentration in the press, and possible measures of economic assistance require further consideration.
8. Neither individual enterprises, nor financial groups should have the right to institute a monopoly in the fields of press, radio or television, nor should government-controlled monopoly be permitted. individuals, social groups, regional or local authorities should have - as far as they comply with the established licensing provisions - the right to engage in these activities.
9. Special measures are necessary to ensure the freedom of foreign correspondents, including the staff of international press agencies, in order to permit the public to receive accurate information from abroad. These measures should cover the status, duties and privileges of foreign correspondents and should include protection from arbitrary expulsion. They impose a corresponding duty of accurate reporting.

B. Measures to secure responsibility of the press and other mass media

It is the duty of the press and other mass media to discharge their functions with a sense of responsibility towards the community and towards the individual citizens. For this purpose, it is desirable to institute (where not already done):

- (a) professional training for journalists under the responsibility of editors and journalists;
- (b) a professional code of ethics for journalists; this should cover *inter alia* such matters as accurate and well balanced reporting, rectification of inaccurate information, clear distinction between reported information and comments, avoidance of calumny, respect for privacy, respect for the right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights;
- (c) press councils empowered to investigate and even to censure instances of unprofessional conduct with a view to the exercising of self-control by the press itself.

C. Measures to protect the individual against interference with his right to privacy

1. There is an area in which the exercise of the right of freedom of information and freedom of expression may conflict with the right to privacy protected by Article 8 of the Convention on Human Rights³¹ The exercise of the former right must not be allowed to destroy the existence of the latter.

³¹ Article 8 of the European Convention on Human Rights:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or-for the protection of the rights and freedoms of others.”

2. The right to privacy consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honour and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially. Those who, by their own actions, have encouraged indiscreet revelations about which they complain later on, cannot avail themselves of the right to privacy.

3. A particular problem arises as regards the privacy of persons in public life. The phrase "where public life begins, private life ends" is inadequate to cover this situation. The private lives of public figures are entitled to protection, save where they may have an impact upon public events. The fact that an individual figures in the news does not deprive him of a right to a private life.

4. Another particular problem arises from attempts to obtain information by modern technical devices (wire-tapping, hidden microphones, the use of computers etc.), which infringe the right to privacy. Further consideration of this problem is required.

5. Where regional, national or international computer-data banks are instituted the individual must not become completely exposed and transparent by the accumulation of information referring even to his private life. Data banks should be restricted to the necessary minimum of information required for the purposes of taxation, pension schemes, social security schemes and similar matters.

6. In order to counter these dangers, national law should provide a right of action enforceable at law against persons responsible for such infringements of the right to privacy.

7. The right to privacy afforded by Article 8 of the Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media. National legislations should comprise provisions guaranteeing this protection.

CONSULTATIVE ASSEMBLY
OF THE
COUNCIL OF EUROPE

TWENTY-FIRST ORDINARY SESSION

Recommendation 582 (1970)³²

on mass communication media and human rights

The Assembly,

³² *Assembly debate* on 23 January 1970 (18th Sitting) (see Doc. 2687, report of the Legal Affairs Committee).
Text adopted by the Assembly on 23 January 1970 (18th Sitting).

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1. Having considered the proceedings of the Symposium on human rights and mass communication media held in Salzburg in September 1968 as a result of its Resolution 338 (1967) on press legislation;
2. Having regard to its declaration on mass communication media and human rights, which confirms the principle of independence of the press and other mass communication media and which states *inter alia* that these media perform an essential function for the general public³³;
3. Convinced that the right to freedom of expression and information, including freedom to hold, seek, receive and impart information and ideas regardless of frontiers, and to publish and distribute them should be ensured to everyone, including the press and other mass media;
4. Considering that the right to freedom of expression and information is a right guaranteed by Article 10 of the European Convention on Human Rights, and that the right to privacy is guaranteed by Article 8 thereof;
5. Recalling that recent technological advances have enormously expanded the range of diffusion of ideas, words and images, and thereby augmented their impact on the individual;
6. Recalling further its Recommendation 509 (1968) on human rights and modern scientific and technological developments;
7. Believing that action by member states is necessary in order to secure the effective application of some of the principles embodied in its declaration on mass communication media and human rights,
8. Recommends that the Committee of Ministers:
 - (a) invite member states to encourage national and international professional organisations to draw up a professional code of ethics for journalists based on the principles embodied in the declaration on mass communication media and human rights, covering *inter alia* such matters as accurate reporting, rectification of inaccurate information, avoidance of calumny, respect for privacy, also taking into account all other relevant work on this subject, and respect for the right to a fair trial as guaranteed by Article 6 of the European Convention on Human Rights;
 - (b) instruct a committee of specialised experts to study the scope and the effects of press concentrations, and to make recommendations on possible measures of economic assistance;
 - (c) set up, in accordance with Resolution No. 3, on press legislation, of the 4th Conference of European Ministers of Justice held in 1966, a committee of specialised experts to study the possibilities of harmonisation of provisions of national press legislations such as the right of reply, seizure and confiscation of publications, and professional secrecy of journalists, to study the problems raised by the portrayal of violence by the mass media, and to make recommendations concerning press councils on the basis of the experience of those countries where press councils have already been set up;

³³ See Resolution 428 (1970).

(d) invite member states which have not already done so to encourage professional organisations to set up press councils, with the view of exercising self-control, such press councils being empowered to deal with instances of unprofessional conduct committed by any organ of the press in their state;

(e) instruct the Committee of Experts on Human Rights to consider and make recommendations on:

(i) the extension of the right of freedom of information provided for in Article 10 of the European Convention on Human Rights, by the conclusion of a protocol or otherwise, so as to include freedom to *seek* information (which is included in Article 19 (2) of the United Nations Covenant on Civil and Political Rights); there should be a corresponding duty on public authorities to make information available on matters of public interest, subject to appropriate limitations;

(ii) the protection of the status and freedom of foreign correspondents, including the staff of international press agencies, by the elaboration of an additional protocol to the European Convention on Human Rights or of a convention, or otherwise;

(iii) the establishment of an agreed interpretation of the right to privacy provided for in Article 8 of the European Convention on Human Rights, by the conclusion of a protocol or otherwise, so as to make it clear that this right is effectively protected against interference not only by public authorities but also by private persons or the mass media.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

TWENTY-SIXTH ORDINARY SESSION

Recommendation 747 (1975)³⁴

on press concentrations

The Assembly,

1. Recalling its Resolution 534 (1972), on press concentrations;
2. Welcoming Resolution (74) 43, adopted by the Committee of Ministers on 16 December 1974, at the conclusion of the substantial and remarkable work accomplished by the Committee of Experts on Press Concentrations;

³⁴ *Assembly debate* on 23 January 1975 (19th Sitting) (see Doc. 3536, report of the Political Affairs Committee).
Text adopted by the Assembly on 23 January 1975 (19th Sitting).

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3. Reiterating its concern at the potential or actual threat to diversity in the press resulting from the sharing of the market by a diminishing number of newspapers or newspaper groups;
4. Convinced that diversity in the press, as a fundamental component of freedom of expression, is a prerequisite for a democratic political system;
5. Noting that the present economic juncture is producing particularly adverse effects on the state of the press, threatening the financial viability of all newspapers and the very survival of the weaker ones, and that therefore measures of public aid to the press may become more necessary;
6. Urging, in this context, the need to avoid arbitrary exclusion from governmental aid programmes of periodicals published by opposition forces;
7. Believing, however, that the predicament of the press can and must be remedied also with measures other than mere economic aid, and that in this respect the Council of Europe has a role to play in order to ensure co-ordination on the European level in the light of Article 10 of the European Convention on Human Rights;
8. Having considered the report of its Political Affairs Committee (Doc. 3536),
9. Recommends that the Committee of Ministers:
 - i. draw the attention of the governments of the member states to the importance that both the Committee of Ministers and the Assembly attach to the full implementation, within a short time, of the whole set of measures envisaged in Resolution (74) 43;
 - ii. consider the possibility of supporting national measures of economic assistance with measures taken at the European level such as:
 - a. the drafting of a model statute for newspaper editorial staff, guaranteeing the freedom of expression and information, with particular regard to the attempt by the ownership or trade unions to control the editorial staff;
 - b. the definition of the requirements of a responsible information policy in a democratic society;
 - c. the establishment of an information centre within the Council of Europe on the facts of the situation of press concentrations, which should:
 1. gather and divulge such information concerning each member country;
 2. continue observation and analysis of the trend towards press concentrations, including analysis of the evolution of the relationship between written and audio-visual information;
 3. establish close co-operation with press bodies and associations, with a view to:
 - making the press aware of all the means available for improving the situation by its own efforts;

- making the public aware of the problems raised by press concentrations.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

TWENTY-SIXTH ORDINARY SESSION

Recommendation 748 (1975)³⁵

on the role and management of national broadcasting

The Assembly,

1. Considering the work of the Munich Symposium on the role and management of telecommunications in a democratic society (24-26 June 1974);
2. Having noted the report of its Committee on Culture and Education on this subject (Doc.3520);
3. Aware of the present debates in many European countries on the management of broadcasting, and convinced that such management must preserve but can also enhance the democratic nature of European society;
4. Recalling the Symposium in Florence in 1973 on freedom of expression and the role of the artist in European society, and in particular its Recommendation 719 (1973) on the exercise of freedom of artistic expression;
5. Convinced, however, that, together with such freedom, individuals should be responsible for what they might broadcast, and also accountable before the laws and existing standards of their countries;
6. Recalling the Symposium in Salzburg in 1968 on human rights and mass communications, and its Resolution 428 (1970) and Recommendation 582 (1970) (with Doc. 2687), and welcoming Resolution (74) 26 of the Committee of Ministers which affirmed the right of reply by individuals to radio and television;
7. Regarding it as the duty of governments to ensure that the broadcasting media provide a full public service in the fields of 1. information, 2. culture and education, 3. debate and 4. artistic expression;

³⁵ *Assembly debate* on 23 January 1975 (18th Sitting) (see Doc. 3520, report of the Committee on Culture and Education).

Text adopted by the Assembly on 23 January 1975 (19th Sitting).

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8. Believing that this service applies to the society of a country as a whole as well as to its minorities;
9. Holding that the state is only the trustee of the public interest, and that the interpretation of such interest must be flexible and be debated by the public itself rather than particular groups (however well intentioned), with some measure of institutionalised public control over what is broadcast;
10. Aware of the extensive and increasing penetration of society by the broadcasting media;
11. Stressing the importance of educating the public in the use of these media;
12. Recalling the work being done by its parliamentary Committee on Science and Technology on the democratic control of technological development, in particular in its recent symposium on science and the decision-making machinery of society;
13. Believing that there is room for considerably greater co-operation on a European level in broadcasting, both for the profitable exchange of ideas and expression and as a direct means of improving mutual understanding between European peoples;
14. Aware of the difficulty of financing broadcasting networks and concerned to ensure that there be no commercial motivation in programming (planning or content),
15. Recommends that the Committee of Ministers:
 - a.* consider the "draft minimum requirements for national broadcasting" set out in the annex to this recommendation;
 - b.* invite member governments to consider holding an ad hoc conference of Ministers responsible for culture and education together with those responsible for telecommunications, in order to consider means of concerting a common European policy as regards the cultural and educational potential of broadcasting.

ANNEX

Draft minimum requirements for national broadcasting

- a.* A full service for all the public, with:
 - i.* Multiple choice of programming with due recognition of regional and minority interests, although not exclusively on any single channel;
 - ii.* A high educational and cultural element;
 - iii.* Control, by properly balanced programming, of cultural, commercial and also information-pollution;

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- iv. High content of co-ordination and exchange with other European broadcasting productions;
- b. Freedom of expression, with no governmental or institutional preliminary censorship. but subject to the following qualifications:
 - i. The right of reply
 - ii. Public accountability of producers for their productions before some organisation, in the first instance predominantly parliamentary, democratically representative of society;
 - iii. Accountability of producers, rather than institutions, before the laws in force in any particular state;
- c. The right of individual access to broadcasting in principle, though subject to the existing controls on quality and to the availability of relevant space;
- d. Recognition of viewers' and listeners' associations and proper opportunities for their opinions to be publicly debated;
- e. Instruction at all levels of education, and also via the media themselves, in the understanding of broadcasting (including advertising techniques and political propaganda);
- f. Research into both the technological and social aspects of broadcasting;
- g. Flexibility to introduce new techniques (such as viewer-selected superimposed subtitling);
- h. A special employment policy for those engaged in the media that recognises their particular responsibility towards ensuring a public service and the obligations this responsibility imposes upon them;
- i. The divorce of commercial interest from programme content and planning;
- j. Responsible control of broadcasting, whether directly by government or by the intermediary of licensed institutions

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTIETH ORDINARY SESSION

Recommendation 834 (1978)³⁶
on threats to the freedom of the press and television

The Assembly,

1. Recalling its Recommendation 747 (1975), on press concentrations;
2. Reiterating its conviction that freedom of the press and television, as a fundamental component of freedom of expression, is a prerequisite for a democratic political system, and that therefore the Council of Europe must contribute to safeguarding such freedom;
3. Considering that problems of monopoly, of government interference and of abuse of proprietorial or trade union power raise such serious issues for the defence of freedom of the media that governments and parliaments in Europe should be encouraged to study and put into operation policies designed to assure the maximum freedom of comment for press and television;
4. Considering that there is an urgent need to bring legislation up to date with technological development in the field of media, notably as far as telecommunication by satellite is concerned;
5. Aware that press concentrations and monopolies, by reducing the number of newspapers and newspaper groups, especially in the present adverse economic juncture, reduce at the same time plurality of expression;
6. Aware that government interference (as opposed to state intervention required to protect and promote freedom of information in a democratic society) results in unfair treatment for opposition media, and produces biased information;
7. Considering that, in a free enterprise system, a mutually satisfactory balance must be found between trade unions' and employers' interests over the introduction of new technologies, which reduce the jobs available to printing workers;
8. Considering that journalists' trade unions, whose primary task it is to defend their members' professional interests, should perform their duties with special regard to the safeguard of the freedom of expression of individual journalists;
9. Drawing attention also to the possible influence of advertisers and sponsors on freedom of expression and in particular on the content of newspaper articles and broadcasts;
10. Welcoming the fact that, in the framework of the intergovernmental programme of the Council of Europe, a committee of experts has special responsibility to deal with questions relating to the mass media;

³⁶ *Assembly debate* on 27 and 28 April 1978 (7th and 8th Sittings) (see Doc. 4090, report of the Political Affairs Committee).

Text adopted by the Assembly on 28 April 1978 (8th Sitting).

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11. Aware, however, of the different national conditions in the field of the media, and of the consequent difficulty of elaborating comprehensive legal instruments at the European level,
12. Calls for the enactment of restrictive national legislation on press monopolies and concentrations, recognising that freedom of the press cannot be governed by the rules of free enterprise alone, and providing *inter alia* for publicity of ownership and balance sheets of newspapers;
13. Recognises that measures of public economic aid to the press may be necessary to assure the financial viability of all newspapers and the very survival of the weaker ones, and that in this respect, without prejudice to existing legislation in certain Council of Europe member states, any form of selective aid should be attributed only by an independent body;
14. Believes that a pluralistic approach to electronic broadcasting of information should be enhanced by establishing more independent channels, thus breaking up monopolies;
15. Believes that programme and management independence of state television can be enhanced by the establishment of specialised parliamentary committees and consultative bodies representing various social groups, such as employers' associations and trade unions, viewers' associations, intellectual institutions, authors, artists, actors and consumers;
16. Calls for the enactment of national legislation, where still missing, governing broadcasts by satellite and by cable, as well as by local radio and television stations;
17. Believes that statutes for the editorial staff of both written and audio-visual media, to be drafted nationally on the basis of guidelines set by the Council of Europe, could contribute to guaranteeing freedom of expression and information, with particular regard to attempts by the ownership or the trade unions to restrict freedom of comment of the journalists;
18. Recommends that the Committee of Ministers:
 - i. transmit the above proposals to the Committee of Experts on the Mass Media, with a request that they study them within the framework of their programme;
 - ii. keep the Assembly regularly informed of the progress and results of the work of the Committee of Experts on the Mass Media;
 - iii. until such time as statutes on the mass media have been drafted, invite those governments that supervise the media to take all necessary steps to ensure that all political, social and cultural forces have access to the media on fair and equitable terms.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTY-FIRST ORDINARY SESSION

Recommendation 862 (1979)³⁷

on cinema and the state

The Assembly,

1. Noting the report of its Committee on Culture and Education on cinema and the state (Doc. 4306) and taking account of the results of the symposium on this subject held by the committee in Lisbon from 14 to 16 June 1978;
2. Recalling its Order No. 341 (1973) and earlier symposia on "Freedom of expression and the role of the artist" (Florence 1973), "Telecommunications" (Munich 1974) and "The democratic renewal of the performing arts" (Athens 1976);
3. Regarding the cinema as an important cultural factor and means of artistic expression and as an industry and commercial activity;
4. Aware of the crisis affecting the cinema in most European countries;
5. Stressing that member governments have a duty to provide a sounder legal, economic and administrative basis for the revitalisation of the cinema and the development of film-making of real artistic quality;
6. Believing that the failure of many existing systems of aid makes a study of the problem necessary on the European level in order to promote new policies for the development of the cinema on the national level;
7. Insisting on the independence of film-making as an art, and on the importance of the diversity, in national and cultural terms, of the film in Europe, and that this diversity finds means for its expression and diffusion;
8. Stressing the importance of alternative non-commercial circuits, such as film clubs and municipal cinemas in community centres;
9. Welcoming the efforts, made by UNESCO to assist member states in the field of the storage, conservation and restoration of films and calling attention to the need for further work to be carried out by Council of Europe member states in these fields and also that of documentation;
10. Welcoming the setting-up of a "European Film Office" at present limited to two member states, as a clearing house for film information and hoping that all European states will be able to participate;
11. Recalling its Recommendation 850 (1979) on European cultural co-operation and the need to co-ordinate the activities of European organisations working in the cultural field;

³⁷ *Assembly debate* on 11 May 1979 (8th Sitting) (see Doc. 4306, report of the Committee on Culture and Education).

Text adopted by the Assembly on 11 May 1979 (8th Sitting).

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12. Welcoming Resolution No. III on cultural industries adopted by the European Ministers with responsibility for cultural affairs meeting in Athens in October 1978;

13. Appreciating the work of the Council for Cultural Co-operation in fields related to cinema, and expressing its support for the conference to be held in Strasbourg on the state's role vis-à-vis the culture industries.

14. Recommends that the Committee of Ministers instruct an appropriate committee to prepare, in consultation with the interested professional and other groups, recommendations to governments for the elaboration of new cinema policies covering the following particular points:

a. *on the national level*

- i. practical measures for the stimulation of film production and the encouragement of new talent and exchanges of experience;
- ii. introduction of secondary school children to the cinema;
- iii. means of selective state aid for the promotion of quality work rather than automatic aid;
- iv. establishment of film clubs and of municipal cinemas in local community centres as an addition to the commercial circuits;
- v. taxes and fees imposed on cinema in relation to those imposed on other shows;
- vi. possibilities of co-operation, on equitable terms, between the cinema and television;
- vii. making the cinema more easily accessible to all, for instance by reductions in admission charges especially for the young and elderly;
- viii. organisation of the storage, conservation and restoration of films;
- ix. increasing cultural budgets to enable film policies to be properly implemented;
- x. ways of solving the problems facing the cinema in the context of audio-visual policy as a whole and with particular attention to technological developments.

b. *on the European level*

- i. agreements between European producers on film financing and measures to encourage the co-ordination of films of European origin both in Europe and throughout the world;
- ii. development of the "European Film Office" for collecting, co-ordinating and circulating documentation on the cinema throughout Europe;
- iii. efforts to co-ordinate policies for the whole audio-visual field;
- iv. encouragement for the greater use of sub-titling rather than dubbing;
- v. study on the diversification of film distribution, with constant stress on the importance of the individuality of film-making in Europe.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTY-THIRD ORDINARY SESSION

Recommendation 926 (1981)³⁸

on questions raised by cable television and by direct satellite broadcasts

The Assembly,

1. Having considered the report of its Legal Affairs Committee (Doc. 4756), and the opinion of its Committee on Culture and Education (Doc. 4782);
2. Considering that new technological developments, such as direct broadcasting satellites, cable television as well as distribution by cable, will have a considerable impact on the national broadcasting systems in Council of Europe member states;
3. Welcoming the fact that satellite broadcasting systems imply a multiplication of radio and television programmes, and will present excellent opportunities for the development of a permanent European co-operation on radio and television programmes;
4. Recalling its many reports on the mass media, and in particular its Recommendation 747 (1975) on press concentrations, 748 (1975) on the role and management of telecommunications in a democratic society, and 834 (1978) on threats to the freedom of the press and television;
5. Recalling from this last recommendation especially:

³⁸ Assembly *debate* on 2 October 1981 (12th Sitting) (see Doc. 4756, report of the Legal Affairs Committee).
Text adopted by the Assembly on 7 October 1981 (17th Sitting).

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- the consideration "that freedom of the press and television, as a fundamental component of freedom of expression, is a prerequisite for a democratic political system, and that therefore the Council of Europe must contribute to safeguarding such freedom";
 - the call "for the enactment of national legislation, where still missing, governing broadcasts by satellite and by cable, as well as by local radio and television stations";
 - the belief "that statutes for the editorial staff of both written and audio-visual media, to be drafted nationally on the basis of guidelines set by the Council of Europe, could contribute to guaranteeing freedom of expression and information...";
6. Considering that Austria, Belgium, Canada, Denmark, Italy, the Netherlands, Spain, Switzerland and the United Kingdom are co-operating, under the supervision of the European Space Agency, to launch a European broadcasting satellite (*L-Sat*) in 1985;
 7. Considering that France and the Federal Republic of Germany have already decided to institute operational broadcasting services using national satellites, whereas others such as Italy and the United Kingdom are studying the possibility of doing so;
 8. Considering that Sweden is studying the launching of *Tele-X*, an experimental preoperational satellite, in 1986, and that the five Nordic countries are considering a joint system for radio and television broadcasting, the so-called *Nordsat* project;
 9. Considering that a number of private companies are planning to transmit commercial television programmes with direct broadcast satellites in two or three years' time;
 10. Considering that the World Administrative Radio Conference (WARC) of 1977 reached agreement on the principle of national areas of coverage for satellite transmissions with minimum overlap on the territory of other countries, but that, nevertheless, a considerable "spill-over" is inevitable;
 11. Considering that, as a consequence of the "spill-over", satellite television programmes, although directed at one of a number of central and western European states, may also be captured in at least 25 million homes outside national territory;
 12. Considering that, in accordance with the WARC decisions, no satellite broadcasts may take place without prior agreement of the state at which territory the broadcasts are primarily directed;
 13. Considering that as a result of these developments the following dangers may arise:
 - i. national legislation may be undermined, as Council of Europe member states will have difficulty in applying their national laws to foreign television programmes;
 - ii. the intellectual property rights of authors, composers and performing artists may be affected especially by cable television;

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- iii. the independence of programme-makers vis-à-vis the state and commercial interests may be more severely threatened than at present, and thus the exercise of the freedom of expression may be further impeded;
 - iv. the same programmes may be broadcast to a large part of Europe and, mainly through the deterioration of the financial resources of existing broadcasting organisations and through the competition for viewers, the intellectual and cultural pluriformity in Council of Europe member states may decline;
14. Considering that, in view of these dangers and of the rapid technological developments, it is necessary and urgent that European states cooperate to solve the legal problems raised by the transmission of television programmes through satellites and cable networks;
15. Considering that the measures to be taken both at national and international level should be on the broadcasting rather than on the receiving end, and that they may include the following:
 - i. safeguards for the application of national legislation for the protection of public health and morals, and for the application of penal law;
 - ii. effective measures to guarantee that advertisers will comply with national and international provisions;
 - iii. if television channels are sold to commercial companies or to foreign countries, they should be made subject to the same regulations as domestic broadcasting organisations;
16. Recalling Resolution No. III on cultural development and the electronic media, of the 3rd Conference of European Ministers with responsibility for Cultural Affairs (Luxembourg, (1981));
17. Desirous to protect adequately the rights of authors, composers and performing artists;
18. Considering that further measures to be taken should safeguard:
 - i. the independence of those responsible for the programmes vis-à-vis the state;
 - ii. the independence of those responsible for the programmes vis-à-vis capital suppliers and advertisers;
 - iii. the clear separation between programmes and advertising;
 - iv. the integrity of commercial information by strict interdiction of hidden or misleading advertising and of subliminal messages;
19. Considering that, in order to increase or safeguard pluriformity of television broadcasts, it may be indicated:
 - i. to take measures to guarantee the access of all political, social and cultural forces to the electronic media on fair and equitable terms;

- ii. to study the desirability and the possibilities of additional financing of broadcasting companies and television programmes by public means;
20. Recalling the European Agreement for the prevention of broadcasts transmitted from stations outside national territories (1965);
21. Considering that the Council of Europe, embracing nearly all free and democratic countries in Europe, is particularly well-suited to deal with these questions, and that it has already studied the framework of its Steering Committee on the Mass Media and its subordinate committees which deal with the technological, economic, social, legal and human rights aspects,
22. Recommends that the Committee of Ministers:
- a. instruct the Steering Committee on the Mass Media to study, in consultation with the other steering committees involved, the problems raised by cable television and by direct satellite broadcasting, in view of arriving at a European agreement:
 - i. on securing the artistic independence of programme-makers vis-à-vis the state and commercial interest;
 - ii. on concrete legal co-operation, possibly in the form of a convention;
 - iii. on measures to educate the public, and especially young people, to appreciate and evaluate the media in question;
 - iv. on copyright and royalty questions;
 - v. on a code of standards regarding programme content, acceptable also to broadcasting organisations;
 - b. invite the member governments to scrutinise their national broadcasting and cable legislation to see whether it is in line with the principles mentioned above and adapt it if necessary.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTY-FOURTH ORDINARY SESSION

Recommendation 952 (1982)³⁹

³⁹ *Assembly debate* on 1 and 2 October 1982 (12th, 13th and 14th Sitzings) (see Doc. 4940, report of the Legal Affairs Committee).

Text adopted by the Assembly on 2 October 1982 (14th Sitting).

*on international means to protect freedom of expression
by regulating commercial advertising*

The Assembly,

1. Considering that freedom of expression is a fundamental right laid down in the constitutions of most Council of Europe member states and in the European Convention on Human Rights;
2. Considering that Article 10 of this convention reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.";
3. Considering that freedom of expression is a right which should enable individuals and groups to express themselves, but that due regard should be had to the rights of others;
4. Noting that, in accordance with the jurisprudence of the European Commission of Human Rights, the protection conferred by Article 10 is not normally withheld from statements of a commercial nature, but that the level of protection may be less than that accorded to the expression of political ideas with which the values underlying the concept of freedom of expression in the convention are chiefly concerned;
5. Desirous to counteract any abuses of human rights;
6. Considering that appropriate advertising is an essential element of the market economy;
7. Considering, however, that commercial advertising is often very intrusive, and that children especially may not possess adequate protection against its influence;
8. Considering that commercial advertising sometimes strives for the sale of goods and services which are dangerous to health or undesirable for other reasons;
9. Considering, in this respect, that there is, for instance, an alarming increase in the use of alcohol by youth in many of our member countries;
10. Referring to its Recommendation 716 (1973), on the control of tobacco and alcohol advertising, and on measures to curb consumption of these products;

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11. Considering that mass media, especially in view of modern technical developments, such as cable television and direct television broadcasts by satellites, are not limited by national boundaries, but that they are frequently heard, watched or read in several of our member countries;
12. Considering that there is a danger of cultural messages, opinions and information being mixed with advertising, and that, as a consequence, the exercise of the right to freedom of expression may be undermined;
13. Considering, for that reason, that any action aimed at protecting freedom of expression by regulating commercial advertising is bound to fail unless it is taken up at international level;
14. Convinced that all action aimed at regulation or prohibition should be accompanied by a policy including measures such as better education of the young, strengthening of consumer associations and better use of leisure time;
15. Recalling its recent Recommendation 926 (1981) on questions raised by cable television and by direct satellite broadcasts;
16. Stressing the importance of:
 - i. the clear separation between programmes and advertising on the electronic media (see Recommendation 926, paragraph 18.iii);
 - ii. effective measures to guarantee that advertisers will comply with national and international provisions (see Recommendation 926, paragraph 15.ii);
 - iii. safeguards for the application of national legislation in the field of health, morals, public order, protection of children, etc.;
17. Considering that the overwhelming majority of newspapers and periodicals in our member states are dependent on a steady flow of advertisements without which they would not be able to exist;
18. Referring to the International Code of Advertising Practice of the International Chamber of Commerce;
19. Welcoming the work of the Council of Europe's Intergovernmental Steering Committee on the Mass Media;
20. Considering that this committee should, as a matter of urgency, study and propose adequate international measures, in particular:
 - i. co-operation and co-ordination in respect of commercial advertising, especially on radio and television;
 - ii. prohibition of misleading, hidden and subliminal advertising or messages;
 - iii. promotion of the conditions under which a pluriform supply of information can exist;

- iv. introduction of a binding code of conduct for commercial advertising which should, in particular, take account of the effect of advertising on children, not be contrary to the process of emancipation, and promote as well as confirm the separation of advertising from information or opinions,
21. Recommends that the Committee of Ministers, in the light of Article 10 of the European Convention on Human Rights, instruct the Steering Committee on the Mass Media to examine international means to protect freedom of expression by regulating commercial advertising, especially on radio and television, and to make concrete proposals, possibly through the conclusion of a European convention.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTY-SIXTH ORDINARY SESSION

Resolution 820 (1984)⁴⁰

on relations of national parliaments with the media

The Assembly,

1. Considering that relations between parliaments and the media have many aspects, namely:
 - i. parliaments of the member countries often examine the media policy of their governments;
 - ii. parliaments are sometimes represented on the boards of television and radio companies, or are in various forms - involved in the monitoring of the activities of these companies;
 - iii. parliaments need media coverage to disseminate knowledge of their activities to a wider public;
2. Considering, however, the limited audience for parliamentary news among viewers and readers;
3. Considering the limited number of newspapers that give extensive and detailed information on the activities of parliaments;
4. Noting that the electronic media, in particular television, tend to cover only important parliamentary events;

⁴⁰ *Assembly debate* on 7 May 1984 (1st Sitting) (see Doc. 5084, report of the Committee on Parliamentary and Public Relations).

Text adopted by the Assembly on 7 May 1984 (1st Sitting).

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5. Stressing the need for parliaments, while respecting their traditions and rules of procedure, as well as the freedom of the press, to make use of all possibilities for adequate media coverage of their work,
6. Expresses the view that, where media coverage of parliamentary events is concerned:
 - a. the electronic media should consider:
 - i. broadcasting programmes on parliamentary work at fixed times;
 - ii. if several channels are available, giving in one of them a certain priority to a parliamentary news programme;
 - iii. giving wider publicity to question time in parliaments, when high-ranking members of government are present;
 - iv. setting up a specialised unit for parliamentary affairs;
 - v. increasing their efforts to explain to the audience the basic facts of parliamentary life (committee work, absenteeism, etc.);
 - b. the press - particularly nation-wide and major regional newspapers - should consider:
 - i. instituting posts of parliamentary correspondents;
 - ii. giving more coverage to parliamentary work which has only limited coverage in other media;
 - iii. devoting series of articles to the basics of parliamentary life, about which only a limited number of readers know the essential facts;
 - iv. publishing more articles of an educative nature on democratic institutions, in particular parliaments;
 - c. national parliaments should:
 - i. contemplate, if the budgetary situation permits, appointing a number of parliamentary information officers;
 - ii. contemplate arranging press briefings by the Speaker or a spokesman on the agenda of parliament;
 - iii. study the possibilities of access by journalists to parliament, bearing in mind security and the working conditions of members;
 - iv. ensure that minimum facilities for journalists are available (press rooms, press gallery, meeting rooms), and produce, if possible, press reviews, analyses of electronic media coverage, newsletters on parliamentary work, brochures explaining the organisation and functioning of parliament (possibly in several languages);

- v. provide, as far as possible, adequate radio and television services (studios, recording and editing equipment, broadcasting facilities);
- vi. produce films or audio-visual material on their functioning;
- vii. record parliamentary debates on magnetic tapes, where possible, for use by radio and television companies.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

THIRTY-EIGHT ORDINARY SESSION

Recommendation 1037 (1986)⁴¹

on data protection and freedom of information

The Assembly,

1. Bearing in mind that democracies are characterised by the distribution and circulation of a maximum amount of information within society;
2. Aware of the contribution made by the Committee of Ministers to the promotion of a free circulation of information within society in adopting Recommendation No. R (81) 19, on access to information held by public authorities, as well as its Declaration on the freedom of expression and information of 29 April 1982, which declared that the pursuit of an open information policy in the public sector, including access to information, is among the objectives of member states;
3. Having regard also to Recommendation 854 (1979), on access by the public to government records and freedom of information, and Recommendation 582 (1970), on mass communication media and human rights, of the Parliamentary Assembly, stating that the rights provided for by Article 10 of the European Convention on Human Rights should be extended "to include freedom to seek information... (with) a corresponding duty on public authorities to make information available on matters of public interest subject to appropriate limitations";
4. Recognising that the principle of freedom of information/access to official information has been introduced by many national, federal and state legislatures of member states of the Council of Europe as well as elsewhere;

⁴¹ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 3 July 1986.
See Doc. 5572, report of the Legal Affairs Committee.

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5. Having particular regard to the legislation of Denmark, France, the Netherlands, Norway and Sweden, on access to official information, as well as of Australia, Canada and the United States;
6. Recalling that a right to have access to official information may be restricted in the interests of the protection of privacy;
7. Believing therefore that the protection of privacy influences the amount of information which can circulate in society;
8. Recalling in this context the basic data protection principles set out in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, of 28 January 1981, which impose limitations on the collection, storage, use and communication of personal information;
9. Aware of the fact that the convention of 28 January 1981, which has now entered into force, confers a right of access to personal data only, and that this right is reflected in the data protection laws of Austria, Denmark, France, the Federal Republic of Germany, Iceland, Luxembourg, Norway, Sweden and the United Kingdom;
10. Convinced however that the coexistence of access to official information legislation and data protection legislation may come into conflict especially where they are administered separately by different organs and under different criteria;
11. Conscious of the fact that certain countries have sought to avoid conflicts by legislating for access to official information and data protection at the same time, and have therefore shown that the concepts are not mutually distinct but form part of the overall information policy in society, Canada, the province of Quebec (Canada) and the state of Hesse (Federal Republic of Germany) being cases in point;
12. Considering that new technological developments may render obsolete existing legislation, and that the Council of Europe should therefore continue to give a lead and provide guidelines for the national legislators concerning the problems raised by new technologies,
13. Recommends that the Committee of Ministers instruct the Committee of experts on data protection:
 - a.* to identify criteria and principles according to which data protection and access to official information could be reconciled;
 - b.* to prepare an appropriate legal instrument setting out such criteria and principles;
14. Invites the governments of member states which have not yet done so to ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

OF THE
COUNCIL OF EUROPE

TWENTY-NINTH ORDINARY SESSION

Recommendation 1067 (1987)⁴²

on the cultural dimension of broadcasting in Europe

The Assembly,

1. Having considered the report by its Committee on Culture and Education (Doc. 5782) and the opinion of its Legal Affairs Committee (Doc. 5800);
2. Recalling its Recommendation 926 (1981) on questions raised by cable television and by direct satellite broadcasts, and Recommendation 996 (1984) on Council of Europe work relating to the media;
3. Recalling the Declaration on the Freedom of Expression and Information adopted by the Committee of Ministers in 1982.
4. Drawing attention to the profound changes in the mass media field, and in particular in that of television, as a result of the introduction of new transmission techniques by satellite and cable, in conjunction with rapidly increasing commercialisation both in public broadcasting and through privatisation;
5. Noting that such developments may have potentially positive effects, in particular through:
 - a. increasing the opportunities and opening up new fields for cultural creation and expression;
 - b. broadening the range of programmes;
 - c. assisting awareness of other European languages and cultures;
6. Believing however that such changes also carry serious cultural risks, notably:
 - a. the encouragement of passive consumption of broadcast material;
 - b. the reduction in programme diversity and the erosion of socially accepted standards of behaviour;
 - c. the undermining of the cultural identity of smaller countries and minor language groups, and of the cultural diversity of Europe as a whole;

⁴² *Assembly debate* on 8 October 1987 (18th Sitting) (see Doc. 5782, report of the Committee on Culture and Education, and Doc. 5800, opinion of the Legal Affairs Committee).
Text adopted by the Assembly on 8 October 1987 (18th Sitting).

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- d.* lack of respect for copyright and neighbouring rights;
 - e.* economic and thereby cultural dependence on outside (largely commercial) factors;
- 7. Recognising that advertising provides an important occasion for artistic creation and is often of high quality, but at the same time wishing to prevent advertising destroying, for example by inappropriate juxtaposition or interruption, the cultural value of the programme it accompanies;
- 8. Insisting on the need for an effective reassertion by governments of the public service nature of broadcasting (whether public or private), and of the political, educational and cultural roles of the mass media, and believing that greater emphasis should be placed on the mass media as a means of creative expression, cultural diversity and communication throughout Europe;
- 9. Believing that, as a general principle, both public and private broadcasting should be subject to the same rules;
- 10. Stressing the importance for member states to concert policies and, when relevant, harmonise legal arrangements relating to the mass media, but in a manner that will respect national differences and also the independence of professional broadcasting bodies;
- 11. Repeating its concern, expressed in Recommendation 963 (1983) on cultural and educational means of reducing violence, that artistic freedom should not be used as an alibi for purely commercial interests;
- 12. Recalling its [Recommendation 862](#) (1979) on cinema and the state, and stressing the need for closer co-ordination of mass media policies with those of other means of cultural expression;
- 13. Recalling also its Recommendation 928 (1981) on the educational and cultural problems of minority languages and dialects in Europe, and Recommendation 1043 (1986) on Europe's linguistic and literary heritage, and stressing the role that the cinema and mass media can play in promoting linguistic diversity and widening cultural appreciation;
- 14. Recalling its Recommendation 1018 (1985) on private sponsorship of the arts, and [Recommendation 1059](#) (1987) on the economics of culture, and believing that considerably more resources should be channelled from the enormous profits made in the mass media business into direct encouragement of original production and the development of new and more varied talent;
- 15. Believing also that the governments of member states should review the fiscal incentives available to promote the re-investment of profits made in the mass media business in original domestic production and the development of new and more varied talent;
- 16. Recalling the long-standing concern of the Council for Cultural Co-operation and the Conference of European Ministers responsible for Cultural Affairs with the interaction between cultural policy and the communication media, and welcoming the proposal made by the ministers in Sintra (September 1987) for developing practical measures to promote

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European cultural diversity, taking into account the development of the communication technologies;

17. Having noted the texts adopted by the 1st European Ministerial Conference on Mass Media Policy (Vienna, December 1986), and welcoming in particular the direct request addressed by the Vienna conference to the Committee of Ministers for the rapid preparation, within the Council of Europe framework, of binding legal instruments on certain crucial aspects of transfrontier broadcasting;

18. Stressing the need for the participation of the European Community bodies in this initiative;

19. Underlining the need for speed in this area, in order to keep pace with technological advance and avoid cultural policies being dictated by such advances,

20. Recommends that the Committee of Ministers:

a. finalise and open for signature, early in 1988, a binding legal instrument on basic standards for transfrontier broadcasting by both public and private bodies, with a view to the possibility of its entering into force before the 2nd European Ministerial Conference on Mass Media Policy in Stockholm in November 1988, and set up an effective mechanism (including the representation of broadcasting bodies) to monitor the implementation of this instrument;

b. provide for the subsequent inclusion into such an instrument of binding agreements or additional protocols in other fields mentioned in the following paragraphs;

c. adopt a declaration on public responsibility for the mass media and the public service nature of broadcasting, with particular reference to the role of television in stimulating awareness of different cultures and developing the diversity of cultural and linguistic identities;

d. draw up proposals for maintaining and encouraging the linguistic diversity of the mass media, for example by:

i. joint production funds on which minor language nations may also draw;

ii. the inclusion of minor language interviews in news bulletins;

iii. the development of improved techniques for subtitling and the provision of dubbing on an optional basis;

iv. ensuring the right for national languages, and where appropriate minor local and regional languages, to be carried on national, regional and local networks;

e. recognise advertising as a valid field of creative expression, but give consideration to means of ensuring that it does not shock or affect the cultural integrity of the programmes it may accompany;

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- f.* accelerate and intensify its work on guidelines for reducing violence, brutality and pornography, with reference to national legislation, not only on videograms, but also with reference to broadcasting in general;
- g.* encourage increased participation by women in broadcasting (especially in the fields of production and programming);
- h.* encourage media education, for example by:
 - i.* the introduction of school courses on critical appreciation of the media and audiovisual production;
 - ii.* the information of adults (and not only parents) as to developments in the mass media field;
- i.* promote the use of the mass media in education and in particular in line with the objectives of the Council of Europe in such fields as human rights, tolerance and equality between the sexes;
- j.* encourage the development of international concertation to promote the production and distribution of audiovisual works in Europe within the framework of overall cultural policies, including:
 - i.* training programmes, for example the setting up of training centres for those working in the broadcasting profession, and trainee exchange schemes;
 - ii.* protection of copyright and neighbouring rights;
 - iii.* the closer co-ordination of media policies, and in particular the relationship between cinema and television;
 - iv.* mechanisms of direct and indirect support for audiovisual creativity;
 - v.* special emphasis on co-production in the making of musical and other non-verbal programmes;
- k.* maintain and encourage a continuing dialogue between all partners (government, media, the public and interested non-governmental bodies) with a view to developing, by means of a series of suitable instruments, the basis for the free exchange of mass media material and professional experience between Council of Europe member countries, between Western and Eastern Europe, and between Europe and other parts of the world;
- l.* conduct periodic reviews of international co-operation and research relating to broadcasting.

COUNCIL OF EUROPE

FORTIETH ORDINARY SESSION

Recommendation 1098 (1989)⁴³

on East-West audiovisual co-operation

The Assembly,

1. Noting the interim report of its Committee on Culture and Education (Doc. 5997) on the Colloquy "Cinema and television: the audiovisual field as a vector of communication between Eastern and Western Europe", organised in Orvieto from 26 to 28 October 1988 by the committee as its contribution to European Cinema and Television Year;
2. Recalling its [Recommendation 862](#) (1979) on cinema and the state, and its Recommendations 926 (1981) on questions raised by cable television and by direct satellite broadcasts, 996 (1984) on Council of Europe work relating to the media, and [1067](#) (1987) on the cultural dimension of broadcasting in Europe;
3. Recalling also its recent reports relating to East West co-operation and in particular [Recommendation 1075](#) (1988) on European cultural co-operation and [Resolution 909](#) (1988) on East-West relations (General policy of the Council of Europe);

Open dialogue and exchanges

4. Believing that the audiovisual field represents an essential area for communication and co-operation between countries, peoples and persons in Eastern and Western Europe, and that this is particularly relevant in view of the current positive political moves towards more open dialogue and of technological developments such as direct broadcasting by satellite;
5. Welcoming the increasing readiness of the Soviet Union and certain other East European countries to participate in open discussion of audiovisual questions, as in the Orvieto Colloquy, and to enter into specific bilateral and possibly multilateral agreements;
6. Aware of the existing exchange of audiovisual material, either bilaterally or through film festivals or through such bodies as EBU and OIRT, but believing that a serious information gap still persists and that it is important to encourage a far greater flow of information, material and persons between Eastern and Western Europe;
7. Noting also that the current flow of audiovisual material is preponderantly from West to East, and believing that special efforts are necessary to balance this tendency through improvements both in the production of East European material and in its distribution in the West (facilities for subtitling or dubbing and training in marketing techniques);

⁴³ *Assembly debate* on 2 February 1989 (23rd Sitting) (see Doc.5997, report of the Committee on Culture and Education, Rapporteur: Mrs Morf).

Text adopted by the Assembly on 2 February 1989 (23rd Sitting).

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8. Stressing the role played by contacts at all levels in this field and the need for the development of networks for circulating audiovisual material and information about it;

9. Noting, in addition, other means of improving contacts and the exchange of information, such as:

- telebridges,
- exchange of persons (artists or technicians),
- genuine co-productions;

Role of the state

10. Convinced that audiovisual creativity and the flow of information should be free from economic and commercial constraints, as also from political control and censorship;

11. Believing that the state continues to play an essential role in the maintenance of cultural standards and therefore in assisting production and in ensuring free flow;

12. Welcoming the fact that the European Convention on Transfrontier Television is in principle to be opened to non-member countries, and calling on countries in Eastern Europe to consider developing their audiovisual policies and practice in a manner that could facilitate their adherence in due course to this basic framework;

13. Stressing, however, the need for ongoing intergovernmental co-operation in order that this framework can be widened to encompass the whole of the audiovisual field;

Specific areas for co-operation

14. Noting as of particular East-West relevance the advantages of intergovernmental co-operation in specific technical areas such as:

- a.* the compilation of European audiovisual legislation;
- b.* statistics on production, distribution (and programme flow) and audiences;
- c.* the cataloguing of archive material;
- d.* the development of technologies (for example multilingual broadcasting and HDTV (high definition television));

15. Noting that education and training are also a key area in which East-West audiovisual co-operation could be usefully developed, notably through:

- a.* distance teaching, especially in scientific subjects or the visual arts;
- b.* audiovisual literacy, especially research, teacher training and exchanges;
- c.* the training of technicians, and the exchange of techniques, technology and persons;

16. Emphasising also the need for continuing international co-operation for the protection of literary and artistic property (copyright), as well as neighbouring rights, through the drawing up and effective implementation throughout Europe of regulations concerning these questions and including that of audiovisual piracy;

European co-operation

17. Believing that it is in the interests of the quality and cultural diversity of audiovisual production throughout Europe (both East and West) that cooperation in this field should be on as wide a European basis as possible;
18. Convinced that special emphasis should be placed on the East-West dimension in all European audiovisual co-operation, whether on the level of the Council of Europe (in such projects as "Eurimages") or in activities of the European Community (the MEDIA project and European Film Distribution Office), or in the recently proposed "Audiovisual EUREKA";
19. Believing, however, that the Council of Europe is the most suitable institution in Europe for developing East-West audiovisual co-operation;
20. Noting that the Committee of Ministers has considered "debate in the widest European parliamentary forum to be indispensable for the strengthening of the European cultural identity and the development of co-operation in the largest possible European geographical area" (reply to [Recommendation 1075](#));
21. Calling on its Committee on Culture and Education to pursue and develop the contacts that were made on the occasion of the Orvieto Colloquy, and to continue to develop proposals for co-operation in the audiovisual field in the light of further colloquies and in the context of a more general review of questions raised by European Cinema and Television Year;
22. Noting the large extent to which the proposals for European co-operation made at the last European Ministerial Conference on Mass Media Policy (Stockholm, 23 and 24 November 1988) meet the conclusions of the Orvieto Colloquy,
23. Recommends that the Committee of Ministers give immediate consideration to the establishment of a suitable framework for East-West audiovisual co-operation, in the first place by making the fullest possible use of the European Cultural Convention, but also by working towards a more specific instrument.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

QUARANTE ET UNIÈME SESSION ORDINAIRE

Resolution 937 (1990)⁴⁴

on telecommunications: the implications for Europe

The Assembly,

⁴⁴ *Assembly debate* on 31 January 1990 (26th Sitting) (see Doc. 6151, report of the Committee on Science and Technology, Rapporteur: Mr Fourné).
Text adopted by the Assembly on 31 January 1990 (26th Sitting).

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1. Convinced that the telecommunications sector is ideal ground for establishing a link between nations, and that such co-operation can operate in the matter of standards and the creation of telecommunications infrastructures;
2. Welcoming the efforts made by the European Community with a view to harmonising telecommunications networks and opening up the services market in its twelve member states, and convinced that this harmonisation should also benefit not only other Council of Europe member states but the whole of the European continent;
3. Considering that European telecommunications standards are, in large measure, prepared by the European Conference of Postal and Telecommunications Administrations (CEPT) which brings together the member countries of the Council of Europe as well as Yugoslavia, the Vatican City and the Principality of Monaco;
4. Welcoming co-operation with some East European countries, which was eased by the relaxation in 1988 of the Cocom rules on telecommunications equipment;
5. Considering that some developing countries, and in particular those in Africa, are still at a severe disadvantage because of their weak telecommunications structures;
6. Considering that the technical infrastructure most suited to the development of the African continent is an integrated telecommunications system which includes a satellite component, and whose feasibility study is being undertaken under the auspices of an inter-agency co-ordinating committee (IACC) in which the International Telecommunication Union (ITU) is the lead agency, associating the African countries and ten international and intergovernmental regional organisations;
7. Anxious that the telecommunications equipment sector should remain one of Europe's economic strengths;
8. Convinced that the success of this sector largely depends on standardisation, research and the opening up of public contracts;
9. Convinced that the growth of a new, important economic sector dealing with "value-added services" depends on present developments in telecommunications, and that the emergence of "new businesses" in such a sector can play an effective part in the creation of new jobs;
10. Convinced that "high-definition television" will be of vital importance to industry over the next decade;
11. Considering that the availability of, and equal access to, basic telecommunications services already contribute substantially to the well-being of populations, conditioning their economic development, and that the improvement of telecommunications in the developing countries will have a positive impact on the whole of the world economy;
12. Aware that regional disparities in telecommunications infrastructures accentuate regional imbalances;

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13. Welcoming the European Community's initiatives in connection with telecommunications development on a regional level, as given practical effect in the "Special Telecommunication Action for Regional Development" (STAR) programme;
14. Welcoming the pragmatic and flexible system of financing the EUREKA programme;
15. Convinced that telecommunications are an outstanding medium for the development of education and vocational training, both in developing countries and those with scattered populations and in industrial countries;
16. Convinced that communications technology allows a restructuring of the employment sector (teleworking, teleshopping) and presents opportunities for harmonising social conditions;
17. Considering that telecommunications, audiovisual techniques and integrated broadband communications contribute to the spread of information and culture;
18. Aware of the interaction between technical media and cultural creation, influenced, *inter alia*, by the development of cable television, direct broadcasting by satellite and the emergence of high-definition television;
19. Convinced that direct broadcasting by satellite can be a source of information independent of the institutional sources;
20. Convinced that monopolies over complete communications channels, particularly where the medium is identified with the message, carry potential risks of cultural domination and, therefore, that pluralism and freedom of information are the best guarantees of democracy;
21. Invites the governments of member states:
 - a. to ensure that the development of new communications media contributes to improving the individual's freedom of information and to strengthening democracy;
 - b. to ensure pluralist use of the networks and to make sure the medium is separated from the message in the provision of communications media;
 - c. to encourage the creation of independent programmes on telecommunications networks and cable networks by preventing programming monopolies;
 - d. to support schemes to develop educational and vocational training programmes using the full range of techniques and media: telematics, television, cable, radio and satellite;
 - e. to support the setting up of a high-power data transmission network linking together scientific research centres in Europe;
 - f. to assist in developing employment by encouraging the ripple effect in the telecommunications sector and, in particular, by promoting the creation of small and medium-sized businesses offering "value-added services";

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- g.* to extend harmonisation rules on the provision of open networks and the opening up of the market for value-added telecommunications services within member states;
- h.* to encourage telecommunications and broadcasting system standardisation on a global basis so as to facilitate the rapid introduction and development of new techniques, thereby providing manufacturers, operators and consumers with worldwide opportunities and corresponding economies of scale;
- i.* to strengthen the European telecommunications equipment industry by giving priority to the development of integrated services digital networks (ISDN), and through standardisation, research and the opening up of public contracts within member countries;
- j.* to take steps to introduce common standards for direct broadcasting by satellite;
- k.* to promote the expansion of the pan-European mobile telecommunications network groupe système mobile (GSM);
- l.* to support the adoption of a common standard for high-definition television in Europe;
- m.* to promote the creation of an internal market for high-definition television covering all the media: cable, hertzian wave and satellite;
- n.* to take steps to correct regional disparities within member states, so that the essential telecommunications services are equally accessible to all and that the basis for an economic upturn is secured;
- o.* to study the implementation of a regional levelling-up programme along the lines of the European Community's STAR programme and financed in the same way as the EUREKA programme;
- p.* to initiate consultation with a view to extending the rules governing standardisation and the provision of networks to East European countries;
- q.* to respond favourably to the applications of East European countries wishing to join the European Conference of Postal and Telecommunications Administrations (CEPT);
- r.* to back international telecommunications programmes designed to assist the developing countries and, in particular, the promotion of a regional telecommunications satellite for Africa, involving the maximum number of states in the region and bringing all existing initiatives together.

FORTY-FIRST ORDINARY SESSION

Recommendation 1122 (1990)⁴⁵

on the revival of the countryside by means of information technology

1. The Assembly considers that new information and communication technologies offer new opportunities for the strengthening and revival of rural regions across Europe. The achievement of a new harmony between urban centres and the countryside through the application of such technologies would not only meet the aspirations of an increasing number of Europeans to improve the quality of their life and environment by living and working in the countryside, but would also benefit family life, and reduce the strain on transport systems and the environment, easing life in the cities. One successful implementation model for the achievement of such changes is the Swedish "telecottage" project.
2. The Assembly notes with satisfaction the important contributions that the Council of Europe has made to the preservation and development of rural Europe and its environmental and cultural diversity, in particular through the European Campaign for the Countryside organised in 1987 and 1988, and by work in the environmental field. The Council of Europe should continue its work in favour of rural regions, *inter alia* by promoting the application of new information and communication technologies.
3. Consequently, the Assembly recommends that the Committee of Ministers invite the governments of member states, the European Community, the European Space Agency and OECD:
 - a. to work out strategies for the application of new information and communication technology in rural areas, within the framework of a general development plan which gives special emphasis to rural development and to decentralisation in the fields of work and economy;
 - b. to establish policies for the telecommunication sector in line with rural development objectives and the specific needs of the countryside. This should specifically apply to price policies for telecommunication services, policies for telecommunication infrastructures, equipment and availability;
 - c. to provide for the testing of and experimentation with different models (infrastructure, equipment and user programmes), to satisfy the specific needs of existing and future clients and operators in rural communities. The Swedish "telecottage" model, which has also been tested in other European countries, as well as other experiences, should serve as a source of inspiration for this work;
 - d. to create and strengthen well-adapted training and education on the use of new information and communication technologies in rural regions, in particular for rural youth;

⁴⁵ *Assembly debate* on 2 February 1990 (29th Sitting) (see Doc. 6160, report of the Committee on Agriculture, Rapporteur: Mr Lanner).

Text adopted by the Assembly on 2 February 1990 (29th Sitting).

- e. to give special attention to the problem of helping existing small and medium-sized enterprises in all sectors to make rapid use of these new technologies for the improvement of their performance and competitiveness;
 - f. to design development policies which will facilitate the creation of new employment opportunities and new enterprises in the information and communication technology sector in rural regions. This could include the decentralisation of public and private service institutions and companies, and of public administrations;
 - g. to implement employment policies which will favour part-time work in rural areas through the use of telecommunication technologies where complete decentralisation of workplaces may not be possible.
4. Bearing in mind its Recommendation 1110 (1989) on distance teaching, the Assembly recommends that the Committee of Ministers include in the intergovernmental programme of activities a project designed to assist member states in introducing the aforesaid policies.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-SECOND ORDINARY SESSION

Resolution 957 (1991)⁴⁶

on the situation of local radio in Europe

1. Freedom of expression and information is a human right secured by Article 10 of the European Convention on Human Rights, and a fundamental aspect of democracy.
2. Radio broadcasting has a major part to play in the development of culture and the freedom to form opinions.
3. The Assembly considers that local radio is an ideal potential means of fostering freedom of expression and information, the development of culture, the freedom to form and confront opinions, and active participation in local life.
4. Member states not yet having done so should accordingly permit local radio to exist.
5. However, the disorderly proliferation of local radio stations could have the effect of disrupting the airwaves and thus even represent an air traffic hazard. It may also impair programme quality.

⁴⁶ *Assembly debate* on 31 January 1991 (24th Sitting) (see Doc. 6343, report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Columberg; and Doc. 6344, opinion of the Committee on Culture and Education, Rapporteur: Mr Soell).
Text adopted by the Assembly on 31 January 1991 (25th Sitting).

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6. Member states which already have regulations in this area should therefore ensure that they are observed, particularly as regards the use of airwaves.

7. In allocating frequencies and issuing broadcasting licences to local radio stations, member states should ensure that the following criteria are observed:

- i. objectiveness;
- ii. quality in preference to quantity;
- iii. diversity in respect of information, culture and entertainment, and plurality in the ideas conveyed.

8. As far as the contents of their programmes are concerned, local stations should be independent both from the political authority and from the press, publishing companies and financial consortia; moreover, the exercise by local radio networks of a monopoly in broadcasting at any level is best avoided.

9. In order to ensure their independence, their sources of finance should be diversified.

10. They may receive subsidies from central, regional and local government and also resort to advertising, provided that this does not exceed a specified percentage of broadcasting time.

11. The content of the programmes presented by local radio should meet the following requirements:

- i. the quality of local radio must be of the same standard as for public radio;
- ii. a certain standard of professionalism must be provided;
- iii. local radio should observe the public service code of ethics and in particular the principles set forth by the European Parliament in its report of 21 April 1989 on radio broadcasting, namely:

"a. objectivity, integrity and impartiality in the presentation of news;

b. the separation of news from opinion, the naming of those who express opinions and freedom of expression, within the limits laid down by the law of each member state;

c. respect for political, religious, social, cultural and linguistic diversity;

d. respect for the dignity, reputation and private life of individuals and for all rights and liberties recognised under international treaties signed by the member states or recognised by the Assembly;

e. the protection of young people and children;

f. respect for principles of equality, thus excluding discrimination on the grounds of race, culture, sex or religion."

12. Where it does not exist, co-ordination between the authorities of frontier regions should be established in order to achieve a harmonious allocation of airwaves, provide conditions for fair competition and foster mutual knowledge of regional cultures.
13. A body responsible for supervising the application of all the principles set out above should be established in each country.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-THIRD ORDINARY SESSION

Recommendation 1147 (1991)⁴⁷

on parliamentary responsibility for the democratic reform of broadcasting

1. The Committee on Culture and Education held its 2nd Colloquy on East-West Audiovisual Co-operation in Prague, in October 1990, on the subject of parliamentary responsibility for the democratic reform of broadcasting.
2. The situation of broadcasting and the approach to it is changing in both Eastern and Western Europe. In the West we witness the impact of new technologies, new forms of commercial involvement and the transfrontier dimension of broadcasting; whereas in the East political changes have washed away forty years of totalitarian ideology leaving behind a legal void. This situation leads to the present review of broadcasting throughout Europe.
3. Radio and television have a tremendous impact on public opinion. In a democracy, broadcasters have considerable power as a result of freedom of expression and the absence of censorship and must be accountable for their policies. Parliaments, which represent regional, political and cultural currents of opinion, and are guided by long-term national interest, must have the ultimate responsibility not only for setting up the legal frameworks within which radio and television are organised, but also for making provisions for guaranteeing their implementation.
4. There is no single solution for organising radio and television. Models vary from country to country and are subject to an ongoing process of adjustment. Much can, however, be learnt from past mistakes. Central and East European countries should be involved in European co-operation and discussion on these questions. Assistance should also be made available on both bilateral and multilateral levels to each country in the process of working out the model that suits best its particular situation and constraints.
5. The basic problem facing the new democracies in Central and Eastern Europe is the search for an audiovisual system to replace the former centralised, politically controlled,

⁴⁷ *Assembly debate* on 22 April 1991 (1st Sitting) (see Doc. 6405, report of the Committee on Culture and Education, Rapporteur: Mrs Grendelmeier).

Text adopted by the Assembly on 22 April 1991 (1st Sitting).

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media. However, the alternative should not be unbridled privatisation and complete liberalisation, as they could lead to ruinous competition for exclusivity rights or even monopoly. To prevent this, the legal void left by the collapse of the totalitarian systems must urgently be filled with the notions of public service broadcasting (as distinct from public ownership), pluralism, independence and balance.

6. Other problems that are common to most Central and East European broadcasting systems are:

- i. The evolution of the legal, organisational and financial structures for broadcasting is out of step with the development of democratic society and the market economy in these countries.
- ii. Their present economic situation and the small size of the market do not allow advertising to play a major role in the financing of broadcasting.
- iii. There are linguistic and minority realities.
- iv. There is a lack of qualified professionals, especially at management level, to replace existing radio and television staff compromised by having subscribed to earlier ideologies.
- v. Their equipment is obsolete or badly serviced.
- vi. They lack outlets in Western Europe.

7. Aware of these problems, the Assembly believes it helpful to identify the following basic principles that parliaments throughout Europe should take into account when revising broadcasting legislation in a democratic society:

- i. The role of a broadcasting system is to provide information, education and entertainment to as wide an audience as possible, in conformity with the principles of the free flow of information, freedom of expression and human rights.
- ii. The information and education roles of broadcasting are those of a public service providing public goods. It should be recognised that under appropriate circumstances the function of public service broadcasting may be fulfilled by publicly or privately organised entities. It is for parliament to set objectives, to vote broadcasters the necessary funds to reach these objectives, and to verify that they are effectively attained. It is for the state or government to provide the means and mechanisms for executing these decisions and it is for the professionals to produce programmes that satisfy these requirements. Ideally, the audiovisual landscape should be mixed and include a public service sector, a commercial sector and a local or regional component.
- iii. Market forces alone, however, cannot be relied upon to ensure public service broadcasting. Purely commercial and public service objectives are opposites: the former is to make money, and therefore the companies need programmes; the latter is to provide a service in the form of programmes, and therefore the broadcasters need money. Public service broadcasting should avoid direct competition for higher audience ratings to the detriment of programme quality.

- iv. In the fulfilment of their aims, radio and television should be accountable to a body independent of broadcasting and of the government, where relevant regional, political, social and cultural currents of opinion are represented, and which is itself accountable (however indirectly) to parliament.
 - v. This body should ensure transparency in the ownership and management of broadcasting, and guard against harmful media concentrations.
 - vi. It should ensure pluralism at least at the level of the overall media landscape.
 - vii. It should also monitor programme standards. Guidelines or codes of conduct for presenting news, political views, violence, etc. should be drawn up in advance by parliament in concertation with broadcasters, reconciling broadcasters' rights to freedom of expression with the right of the public to receive information. Responsibility should replace censorship.
 - viii. Regional broadcasting has an important role to play within a national system, and in particular when it includes the right of minorities to express themselves. It should be protected in order to preserve regional identity and the cultural heritage, although the additional financial difficulties should not be overlooked.
 - ix. Broadcasters should be guaranteed independence whatever their sources of funding, and in particular by the diversification of these sources, including licence fees, advertising, subscriptions and the sale of services, and in addition direct state subsidies, if they are necessary, at national or regional level.
 - x. In an increasingly interactive media landscape it is useful to take account of the principles laid out in the European Convention on Transfrontier Television.
8. The Prague colloquy was a parliamentary contribution to a global approach in parallel with expert assistance provided by the Council of Europe at the intergovernmental level to the drafting of new legislation by Central and East European states. The Assembly therefore recommends that the Committee of Ministers give high priority to the continuation of this activity.
9. Co-operation, involving contacts and, where appropriate, exchanges, should indeed continue at all levels - parliamentary, governmental and professional - as new systems cannot be invented at a stroke and new ways of thinking need time to develop.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FOURTH ORDINARY SESSION

Resolution 1003 (1993)⁴⁸
on the ethics of journalism

The Assembly affirms the following ethical principles for journalism and believes that they should be applied by the profession throughout Europe.

News and opinions

1. In addition to the legal rights and obligations set forth in the relevant legal norms, the media have an ethical responsibility towards citizens and society which must be underlined at the present time, when information and communication play a very important role in the formation of citizens' personal attitudes and the development of society and democratic life.
2. The journalist's profession comprises rights and obligations, freedoms and responsibilities.
3. The basic principle of any ethical consideration of journalism is that a clear distinction must be drawn between news and opinions, making it impossible to confuse them. News is information about facts and data, while opinions convey thoughts, ideas, beliefs or value judgments on the part of media companies, publishers or journalists.
4. News broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumour must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.
5. Expression of opinions may entail thoughts or comments on general ideas or remarks on news relating to actual events. Although opinions are necessarily subjective and therefore cannot and should not be made subject to the criterion of truthfulness, we must ensure that opinions are expressed honestly and ethically.
6. Opinions taking the form of comments on events or actions relating to individuals or institutions should not attempt to deny or conceal the reality of the facts or data.

⁴⁸ *Assembly debate* on 1 July 1993 (42nd Sitting) (see Doc.6854, report of the Committee on Culture and Education, Rapporteur: Mr Núñez Encabo).
Text adopted by the Assembly on 1 July 1993 (42nd Sitting).

**The right to information as a fundamental human right -
Publishers, proprietors and journalists**

7. The media's work is one of "mediation", providing an information service, and the rights which they own in connection with freedom of information depends on its addressees, that is the citizens.
8. Information is a fundamental right which has been highlighted by the case-law of the European Commission and Court of Human Rights relating to Article 10 of the European Convention on Human Rights and recognised under Article 9 of the European Convention on Transfrontier Television, as well as in all democratic constitutions. The owner of the right is the citizen, who also has the related right to demand that the information supplied by journalists be conveyed truthfully, in the case of news, and honestly, in the case of opinions, without outside interference by either the public authorities or the private sector.
9. The public authorities must not consider that they own information. The representativeness of such authorities provides the legal basis for efforts to guarantee and extend pluralism in the media and to ensure that the necessary conditions are created for exercising freedom of expression and the right to information and precluding censorship. Moreover, the Committee of Ministers is aware of this fact, as demonstrated by its Declaration on the Freedom of Expression and Information adopted on 29 April 1982.
10. When dealing with journalism it must be borne in mind that it relies on the media, which are part of a corporate structure within which a distinction must be made between publishers, proprietors and journalists. To that end, in addition to safeguarding the freedom of the media, freedom within the media must also be protected and internal pressures guarded against.
11. News organisations must consider themselves as special socio-economic agencies whose entrepreneurial objectives have to be limited by the conditions for providing access to a fundamental right.
12. News organisations must show transparency in matters of media ownership and management, enabling citizens to ascertain clearly the identity of proprietors and the extent of their economic interest in the media.
13. Inside the news organisation, publishers and journalists must co-exist, bearing in mind that the legitimate respect for publishers' and owners' ideological orientations is limited by the absolute requirements on truthful news reporting and ethical opinions. This is essential if we are to respect the citizens' fundamental right to information.
14. These requirements are such that we must reinforce the safeguards of the journalist's freedom of expression, for they must in the last instance operate as the ultimate sources of information. In this connection we must legally expand and clarify the nature of the conscience clause and professional secrecy *vis-à-vis* confidential sources, harmonising national provisions on this matter so that they can be implemented in the wider context of democratic Europe.
15. Neither publishers and proprietors nor journalists should consider that they own the news. News organisations must treat information not as a commodity but as a fundamental right of the citizen. To that end, the media should exploit neither the quality nor the substance

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of the news or opinions for purposes of boosting readership or audience figures in order to increase advertising revenue.

16. If we are to ensure that information is treated ethically, its target audience must be considered as individuals and not as a mass.

The function of journalism and its ethical activity

17. Information and communication as conveyed by journalism through the media, with powerful support from the new technologies, has decisive importance for the development of the individual and society. It is indispensable for democratic life, since if democracy is to develop fully it must guarantee citizens participation in public affairs. Suffice it to say that such participation would be impossible if the citizens were not in receipt of the information on public affairs which they need and which must be provided by the media.

18. The importance of information, especially radio and television news, for culture and education was highlighted in Assembly [Recommendation 1067](#). Its effects on public opinion are obvious.

19. It would be wrong to infer from the importance of this role that the media actually represent public opinion or that they should replace the specific functions of the public authorities or institutions of an educational or cultural character such as schools.

20. This would amount to transforming the media and journalism into authorities or counter-authorities ("mediocracy"), even though they would not be representative of the citizens or subject to the same democratic controls as the public authorities, and would not possess the specialist knowledge of the corresponding cultural or educational institutions.

21. Therefore journalism should not alter truthful, impartial information or honest opinions, or exploit them for media purposes, in an attempt to create or shape public opinion, since its legitimacy rests on effective respect for the citizen's fundamental right to information as part of respect for democratic values. To that end, legitimate investigative journalism is limited by the veracity and honesty of information and opinions and is incompatible with journalistic campaigns conducted on the basis of previously adopted positions and special interests.

22. In journalism, information and opinions must respect the presumption of innocence, in particular in cases which are still *sub judice*, and must refrain from making judgments.

23. The right of individuals to privacy must be respected. Persons holding office in public life are entitled to protection for their privacy except in those cases where their private life may have an effect on their public life. The fact that a person holds a public post does not deprive him of the right to respect for his privacy.

24. The attempt to strike a balance between the right to respect for private life, enshrined in Article 8 of the European Convention on Human Rights, and the freedom of expression set forth in Article 10, is well documented in the recent case-law of the European Commission and Court of Human Rights.

25. In the journalist's profession the end does not justify the means; therefore information must be obtained by legal and ethical means.

26. At the request of the persons concerned, the news media must correct, automatically and speedily, and with all relevant information provided, any news item or opinion conveyed by them which is false or erroneous. National legislation should provide for appropriate sanctions and, where applicable, compensation.

27. In order to harmonise the application and exercise of this right in the member states of the Council of Europe, we must implement 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, and also the relevant provisions of the European Convention on Transfrontier Television.

28. In order to ensure high-quality work and independence on the part of journalists, they must be guaranteed decent pay and proper working conditions and facilities.

29. In the relations which the journalist must maintain in the course of his duties with the public authorities or the various economic sectors, care should be taken to avoid any kind of connivance liable to affect the independence and impartiality of journalism.

30. In journalism, controversial or sensational items must not be confused with subjects on which it is important to provide information. The journalist must not exploit his duties for the principal purpose of acquiring prestige or personal influence.

31. In view of the complexity of the process of providing information, which is increasingly based on the use of new technologies, speed and conciseness, journalists must be required to have appropriate professional training.

Rules governing editorial staff

32. Within the newspaper business, publishers, proprietors and journalists must live side by side. To that end, rules must be drawn up for editorial staff in order to regulate professional relations between the journalists and the publishers and proprietors within the media, separately from the normal requirements of labour relations. Such rules might provide for the setting up of editorial boards.

Situations of conflict and cases of special protection

33. In society, situations of tension and conflict sometimes arise under the pressure of factors such as terrorism, discrimination against minorities, xenophobia or war. In such circumstances the media have a moral obligation to defend democratic values: respect for human dignity, solving problems by peaceful, tolerant means, and consequently to oppose violence and the language of hatred and confrontation and to reject all discrimination based on culture, sex or religion.

34. No-one should remain neutral *vis-à-vis* the defence of democratic values. To that end the media must play a major role in preventing tension and must encourage mutual understanding, tolerance and trust between the various communities in regions where conflict prevails, as the Secretary General of the Council of Europe has set out to do with her confidence-building measures in the former Yugoslavia.

35. Having regard to the very specific influence of the media, notably television, on the attitudes of children and young people, care must be taken not to broadcast programmes, messages or images glorifying violence, exploiting sex and consumerism or using deliberately unsuitable language.

Ethics and self-regulation in journalism

36. Having regard to the requisite conditions and basic principles enumerated above, the media must undertake to submit to firm ethical principles guaranteeing freedom of expression and the fundamental right of citizens to receive truthful information and honest opinions.

37. In order to supervise the implementation of these principles, self-regulatory bodies or mechanisms must be set up comprising publishers, journalists, media users' associations, experts from the academic world and judges; they will be responsible for issuing resolutions on respect for ethical precepts in journalism, with prior commitment on the part of the media to publish the relevant resolutions. This will help the citizen, who has the right to information, to pass either positive or negative judgment on the journalist's work and credibility.

38. The self-regulatory bodies or mechanisms, the media users' associations and the relevant university departments could publish each year the research done *a posteriori* on the truthfulness of the information broadcast by the media, comparing the news with the actual facts. This would serve as a barometer of credibility which citizens could use as a guide to the ethical standard achieved by each medium or each section of the media, or even each individual journalist. The relevant corrective mechanisms might simultaneously help improve the manner in which the profession of media journalism is pursued.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

FORTY-FOURTH ORDINARY SESSION

Recommendation 1215 (1993)⁴⁹

on the ethics of journalism

1. The Assembly recalls its work in the field of the media, and in particular its Resolution 428 (1970) containing a declaration on mass communication media and human rights and its Recommendation 963 (1983) on cultural and educational means of reducing violence.

2. Further to the criticism of the role played by the media during the Gulf war, the Committee on Culture and Education organised a parliamentary hearing on the ethics of journalism in Helsinki on 26 June 1991, at which a number of concerns were expressed.

⁴⁹ *Assembly debate* on 1 July 1993 (42nd Sitting) (see Doc. 6854, report of the Committee on Culture and Education, Rapporteur: Mr Núñez Encabo).
Text adopted by the Assembly on 1 July 1993 (42nd Sitting).

3. Since 1970 the Parliamentary Assembly, and also other institutions such as the European Parliament (Resolution of 16 September 1992 on media concentration and diversity of opinions), have been pressing for the elaboration of ethical codes for journalism. However, existing texts dealing with the matter have insufficient international scope and their practical effectiveness therefore remains very limited.
4. European citizens from the different Council of Europe member states increasingly share the same media facilities within a common European information area.
5. The Assembly consequently recommends that the Committee of Ministers:
 - i. ask governments of member states to see that legislation guarantees effectively the organisation of the public media in such a way as to ensure neutrality of information, plurality of opinions and gender balance, as well as a comparable right of reply to any individual citizen who has been the subject of an allegation;
 - ii. study, in co-operation with the competent non-governmental organisations such as the International Federation of Journalists (IFJ), the prospects for setting up, within the Council of Europe, a European mechanism for information verification, taking the form of a European media ombudsman, with sufficient international representativeness where possible drawn from, and having a mode of operation and function similar to, the corresponding national self-regulatory bodies or mechanisms;
 - iii. foster the setting up of citizens' media associations and encourage schools to provide media education;
 - iv. adopt a declaration on the ethics of journalism along the lines of Assembly Resolution 1003 (1993) and promote the implementation of these basic principles in the member states of the Council of Europe.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1994 ORDINARY SESSION

Recommendation 1228 (1994)⁵⁰

***on cable networks and local television stations:
their importance for Greater Europe***

⁵⁰ *Assembly debate* on 24 January 1994 (1st Sitting) (see Doc. 6977, report of the Committee on Science and Technology, Rapporteur: Mr Bartodziej).
Text adopted by the Assembly on 24 January 1994 (1st Sitting).

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1. The Parliamentary Assembly notes that the development of cable networks, satellite broadcasts and local television stations can foster democracy in the countries of central and eastern Europe.

2. It further observes the development under way in other countries, particularly in the United States, where closer links are being established among telephone and information companies and cable operators.

3. Having examined the situation of cable networks in Europe, the Parliamentary Assembly observes that the level of development of these networks differs from one country to another. Each country has its own problems, particularly on the technical front, but also in respect of legislation and management. Awareness of the importance of the technological, industrial, economic and cultural issues is necessary for the protection of European interests.

4. The Assembly has regard in this context to:

- i. its Recommendation 1098 (1989) on east-west audiovisual co-operation;
- ii. its Recommendation 1110 (1989) on distance teaching;
- iii. its Resolution 937 (1990) on telecommunications: the implications for Europe;
- iv. its Resolution 957 (1991) on the situation of local radio in Europe;
- v. its Recommendation 1147 (1991) on parliamentary responsibility for the democratic reform of broadcasting;

and also to:

- vi. the European Convention on Transfrontier Television (of 5 May 1989);
- vii. Resolution 253 (1993) on the regional dimension of the European audiovisual area of the Standing Conference of Local and Regional Authorities of Europe (CLRAE).

5. The Assembly considers that the creation of the European Audiovisual Observatory - now a reality, as proposed by the Committee of Ministers in Resolution (92) 70 - responsible for collecting data on the various forms of communication, is an important step, since availability of legal, economic and programme-related information to professional circles will ensure a more open market.

6. The Assembly, therefore, requests the Committee of Ministers of the Council of Europe to invite the Steering Committee on the Mass Media (CDMM):

- i. to carry out a survey of cable networks and local television stations in the countries of central and eastern Europe, which findings should assist, in particular, in:
 - a. support for the efforts of cable networks and local television stations in central and eastern Europe through the provision of production and post-production material in exchange for programmes;
 - b. the development of technological exchanges;
- ii. to examine ways of encouraging public service broadcasters in central and east European countries to be attentive to the advantages to be gained from cable and other technologies;

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- iii. to work out proposals as to how the west European countries, in particular public broadcasters in the latter, can be encouraged to help public broadcasters in the central and east European countries to equip themselves with these new technologies ;
 - iv. to set up its own special structure with the following terms of reference:
 - a. helping the countries of central and eastern Europe to frame their national legislation on copyright and neighbouring rights, considering that the introduction in each country of structures for collecting and distributing the royalties accruing from these rights would boost the creation of national or local productions and develop employment in this sector;
 - b. ensuring that national legislation embody protection of certain individual rights and compliance with programming standards, particularly in respect of advertising and identification of sponsors;
 - v. to step up its training programmes for professionals in the fields of management, programming, production, technology and ethics of journalism, particularly by means of courses and seminars in western Europe on such subjects as exchanges of technology and programmes and the organisation of co-productions (on the Eurimages model);
7. The Assembly recommends that the Committee of Ministers:
- i. speed up its work as regards the opening for signature of the draft European convention relating to questions of copyright law and neighbouring rights;
 - ii. examine the specific problems of local and regional television services in central and eastern Europe as key elements in the strengthening of democracy. The proposal in CLRAE Resolution 253 for establishing an "observatory or network of regional television services" should be considered in the framework of the European Audiovisual Observatory which has been operating since 1 August 1993.
8. The Assembly also requests the Committee of Ministers to invite the governments of member states:
- i. to support the audiovisual products of the countries of central and eastern Europe by making a set of concrete proposals concerning the purchase of rights and the copying and subtitling of audiovisual products, and by upholding the principle of lowering the cost of communication and broadcasting by satellite;
 - ii. to facilitate the use of cable networks as an ideal vehicle and a natural extension of education and vocational training, whose economic viability could be secured with only a limited number of viewers. A list of training products might be included in an international catalogue;
 - iii. to promote the creation of integrated television, communications and information structures in order to ensure that the facilities provided achieve immediate profitability and to avoid the creation of parallel networks;

- iv. to invest in the production of advanced technologies, such as digital systems and optical fibre cables.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1995 SESSION

Recommendation 1276 (1995)⁵¹

on the power of the visual image

1. We are increasingly surrounded and influenced by images: photography and cinema, but also television, video and computers. Visual images are becoming increasingly powerful. So powerful is this surge in visual imagery that we are now confronted with the concept of "virtual reality" with the further risks of manipulation of images portraying news and information that it entails.
2. Technology is evolving quickly and visual images cross borders unhindered. The proliferation of satellites, cable and video games, and the developments in digital or interactive television, virtual images, new television advertising techniques and electronic communication superhighways are such that "the rules of the game" have to be reviewed. Even if responsibilities remain the same, supervising the respect of such responsibilities becomes increasingly problematic.
3. Visual images record reality but they also convey stereotypes. In some cases images undermine written messages and are used to by-pass advertising regulations. Most people do not know how to "read" visual images and this can lead to misinterpretation and manipulation. However real they may seem, images should not be taken for reality.
4. In central and eastern Europe people were brainwashed and manipulated by visual images for a very long time. Today the simplistic notion that all that was censored during the communist period, including violence and pornography, was what came from the West (and therefore was good), is still very much alive.
5. The instant availability of pictures from all over the planet plays an important role in changing the way in which people watch television. On the one hand we are led to believe that we are watching "history in the making"; on the other hand, the relative importance of events is imposed on us. Such availability often influences editorial judgements on what should constitute a news bulletin and determines the order of priority.
6. One of the major influences in the nature of television programming has been the substantial increase in television channels which developed as a result of specific legislative

⁵¹ *Assembly debate* on 30 June 1995 (24th Sitting) (see Doc. 7314, report of the Committee on Culture and Education, rapporteur: Mr Berg).

Text adopted by the Assembly on 30 June 1995 (24th Sitting).

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initiatives during the 1980s and subsequently. With the increase of television stations competing for the same sources of funds it was inevitable that many tended to cater to the lowest common denominator.

7. Society has been active in teaching children how to read and write, in fighting illiteracy, but interpreting visual images is also part of literacy and this continues to be mainly overlooked. Most of us still believe in the images we see, for instance in news bulletins. On the other hand, television screens have become the "electronic baby-sitters" of today: too many children spend too much time in front of them.

8. Questions of society such as the absence of a family environment and the increase in violence, together with increasing evidence that, under certain circumstances, a direct relation may exist between viewing violence and acting violently, prompts the call for tighter controls over violence on television screens and to a better protection for children against such violence.

9. Twelve years after adopting Recommendation 963 (1983) on cultural and educational means of reducing violence, the Assembly reaffirms its concern at the increasing tendency towards emphasis on violence in the media, and in particular on its portrayal in the visual media: television, video, film, advertising, photography and computer programmes. The problems identified then have since gained in acuteness and most of what was recommended is still topical, and much more urgent.

10. Freedom of expression, a fundamental human right enshrined in Article 10 of the European Convention on Human Rights, should be ensured together with the responsibility it carries. In certain instances the limitation of freedom of expression can be justified in terms of its reconciliation with the need to protect other rights and freedoms, with special reference to children.

11. The Assembly would therefore propose the following set of basic principles and recommends that the Committee of Ministers take them into account when policy-making in the field of visual image or when advising member governments about such policy-making:

- i. self-regulation and adoption of codes of conduct by television programme makers, news editors, film makers and makers and distributors of video films, video games and computer programmes should be strongly emphasised, subject only to national laws on privacy where appropriate;
- ii. visual literacy and media awareness should be promoted from the earliest possible stages of school education;
- iii. teacher training for visual literacy and media awareness should be promoted at all levels of school education;
- iv. emphasis should be put on the responsibility of homes and parents for television programmes watched by their children; television must not take the place of parents or diminish the time that ought to be spent assisting their children's development;
- v. research should be developed on possible links between violence on the screen and violent behaviour;

- vi. professionals should be made more aware of the influence of their work on viewers and the public in general and especially with the development of new technologies (from subliminal advertising to virtual reality);
 - vii. the creation of associations of viewers, readers and consumers in general should be encouraged and complaint systems should be set up wherever they do not yet exist;
 - viii. the funding of public service television should be given an appropriate and secure framework in order to enable it to offer an alternative of high quality programmes without recourse to commercial sources;
 - ix. an evening time threshold before which scenes of sex or violence may not be transmitted on television should be implemented either by self-regulation and codes of conduct or by licence conditions;
 - x. means should be found to encourage high quality television programme production in Europe;
 - xi. the above-mentioned measures should be co-ordinated on as broad a European level as possible.
12. The Assembly also asks the Committee of Ministers to follow-up the implementation of measures to counteract violence on television (in close co-operation with broadcasters) and of educational measures in the field of media awareness.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1995 SESSION

Recommendation 1277 (1995)⁵²

on migrants, ethnic minorities and media

1. Immigration and the presence of ethnic minorities are integral parts of the European identity. Large communities of immigrant origin have now settled permanently in our societies and contribute to their wealth and diversity.
2. Media presentation of subjects connected with immigrants and ethnic minorities has a significant influence on public opinion. Although the media constitute an important means of combating racist and xenophobic views, prejudices and preconceived ideas, they can also have a role in the emergence or strengthening of such views.

⁵² *Assembly debate* on 30 June 1995 (24th Sitting) (see Doc. 7322, report of the Committee on Migration, Refugees and Demography, rapporteurs: Mrs Aguiar and Mr Vázquez).
Text adopted by the Assembly on 30 June 1995 (24th Sitting).

3. Migrants and ethnic minorities are entitled to be portrayed comprehensively and impartially in the media. This is a pre-condition if all citizens are to take a more rational view of immigration and multi-culturalism and accept persons of immigrant origin or members of ethnic minorities as their equals. An objective image can primarily be achieved through a responsible approach by media professionals and improved media access for migrants and ethnic minorities on all levels. The Assembly considers it of prime importance that the media and the competent authorities should do their utmost to attain these objectives.

4. The media are also an important means of informing migrants about their host country, its culture and its language and contribute to forging links between them and the host society. They likewise allow migrants to keep in touch with their country of origin and give them a means of expression and of communication with members of their community.

5. The Assembly therefore recommends that the Committee of Ministers:

i. through the relevant bodies of the Council of Europe, encourage media professionals' associations to prepare, in so far as they have not already done so, codes of conduct laying down the ethical principles that should guide the work of these professionals;

ii. provide institutional and financial backing for the creation of a pan-European prize to be awarded annually to media professionals or organs which have distinguished themselves in the fight against intolerance and racism, for example by giving an objective and balanced picture of migrants or ethnic minorities;

iii. instruct the European Committee against Racism and Intolerance (ECRI) to pay particular attention to member states' legislation and policy for combating racism and intolerance in the media;

iv. invite the member states:

a. to enforce vigorously the legislation prohibiting incitement to racism and fascism in the media or, where necessary, to enact or reinforce such legislation;

b. to further the education and labour market access of persons belonging to immigrant communities or ethnic minorities;

c. to establish, in co-operation with the media industry, teaching and training programmes designed for persons of immigrant origin or belonging to ethnic minorities so as to give them a genuine chance of a career in the various media sectors;

d. to encourage the organisation of seminars and training courses for media professionals on the subject of intercultural education, and the teaching, in journalism schools, of questions of ethics relating to the problem of intolerance;

e. to evaluate the quality of media output on migrant and ethnic-minority matters from time to time and award prizes to outstanding examples of media coverage of this area;

- f.* to encourage both public and private media to play a responsible role in combating racism and xenophobia through objective coverage of migrant and ethnic minority issues and the provision of opportunities for the balanced involvement of representatives of migrant and ethnic communities in mainstream radio and television programmes;
- g.* to ensure that official public relations services provide full, unbiased information on subjects connected with migrants and ethnic minorities;
- h.* to assist the production and broadcasting of programmes on intercommunity relations and immigration, including programmes in migrants' own languages;
- i.* to encourage action by local media to improve migrant integration into, and participation in the local community;
- j.* to promote, through the Eurimages Fund and the European Convention on Cinematographic Co-Production, the co-production of films with producers from immigrant communities' countries of origin, including films dealing with migrants and ethnic minorities;
- k.* to ratify, if this has not already been done, the European Convention on Transfrontier Television.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1997 ORDINARY SESSION

Resolution 1120 (1997)⁵³

***on the impact of the new communication and
information technologies on democracy***

1. In view of the technical, political and cultural changes currently under way, the Assembly feels it should help to identify the opportunities opened up by the new communication and information technologies (NCITs) for meeting the needs of our societies more fully. The developments and applications of the NCITs should afford real social benefit. They must serve the promotion of freedoms, foster the self-fulfilment of citizens and their more effective participation in public affairs, stimulate economic development and employment, facilitate social and cultural progress and advance education and the acquisition

⁵³ *Assembly debate* on 22 April 1997 (11th Sitting) (see Doc. 7772, report of the Committee on Parliamentary and Public Relations, rapporteur: Mr Masseret; and Doc. 7805, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Rodeghiero).
Text adopted by the Assembly on 22 April 1997 (11th Sitting).

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of knowledge. They must be harnessed to the interests of man, social progress, democracy and peace.

2. The Assembly wishes to stress the positive challenges of the development of the new communication and information technologies. These open up huge possibilities, for instance in the field of education, and can also play an important role in the promotion of democracy as they make it possible for contacts and the exchange of ideas without censorship by undemocratic authorities.

3. In this context, the Assembly considers it essential:

i. to find ways of averting the following risks: a reduction in political choice, the manipulation of consciences, the commercialisation and fragmentation of political messages, a surfeit of opinion polls, the marginalisation of parliamentary procedures, social discrimination, the monitoring of citizens and the drift towards an instantaneous but devalued form of democracy;

ii. to take account of the new prospects offered by the NCITs for developing interactivity as a remedy for the passiveness characterising those who merely observe events. The NCITs provide an opportunity to create a new type of two-way communication and develop a new concept, "electronic citizenship";

iii. to decide what belongs in the public sphere and what should be subjected to market forces.

4. Consequently, the Assembly calls upon national parliaments to promote policies which take account of the following requirements:

i. *at the legal level:*

a. taking legislative action in order to ensure the most effective use of these technologies for the benefit of the public and to reconcile technological progress with respect for democratic principles and human rights;

b. avoiding the introduction of complex and unworkable rules which would hamper the evolution and development of the NCITs necessary for the common good. Whenever it is necessary to regulate, the proportionality principle must be applied so as to strike a proper balance between the measures taken and the objectives pursued, between respect for freedoms, the protection of privacy and the fight against crime;

ii. *at the political level:*

a. organising training in the NCITs from the earliest age in the public and private education system. The necessary funds should be made available to ensure that the public sector has all the appropriate resources. This is a prerequisite of equal opportunity for all citizens, regardless of their social status;

b. providing universally accessible and affordable computer facilities that cover all the possibilities offered by national and international networks;

c. endowing national parliaments and decentralised authorities with the equipment needed for developing consultations between elected representatives and citizens, thereby ensuring increased participation by the latter in political decision-making;

d. promoting appropriate national legislative measures so as to set a legal framework for the preservation of private data, the protection of young people and respect for ethical rules and human rights;

e. ensuring respect for the confidentiality of automated private and personal data, in particular by applying the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and Committee of Ministers Resolutions Nos. (73) 22 and (74) 29 on protection of the privacy of individuals vis-à-vis electronic data banks, Recommendation No. R (94) 13 on measures to promote media transparency, and Recommendation No. R (95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services.

5. The Assembly also requests national parliaments to inform it annually of any steps taken or being prepared in connection with the various situations created by the NCITs, so that they may be presented and discussed at interparliamentary conferences organised by the Committee on Parliamentary and Public Relations.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1997 ORDINARY SESSION

Recommendation 1332 (1997)⁵⁴

*on the scientific and technical aspects
of the new information and communications technologies*

1. The Parliamentary Assembly, aware of the challenge posed to society by the extremely rapid development of the new information and communication technologies, has addressed various aspects of this matter on numerous occasions. It is aware that changes in this field succeed one another at a phenomenal rate and that therefore any ad hoc approach may well become obsolete before its effects are even felt.

2. It considers that the changes brought about by the new information and communication technologies will affect almost all areas of society and will have social, economic, cultural, ethical, legal and other consequences. The main fields of application of the new information

⁵⁴ *Assembly debate* on 23 June 1997 (17th Sitting) (see Doc. 7832, report of the Committee on Science and Technology, rapporteur: Mr Frey).

Text adopted by the Assembly on 23 June 1997 (17th Sitting).

and communication technologies include education and training, health and the ageing population, public authorities, the environment and transport.

3. It recalls Recommendation 1324 (1997) on the contribution of the Parliamentary Assembly to the 2nd Summit of Heads of State and Government of the Council of Europe, which asks the summit to decide that the Council of Europe's legal instruments be reviewed and that, where appropriate, new legal instruments (conventions) be drafted in the light of the development of the new information and communication technologies and its consequences for European society.

4. It considers that finding answers to the scientific and technological questions covered in the present recommendation would be a necessary step towards solving other problems posed by the new information and communication technologies.

5. To help bridge the gap between the extent of development of the new information and communication technologies and society's readiness for them, the Assembly recommends that the Committee of Ministers:

i. analyse its work programme, taking into account the changes brought about by the new information and communication technologies in all fields of its activity;

ii. support and reinforce the work of the European Ministerial Conference on Mass Media Policy, which is to hold its fifth meeting in Thessaloníki on 11 and 12 December 1997, in particular with regard to the new information and communication technologies, human rights and democratic values, as well as efforts to harmonise the relevant legislation in Europe and at international level;

iii. invite governments of Council of Europe member states and the European Union to pursue, in co-operation with private companies, research institutes and non-governmental organisations, their scientific and technological efforts by implementing, *inter alia*, the following measures:

a. developing and adapting technologies to facilitate the development of teleworking, including for senior citizens and people with disabilities, while at the same time introducing regulations which, *inter alia*, will help avoid the isolation of workers;

b. developing computerised medical systems and telemedicine systems;

c. developing technological solutions that will allow the general public and companies to have electronic access to public services;

d. developing telematic systems for the monitoring and analysis of environmental data;

e. developing advanced telematic systems for the field of transport;

f. facilitating the installation of the hardware necessary to use the new information and communications technologies in all education and training institutions;

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- g.* encouraging the development of multimedia applications and new teaching methods based on simulation and virtual reality at all levels of the education and training system, including aspects relating to cultural and linguistic diversity;
- h.* facilitating general access to all services created by the new information and communication technologies, for example by fiscal measures, and encouraging in particular the development of interactive multimedia services;
- i.* fostering interoperability between networks by stepping up international co-operation in the field of standardisation and particularly by encouraging the International Telecommunications Union to continue its work in this area;
- j.* encouraging and investing in the development of digital technologies and high-speed networks and in new direct transcontinental links, particularly to the United States;
- k.* assisting with the setting up of hardware and software manufacturing companies in all European countries and especially in countries in transition - which have a highly skilled workforce available at competitive rates - while supporting the development of communication-system infrastructures, emphasising their digitisation;
- l.* developing a specific privacy technology, particularly by encouraging more intensive research in information cryptography in order to provide a satisfactory level of security for data transmitted on the network, which will encourage the development of electronic trade and the security of all other personal information;
- m.* promoting the key technologies of the information society, which include communication and network technologies, software and system technologies, mobile communication technologies, including the use of satellites, interfaces using different means of expression (for example voice) and microelectronics;
- n.* gearing the development of generic technologies and basic research towards real-time, large-scale simulation and visualisation technologies, virtual-presence technologies, technologies for the creation of very high-performance computers and super-intelligent networks, and the creation of advanced high-speed networks for research;
- o.* supporting the development of filtering technologies which, combined with the adaptation of current legislation for conventional communication systems, will encourage the self-regulation of network operators at international level;
- p.* maintaining or setting up - and supporting the funding of - national research centres for communication and information systems, especially as liberalisation is likely to reduce the efforts devoted to research by telecommunications operators, and paying particular attention to compliance with standards set by the scientific patents system;

q. encouraging through every possible means, including financial, the creation of virtual centres of scientific research providing electronic access to sophisticated and expensive research equipment;

r. monitoring in particular the implementation of their scientific and technological policies so that these policies do not harm democratic values in Europe, but instead consolidate their development.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

1997 ORDINARY SESSION

Resolution 1142 (1997)⁵⁵

on parliaments and the media

1. The Assembly is aware of the difficulties that the parliamentary institution faces in preserving its position as the cornerstone of democracy. The citizens in most European countries do not feel involved enough, or at all, in the ongoing debates in their parliaments and are not aware of their agendas or activities.

2. Communication is vital for bridging the gap between elected representatives and citizens. Parliaments should therefore promote better co-operation with the media, in order to enhance public dialogue with the citizens.

3. However, for reasons of profitability, most mass media follow certain criteria, driven, for example, by the need to entertain or to focus on spectacular events, which makes it difficult for parliamentary activities to gain media coverage.

4. Moreover, the lesser ability of parliaments in numerous European countries to take the initiative and make policy decisions as compared with governments causes the media to neglect parliaments in favour of governments, resulting in a loss of credibility for those parliaments.

5. By the very nature of their work, parliaments cannot react to events with the same promptness as governments. Nor are the lengthy parliamentary procedures, which are essential for the careful scrutiny of bills, in keeping with the faster dissemination of news through modern communications technologies.

6. The role of parliaments as central political fora for debates has been weakened in recent years. This is because the media promote short and unconventional debates and comments.

⁵⁵ *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 7 November 1997.*
See Doc. 7905, report of the Committee on Parliamentary and Public Relations, rapporteur: Mr Lekberg.

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7. The media landscape is highly complex. Alongside the sensationalist media which jeopardise the development of a constructive public dialogue, quality newspapers and magazines and serious public radio and television services continue objectively to cover a wide range of news, including parliamentary news. They ensure that high standards are maintained by meeting, as best they can, the basic aims of the media: to inform, to comment, means with which to develop critical judgement.

8. However, their emphasis on quality can be undermined by market forces, and media diversity, so necessary to the proper functioning of democracy, finds itself challenged. Parliaments should therefore consider measures aimed at preserving the role of quality media.

9. Without adaptation to modern communication methods, parliaments could easily see their activity overtaken by other mediators using new means of expression for the will of the people. Therefore, parliaments need to keep up with the realities of a global communication society.

10. Extensive use of the new information technologies should therefore be considered as an important "ingredient" of the policy pursued by parliamentary communication services in the interests of public debate. This requires, however, high levels of investment that cannot immediately be borne by all parliaments.

11. The Assembly invites national parliaments to urgently consider measures aimed at:

- i. ensuring greater openness of parliamentary work, including committee meetings, and to consider this question not only as a matter of communication policy but also as an important political priority with direct implications for the functioning of democracy;
- ii. making better use of classic communication methods and new information technologies, in particular:
 - a. by providing the best possible working conditions for the media and especially for parliamentary correspondents;
 - b. by ensuring the speedy dissemination of information about debates, *inter alia*, by rapidly publishing the minutes and verbatim reports of proceedings;
 - c. by creating on-line services for direct electronic communication with the public and with journalists;
 - d. by providing full access to parliamentary documents, so that public debate can be encouraged before the vote on a bill;
- iii. taking advantage of the advice of experts in communication;
- iv. making legal texts more accessible to non-specialist readers;
- v. taking the necessary steps to place themselves more in focus for political debate identifying, for instance, areas in which procedures can be streamlined to speed up decision making;

- vi. encouraging, within information and communication services, the assembly of information packs presenting laws and describing their specific features for the journalistic and professional circles most closely concerned;
- vii. organising seminars for journalists on parliamentary work with a view to familiarising them with legislative procedures and parliamentary proceedings and to improving their knowledge on relations between parliaments and international institutions. Journalists from local and regional newspapers and magazines should receive special attention;
- viii. creating communication networks on the Internet, enabling citizens to communicate interactively with both parliamentarians and parliamentary information services;
- ix. devising means of encouraging the creation of independent television channels devoted to parliamentary work, as is the case in several European countries, in the United States and in Canada;
- x. assisting, through fiscal or other means, those media which strive to provide high-quality news on a fully independent basis and which are threatened with extinction by market forces.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1165 (1998)⁵⁶

Right to privacy

1. The Assembly recalls the current affairs debate it held on the right to privacy during its September 1997 session, a few weeks after the accident which cost the Princess of Wales her life.
2. On that occasion, some people called for the protection of privacy, and in particular that of public figures, to be reinforced at the European level by means of a convention, while others believed that privacy was sufficiently protected by national legislation and the European Convention on Human Rights, and that freedom of expression should not be jeopardised.
3. In order to explore the matter further, the Committee on Legal Affairs and Human Rights organised a hearing in Paris on 16 December 1997 with the participation of public figures or their representatives and the media.

⁵⁶ *Assembly debate* on 26 June 1998 (24th Sitting) (see [Doc. 8130](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Schwimmer; [Doc. 8147](#), opinion of the Committee on Culture and Education, rapporteur: Mr Staes; and [Doc. 8146](#), opinion of the Social, Health and Family Affairs Committee, rapporteur: Mr Mitterrand).

Text adopted by the Assembly on 26 June 1998 (24th Sitting).

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4. The right to privacy, guaranteed by Article 8 of the European Convention on Human Rights, has already been defined by the Assembly in the declaration on mass communication media and human rights, contained within Resolution 428 (1970), as "the right to live one's own life with a minimum of interference".

5. In view of the new communication technologies which make it possible to store and use personal data, the right to control one's own data should be added to this definition.

6. The Assembly is aware that personal privacy is often invaded, even in countries with specific legislation to protect it, as people's private lives have become a highly lucrative commodity for certain sectors of the media. The victims are essentially public figures, since details of their private lives serve as a stimulus to sales. At the same time, public figures must recognise that the special position they occupy in society - in many cases by choice - automatically entails increased pressure on their privacy.

7. Public figures are persons holding public office and/or using public resources and, more broadly speaking, all those who play a role in public life, whether in politics, the economy, the arts, the social sphere, sport or in any other domain.

8. It is often in the name of a one-sided interpretation of the right to freedom of expression, which is guaranteed in Article 10 of the European Convention on Human Rights, that the media invade people's privacy, claiming that their readers are entitled to know everything about public figures.

9. Certain facts relating to the private lives of public figures, particularly politicians, may indeed be of interest to citizens, and it may therefore be legitimate for readers, who are also voters, to be informed of those facts.

10. It is therefore necessary to find a way of balancing the exercise of two fundamental rights, both of which are guaranteed by the European Convention on Human Rights: the right to respect for one's private life and the right to freedom of expression.

11. The Assembly reaffirms the importance of every person's right to privacy, and of the right to freedom of expression, as fundamental to a democratic society. These rights are neither absolute nor in any hierarchical order, since they are of equal value.

12. However, the Assembly points out that the right to privacy afforded by Article 8 of the European Convention on Human Rights should not only protect an individual against interference by public authorities, but also against interference by private persons or institutions, including the mass media.

13. The Assembly believes that, since all member states have now ratified the European Convention on Human Rights, and since many systems of national legislation comprise provisions guaranteeing this protection, there is no need to propose that a new convention guaranteeing the right to privacy should be adopted.

14. The Assembly calls upon the governments of the member states to pass legislation, if no such legislation yet exists, guaranteeing the right to privacy containing the following guidelines, or if such legislation already exists, to supplement it with these guidelines:

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- i. the possibility of taking an action under civil law should be guaranteed, to enable a victim to claim possible damages for invasion of privacy;
 - ii. editors and journalists should be rendered liable for invasions of privacy by their publications, as they are for libel;
 - iii. when editors have published information that proves to be false, they should be required to publish equally prominent corrections at the request of those concerned;
 - iv. economic penalties should be envisaged for publishing groups which systematically invade people's privacy;
 - v. following or chasing persons to photograph, film or record them, in such a manner that they are prevented from enjoying the normal peace and quiet they expect in their private lives or even such that they are caused actual physical harm, should be prohibited;
 - vi. a civil action (private lawsuit) by the victim should be allowed against a photographer or a person directly involved, where paparazzi have trespassed or used "visual or auditory enhancement devices" to capture recordings that they otherwise could not have captured without trespassing;
 - vii. provision should be made for anyone who knows that information or images relating to his or her private life are about to be disseminated to initiate emergency judicial proceedings, such as summary applications for an interim order or an injunction postponing the dissemination of the information, subject to an assessment by the court as to the merits of the claim of an invasion of privacy;
 - viii. the media should be encouraged to create their own guidelines for publication and to set up an institute with which an individual can lodge complaints of invasion of privacy and demand that a rectification be published.
15. It invites those governments which have not yet done so to ratify without delay the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.
16. The Assembly also calls upon the governments of the member states to:
- i. encourage the professional bodies that represent journalists to draw up certain criteria for entry to the profession, as well as standards for self-regulation and a code of journalistic conduct;
 - ii. promote the inclusion in journalism training programmes of a course in law, highlighting the importance of the right to privacy vis-à-vis society as a whole;
 - iii. foster the development of media education on a wider scale, as part of education about human rights and responsibilities, in order to raise media users' awareness of what the right to privacy necessarily entails;

- iv. facilitate access to the courts and simplify the legal procedures relating to press offences, in order to ensure that victims' rights are better protected.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1191 (1999)⁵⁷

Information society and a digital world

(Extract from the Official Gazette of the Council of Europe – May 1999)

1. The Parliamentary Assembly draws attention to the growing importance of the information society and digital world that are being created by the rapidly developing information and communication technologies.
2. The establishment of a proper balance between the various components of the digital world is the main challenge to be met for the democratic development of the information society.
3. Given the complex relationships between the expanding digital world and the emerging information society, it is important to ensure improvement in the quality of the information and communication technologies, while pursuing the aim of increased well-being for citizens.
4. Consequently, the Assembly, recalling its Recommendation 1332 (1997) on the scientific and technical aspects of the new information and communication technologies, calls on member governments and the European Union to:
 - i. establish European education networks using the existing Web infrastructure and, where feasible, the method of virtual classes to educate people quickly on the most recent developments in the digital world;
 - ii. make sure that access to such networks will be open to all, if necessary by the introduction of fiscal or other relevant measures;
 - iii. assess, in close co-operation with industry, professional associations and cultural organisations, the feasibility of promoting, through appropriate measures, systems of networking between simple individual terminals and shared, reliable computers with a powerful processing capacity;
 - iv. facilitate technological developments favourable to the expansion of electronic commerce;

⁵⁷ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 May 1999. See Doc. 8400, report of the Committee on Science and Technology, rapporteur: Mr Cherribi.

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- v. support the development and the deployment of broad-band communication channels (including wire-less communication);
- vi. ensure the interoperability of digital libraries, in order to maintain diversity and unconstrained access to the cultural and scientific heritage of nations across borders, and across linguistic or cultural barriers;
- vii. improve continuously the legal and organisational framework of virtual enterprises and define procedures for managing and operating them, thus fostering the creation of new opportunities for economic growth and employment;
- viii. give support to interdisciplinary teams of specialists, working to improve intelligent data handling systems (recommended systems);
- ix. study the use of new information and communication technologies as part of the promotion of electronic democracy through improved direct contacts between voters and their elected representatives;
- x. pass laws and make intensive studies on reforming law enforcement agencies, in order to check the inevitable flood of information technology crimes, while, at the same time, encouraging the use of the new information and communication technologies, and promote ethics and codes of good conduct;
- xi. support, in co-operation with industry, research on such issues as data security, digital signatures, "watermarking" of digital information to trace copyright violations and coding to protect against obscene and offensive materials;
- xii. encourage data retrieval and storage ("warehousing") to gather information present in the digital world, and needed for the identification of various complex multi-dimensional relationships (natural disasters, social transformations, etc.);
- xiii. encourage research and development of strategies for preventing, locating, eliminating and/or tolerating possible faults occurring in various components of the digital world;
- xiv. work out scenarios and procedures for coping with crises resulting from impending faults, of which the most imminent manifestation is the millennium bug;
- xv. review the status of preparations for the millennium bug, and in particular, consider individual responsibilities at various levels and create crisis units to handle emergencies should they appear;
- xvi. support research and development in non-technical disciplines concerning the digital world and the information society such as new economics resulting from the changed nature of work, new paradigms of educational, ethical, sociological and philosophical issues resulting from the changing style of human life;
- xvii. promote the establishment of standards for collaborative computing, with particular emphasis on those standards related to the end-user interface, administrative procedures, communication media and protocols.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1407 (1999)⁵⁸

Media and democratic culture

(Extract from the Official Gazette of the Council of Europe- April 1999)

1. The Assembly stresses that the media are vital for the creation and the development of a democratic culture in any country. They provide people with information which influences the process of shaping opinions and attitudes and of making political choices.
2. Therefore, the media must be free, pluralistic and independent, and at the same time socially accountable. These are also the conditions for establishing widespread credibility. The Assembly recalls, in this respect, its [Resolution 1003](#) (1993) on the ethics of journalism.
3. Free media cannot thrive in an undemocratic country. It is therefore the role of politicians to ensure that the political and legal conditions are met so as to enable, on the one hand, media to perform freely and, on the other, to guarantee individual freedoms and other fundamental human rights.
4. Sheer quantity of information, especially in a situation of strong media concentration, does not by itself provide variety and quality. Neither does intensification of communication necessarily make people more able and better qualified to take decisions or to influence decision-making processes.
5. The media situation in Europe varies from one country to another, depending on cultural traditions, economic might, the strength of democratic institutions and the level of professionalism. However, with the opening up of practically all the countries of the continent, with the intensification of co-operation and integration between them and with the emergence of new information technologies, the media are increasingly facing the same sort of problems. These problems require the same sort of co-ordinated approaches.
6. Media independence remains one of the most difficult issues. Even where democratic traditions are deeply entrenched, the right to voice both facts and opinions is sometimes limited. Methods vary from the mild hindering of access to information, through state monopolies on paper or on distribution, refusal to grant radio and TV licences (or imposing excessive restrictions on them) and legal prosecution, to closing down newspapers, television and radio stations, physical intimidation and violence.

⁵⁸ *Assembly debate* on 29 April 1999 (15th Sitting) (see [Doc. 8355](#), report of the Committee on Culture and Education, rapporteur: Mr Jarab).

Text adopted by the Assembly on 29 April 1999 (15th Sitting).

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7. The delicate relationship between freedom of expression and the citizen's right to objective, undistorted information is another chronically difficult issue. The media can still be used as an instrument for settling scores, both political and personal. The increasing commercialisation and competition in the media sector pushes even serious media towards "standardisation" and sensationalism, preference for "infotainment" and an excessive emphasis on crime and violence.

8. Public service broadcasting (which should not be confused with state owned media) has traditionally been considered as a guarantee that all segments of the public, including minority groups, are provided with programmes that are impartial and varied, free of government or partisan interference, comprising information, education, culture and entertainment. In reality, though, it is often subject to political and economic pressures and to increasing competition from commercial broadcasting, which is becoming cheaper and more readily available due to the new information technologies.

9. Bearing in mind that the democratic culture of a society cannot be imposed but that conscious and sustainable efforts are necessary to develop it so that it can respond appropriately to new challenges, the Assembly recommends that the Committee of Ministers:

- i. monitor closely the state of freedom of the press in European member and non-member countries, so as to:
 - a. exert moral and political pressure upon governments which violate freedom of expression;
 - b. defend and protect journalists who are victims of such violations.
- ii. develop further its assistance and co-operation programmes for the reform of media legislation, in particular:
 - a. the drafting of clear guidelines for public access to information and the functioning of government press services, and ensuring that those guidelines are followed at all levels;
 - b. the elaboration of guidelines concerning the right to privacy and the disclosure of information about holders of political or public office, following the proposals in Assembly [Resolution 1165](#) (1998) on the right to privacy;
 - c. methodological and practical assistance to member and non-member countries which may need it in ensuring fair coverage by the media during election campaigns;
- iii. ensure the application of legislation and rules for the protection of freedom of expression and of other fundamental human rights, including the rights of children, in accordance with the principles of the Council of Europe, in particular Article 10 of the European Convention on Human Rights;
- iv. enhance the media aspects of its programmes on education for democratic citizenship and on the development and consolidation of democratic stability;

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- v. continue its assistance in developing public service broadcasting in central and eastern Europe along the lines of its Recommendation No. R (96) 10 and carry on monitoring developments in this sector Europe-wide;
- vi. encourage the development of self-regulatory mechanisms in the media, for instance by collecting examples of good practice and raising awareness of them, and establish a special framework for information on regulation and self-regulation concerning new communications and information services;
- vii. pay greater attention to the question of media independence in the context of market competition and globalisation, namely by:
 - a. considering ways of ensuring editorial independence in countries where the economic conditions do not allow media enterprises to function independently;
 - b. carrying on work on media concentrations, providing practical assistance to member countries along the lines of its relevant recommendations and placing emphasis on questions of transparency concerning ownership and funding;
- viii. foster education on the media and by the media, for example by encouraging the appropriate authorities in member states to:
 - a. provide educational and training opportunities for journalists aiming at the highest standards of professionalism and ethical conduct;
 - b. develop media (traditional and electronic) literacy as part of school curricula along the lines set out in [Recommendation 1276](#) (1995) on the power of the visual image, for instance by acquainting students with codes of conduct for journalists and by encouraging the making of school newspapers and broadcasts in co-operation with professional journalists;
- ix. ensure better co-ordination between the different Council of Europe bodies involved in co-operation and assistance programmes in the media field and step up co-operation with media associations, independent bodies such as press complaints commissions and other relevant non-governmental organisations, including those organised by and speaking for media consumers;
- x. promote better co-operation and complementarity between the media programmes of international organisations, in particular the European Union, UNESCO and the OSCE.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1466 (2000)⁵⁹

Media education

1. With the advent of the information society, the individual of today lives immersed in a world of media messages. Seemingly, there are no limits to the amount of information available.
2. However, new challenges are arising. Firstly, the new media offer countless sources of information and in an unprecedented way allow anyone to send messages out into the public space. It is becoming increasingly difficult to orient oneself in the huge mass of information. Problems derive not merely from the sheer mass, but from the very nature of communications. Media reality is not the "real" reality. But, in a world dominated by media culture, the boundaries between fact and fiction often become blurred.
3. For many children and young people, modern media and especially the Internet are more than just a means of learning about the world. They are their world, their "virtual reality", where everything, the best and the worst, can be done and undone. Young people often are much more eager than adults to handle new technologies and are more at ease with them, whilst their discerning capacities and their ability to make value-based judgements are not yet well developed.
4. Teachers and parents are often helpless when trying to reconcile their own living and professional experience with the media experience of their children. Many adults find it increasingly difficult to cope with the pervasive change brought about by modern communications.
5. On a broader scale, the media, by their nature, are capable of influencing attitudes and behaviour in society. There is enough evidence in Europe that free and independent media are a real power in promoting democratic change, while in the hands of totalitarian forces they can become tools for inciting ethnic hatred and imposing stereotypes. It is also often claimed that there is a strong link between the increase in violence in society and the violent images conveyed by television, the Internet or computer games.
6. Globalisation and media convergence, along with all the formidable possibilities that they offer, also give rise to new concerns: the overflow of information; uniformisation caused by the unequivocal dominance of one language and one culture over the new media; and increasing commercialisation. There is also a serious risk of a new form of social exclusion for those who cannot communicate through the media and/or are unable to assess its content critically.
7. European democracies have many tools at their disposal to respond to the challenges posed by this changing society. The present situation, however, shows that there is an urgent need also to develop more decisive and radical educational measures promoting active, critical and discerning use of the media: in other words, developing media education.

⁵⁹ *Assembly debate* on 27 June 2000 (19th Sitting) (see [Doc. 8753](#), report of the Committee on Culture and Education, rapporteur: Mrs Isohookana-Asunmaa).
Text adopted by the Assembly on 27 June 2000 (19th Sitting).

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8. Media education can be defined as teaching practices which aim to develop media competence, understood as a critical and discerning attitude towards the media in order to form well-balanced citizens, capable of making their own judgements on the basis of the available information. It enables them to access the necessary information, to analyse it and be able to identify the economic, political, social and/or cultural interests that lie behind it. Media education teaches individuals to interpret and produce messages, to select the most appropriate media for communicating and, eventually, to have a greater say in the media offer and output.

9. Media education allows people to exercise their right to freedom of expression and right to information. It is not only beneficial for their personal development, but also enhances participation and interactivity in society. In this sense it prepares them for democratic citizenship and political awareness.

10. Although media education is part of the curriculum in several European countries, its practical application is still problematic, even as far as the traditional media are concerned. Qualified teachers and teaching material are the basic elements in media education and therefore constant attention should be paid to both initial and continuing teacher education. Uncertainty also persists as to the place media education should have in the curriculum, the methodology of teaching, the objectives pursued and the evaluation of the results. Furthermore, most schools have not yet adapted to an educational pattern where both pupils and teachers place themselves in the situation of learners.

11. Media education should be aimed both at the adults of today and of the future. It should not only allow them to keep up with the pace of modern development, but also help them to perform better their role as parents. In this sense it is vital to develop media education as part of the concept of life-long learning. Such non-formal education should be given more means and the work of the relevant NGOs should be facilitated in line with [Assembly Recommendation 1437](#) (2000) on non-formal education.

12. It is also essential to seek the co-operation and the involvement of media professionals. They should in particular be encouraged to produce high quality educational and cultural programmes.

13. The Assembly therefore recommends that the Committee of Ministers:

- i. consider media education as an important area for the work of its competent bodies in the fields of education for democratic citizenship, new information technologies and non-formal education, along the lines set up in the above-mentioned Assembly recommendation;
- ii. ensure a co-ordinated, inter-sectoral approach to this issue;
- iii. examine existing practices in media education in member states with a view to promoting the most successful of them;
- iv. promote an integrated European approach to media education, possibly through the creation of an international office for media education, responsible for co-ordination and networking, in close co-operation with other international organisations such as the European Union and UNESCO.

14. The Committee of Ministers should also call on governments and the appropriate authorities of member states to:

- i. encourage the elaboration and the development of media literacy programmes for children, adolescents and adults;
- ii. promote the elaboration and the development of teacher training programmes in the field of media education;
- iii. involve educational bodies, parents' organisations, media professionals, Internet service providers, NGOs, and so on, in an active dialogue on these issues;
- iv. examine ways of sustaining an offer of educational programmes by the different media that is satisfactory in both quantitative and qualitative terms, and of promoting media education in them.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1506 (2001)⁶⁰

Freedom of expression and information in the media in Europe

1. The Assembly believes that free and independent media are an essential indicator of the democratic maturity of a society. The right to freedom of expression and information is intrinsically linked to the citizens' right to know, which is a prerequisite for making well-informed decisions. The possibility to express freely ideas and opinions enhances public dialogue and therefore stimulates the development of the democratic process in society.

2. Now that there are forty-three member states in the Council of Europe, almost all the continent is covered by the provisions of the European Convention on Human Rights and its Article 10 which guarantees everybody freedom of expression, including "freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". Rapid progress towards democratisation in that respect is expected in the Federal Republic of Yugoslavia and in Bosnia and Herzegovina. Belarus remains the country where the deeds of the authorities most blatantly go against the values and principles in the media field defended by the Council of Europe.

3. As was stated in Assembly [Recommendation 1407](#) (1999) on media and democratic culture, enormous progress in the field of freedom of expression and information has been achieved in central and eastern Europe since the fall of communism. However, serious and

⁶⁰ *Assembly debate* on 24 April 2001 (10th Sitting) (see [Doc. 9000](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Hegyi).

Text adopted by the Assembly on 24 April 2001 (10th Sitting).

unacceptable violations of this freedom are still committed in a number of countries. At the same time new challenges arise and they have to be faced by the whole of Europe.

4. Censorship is still practised and in its most appalling form, violence and murder. Journalists continue to die, not only when covering events on the battlefield, but also, and more often, in the course of their work when trying to throw light on darker sides of the society such as corruption, financial abuse, drug trafficking, terrorism or ethnic conflict. Most perpetrators of such crimes have not been caught and brought to justice, which casts serious doubts on the independence of the judiciary and as to the real willingness of the authorities to disclose the truth. The Assembly has recently drawn attention to this problem in the case of Ukraine in its [Resolution 1239](#). Azerbaijan, Russia, Turkey and Ukraine are the countries where the greatest number of journalists have been subject to physical aggression over the last years.

5. Governments continue to use provisions in legislation, such as defamation, and regulations pertaining to territorial integrity, national security or public order, in order to harass undesired critics. Prison sentence for defamation is still practised in several former communist countries and in Greece, and also features in the criminal codes of other western legislations, although no longer applied there. In Turkey, several journalists are still imprisoned or have been brought to trial, most having been sentenced for or accused of having links with terrorist groups. Elsewhere, even where libel has been decriminalised, disproportionately heavy fines often deter free expression and lead to self-censorship. A very high number of court trials also characterises the transition of new democracies from the "one party, one truth" system to pluralism of opinions.

6. In several countries access to official information is to a great extent left to the discretion of the authorities. Particularly unacceptable are the restrictions imposed on access to information in areas of conflict such as Chechnya, despite many Assembly appeals to the Russian authorities to guarantee free access to journalists, and on sensitive issues such as, in Turkey, the latest hunger strikes. Some aspects of the information policy of Nato during the Kosovo war also deserve criticism.

7. Attacks against freedom of expression can take many other forms, such as threats, intimidation, arbitrary closure of media outlets, power cuts, bomb alerts, police searches and confiscation of material, damage of printing facilities or television and radio transmitters, heavy taxes, monopolies on paper and distribution, unequal conditions for state media as opposed to other media and pressure on advertisers.

8. Administrative harassment is also commonplace in several former communist countries, especially through tax and other financial regulations. Such practices, for instance in Russia, are currently used in an apparent attempt to bring all nationwide television stations under governmental control. The Assembly expresses particular concern about the recent developments in Russia – the forceful seizure of the only independent nationwide television channel NTV, the closure of the newspaper "*Segodnya*" and sacking of the journalists of the magazine "*Itogy*". The attacks on the freedom of expression and mass media in Russia, undertaken with the participation of the authorities, run counter to the basic principles of the Council of Europe and constitute a significant violation of Article 10 of the European Convention on Human Rights.

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9. Precarious economic conditions and a low level of democratic culture represent in themselves a serious threat to freedom of expression since they make the media an easy prey to mighty political, economic and other interests. Instead of performing their role of a public watchdog, the media become instruments for settling scores and are transformed into mercenaries acting upon orders.

10. Independence of public service broadcasting and the need to provide a genuinely independent regulatory authority for the broadcasting sector, as prescribed in Recommendation Rec (2000) 23 of the Committee of Ministers, remain a serious challenge for almost all former communist countries and is not completely taken for granted even in established democracies. This was well illustrated during the recent events concerning Czech public television and Bulgarian national radio. In Hungary only the ruling parties are represented on the television and radio boards, despite the constant complaints of two opposition parties. The problem is rooted in the fact that the smallest opposition party requires double the representation on the media boards compared to the leading opposition party, which has ten times more MPs. Recently a new law on radio and television was adopted in Croatia without taking into account the reservations of the Council of Europe in that respect. It is equally important to establish a fair and transparent licensing procedure, as can be witnessed in the case of the problems that private broadcasters in Azerbaijan are facing.

11. Throughout Europe, freedom of expression and information is facing new challenges resulting from the ongoing process of globalisation of the media market along with the revolution provoked by the convergence between broadcasting, computing and telecommunications. The current market restructuring, leading to new alliances and mergers between traditional media companies and new service providers, might lead to further concentration and vertical integration of multimedia corporations and thus restrict media pluralism. The Committee of Ministers, in its Recommendation (99) 1, stressed that states should promote political and cultural pluralism by developing their media policy in line with Article 10 of the European Convention on Human Rights.

12. A pluralist and independent media system is also essential for democratic development and a fair electoral process. It is thus essential to eliminate oligopolism in the media, and to ensure that the media are not used to gain political power, especially in countries where a mixed public-private system would enable political movements, supported by the private sector, to control all information after elections, especially through radio and television.

13. There is a growing trend for the media to be considered as a purely commercial product rather than a specific cultural and democratic resource. Even if certain journalists are willing to live with it, this trend puts the majority of them under unacceptable pressure to sacrifice quality journalism to "infotainment" and therefore restricts freedom of expression and information. The merciless competition between media enterprises puts increasing pressure on editorial boards to ensure immediate coverage, at the expense of in-depth analysis and research. Cuts in editorial budgets and new ownership policies result in a decline of editorial standards and to increasing reliance on freelance journalists and consequent damage to professional responsibility. Investigative journalism is becoming unprofitable. Sensational stories and "advertorials" or "Big Brother"-style programmes are replacing independent editorials. On the other hand, employed journalists are censored and often limited in expression by their employers – owners or chiefs of wireless media companies, editors of newspapers – when they impose their own views and political or commercial interest upon the journalist's personality, name and professional responsibility.

14. Taking into account these considerations, the Assembly considers that freedom of expression and information is and will remain a major challenge for democracy in Europe and should continue to be a primary concern for the Council of Europe.

15. In this respect, the Assembly reiterates its position, stated in [Recommendation 1407](#) (1999) on media and democratic culture, that the Council of Europe should "exert moral and political pressure upon governments which violate freedom of expression". The Assembly will pursue this issue, and on a country-by-country basis. It regrets the fact that the Committee of Ministers has still failed to provide a satisfactory reply to the recommendation, and this in a period when it is striving to acquire a stronger political presence in Europe.

16. Therefore the Assembly recommends that the Committee of Ministers:

- i. consider as a priority the defence of freedom of expression and information in member and candidate states;
- ii. set up a more efficient system of defending freedom of expression and information in Europe, involving all relevant sectors of the organisation that deal with this issue and allowing it to increase pressure on governments;
- iii. make public the findings of its monitoring procedure in the field of personal and editorial freedom of expression, formulate on this basis specific recommendations to individual member states and make these states publicly accountable for their implementation;
- iv. ensure that the expertise provided by the Council of Europe in the field of media legislation is duly taken into account by member states, particularly on points challenging attempts at political control over the media;
- v. instruct its relevant bodies to step up work on challenges to freedom of expression and information and to media pluralism and diversity stemming from globalisation and from the further development of the information society;
- vi. enhance public debate within its specific bodies on necessary changes and improvements in the field of freedom of expression and information in member countries;
- vii. provide the necessary means for the implementation of assistance programmes and make governments better aware of the urgent need for voluntary contributions;
- viii. ensure co-ordination and complementarity of the above-mentioned activities with other international institutions, and in particular the OSCE Representative on Freedom of the Media, the European Union and UNESCO, as well as with relevant press freedom NGOs, journalism associations and trade unions;

17. The Assembly considers it necessary that the Monitoring Committee pay special attention to the freedom of expression and mass media in Council of Europe member states during the monitoring procedures.

18. The Assembly welcomes the decision of its Committee on Culture, Science and Education to appoint a General Rapporteur on the Media and requests the Committee of Ministers and the Secretary General to give him/her their support, in particular as regards information and secretariat assistance.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1543 (2001)⁶¹

Racism and xenophobia in cyberspace

1. The Assembly considers racism not as an opinion but as a crime. The relevant international legal instrument to combat racism is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Assembly deplores that Andorra, Moldova and San Marino have not yet ratified this instrument.
2. Adequate legal instruments to combat racism already exist in some Council of Europe member states. The difficulties of combating racism on the Internet arise from the nature of this means of disseminating information itself and from the legal obstacles to the implementation of provisions against hate speech.
3. The Council of Europe now has a binding legal instrument: the Convention on Cybercrime, but that convention does not address the dissemination of racist propaganda using computer technology. An ad hoc committee of experts, with terms of reference approved by the Committee of Ministers, should be asked to prepare a protocol to remedy this shortcoming of the convention, as requested by the Assembly in its [Opinion No 226](#) (2001).
4. An additional protocol to the Convention on Cybercrime aimed at punishing racism on the Internet will have no effect unless every state hosting racist sites or messages is a party to it. The Assembly's starting-point is that a dialogue must be initiated with all service providers to convince them of the need to take steps themselves to combat the existence of racist sites.
5. On an ethical level, the Assembly believes that the self-disciplinary efforts made by access providers and hosts should be encouraged. Self-discipline should be made the norm by labelling and classifying sites, setting up hotlines, filtering, drawing up rules of conduct and including clauses in contracts with technical providers prohibiting their clients from using their services for unlawful purposes.
6. Dialogue between Internet users, technical operators and prosecuting authorities must be encouraged. The Assembly considers that a consultation or joint regulation body could be set up within the Council of Europe to help prepare codes of conduct, serve as a mediator in specific disputes and function as a permanent observatory of racism and xenophobia on the Internet.

⁶¹ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 8 November 2001 (see [Doc. 9263](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Tallo).

7. The Assembly would like education and training aimed at developing the discernment of Internet users, particularly the younger generations, to play an important role in the future. Not only racism, but also the dissemination of hate speech against certain nationalities, religions and social groups must be opposed.

8. For these reasons, the Parliamentary Assembly, in accordance with its [Opinion No. 226](#), in which it recommended that an additional protocol to the new convention be immediately drawn up, defining and criminalising the dissemination of racist propaganda and unlawful hosting of hate messages, recommends that the Committee of Ministers:

- i. give the Committee of Experts on the criminalisation of racist or xenophobic acts using computer networks (PC-RX), which has been instructed to prepare a draft additional protocol to the Convention on Cybercrime, sufficient means to enable it to complete its task by 30 April 2002, when its terms of reference expire. The committee should complete its work in time for the additional protocol to come into force as soon as possible after the entry into force of the convention;
- ii. make specific mention of unlawful hosting in the terms of reference of this committee;
- iii. specify the means by which it is possible to eliminate racist sites from the Internet and to encourage the effective prosecution of those responsible.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1555 (2002)⁶²

The image of women in the media

1. The Parliamentary Assembly refers to its Resolution [1018](#) (1994) on equality of rights between men and women, in which it recommends that machinery be set up to "promote and supervise respect for the principle of equality of rights between women and men", and encourages the media "to promote equality".

2. The Assembly notes that, although progress has visibly been made in several European countries, women's image in the media all too frequently remains a negative one, and continues to be stereotyped and sexist. Women are associated with the private sphere, the household and family life. The media frequently present women as sex objects. While the contemporary world has undergone rapid changes, the image of women in the media has not really altered.

⁶² *Assembly debate* on 24 April 2002 (13th Sitting) (see Doc. [9394](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs López González).
Text adopted by the Assembly on 24 April 2002 (13th Sitting).

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3. The Assembly welcomes the fact that certain European governments, women's groups and intergovernmental bodies have made progress where the depiction of women in the media is concerned. The appointment of an ombudsperson responsible for equality issues to apply national and European Community legislation constitutes a step towards respect for gender equality.
4. The Assembly notes with regret that certain European countries have regressed as far as women's image in the media is concerned. Following the world conference in Beijing, little has been done by governments and media to address the issue.
5. In certain countries of eastern Europe and in the Commonwealth of Independent States, the image of women in the media is relatively negative. The media describe men as reformers, whereas a limited role is attributed to women. This results from the social and cultural heritage of the countries concerned. These countries suffer from a lack of democratic experience and are encountering difficulties in their development process. The images of women which occur in their media are evidence of the dramatic situation of women's rights in these countries. Women's real problems, like women's movements, are ignored.
6. Certain countries have tried to set up a self-regulation machinery for media producers, but governments fail to allocate the necessary funds to these efforts.
7. The stereotyped image of women is a result of the inadequate training of journalists and other media managers and the small numbers of women holding decision-making posts. While the number of female journalists has risen considerably in the past ten years, there are still few women on media management bodies, and they are unable significantly to influence the policy pursued by the media.
8. The Assembly is concerned about the increasing exposure of children to sexist messages. The antisocial forces exerted by the repeated sending of this kind of message are particularly worrying at a time when society is attempting to curb violence against women.
9. The Assembly calls on the governments of Council of Europe member states to adopt and to implement a policy against sexist and stereotyped images and representations of women in the media. The Assembly invites governments to set up more bodies to monitor the media and supervise the audiovisual sector.
10. The Assembly therefore asks that the governments of member states:
 - i. introduce the concept of "sexism", which is to be defined as negating the equal dignity of human beings on the grounds of their male or female gender, into their legislation and condemn it to the same degree as racism;
 - ii. adopt a law on gender equality in the media;
 - iii. ask the ombudsperson responsible for issues relating to gender equality to create direct links between his or her office and the population as a whole;
 - iv. draw a distinction between the situation in the privately-owned and publicly-owned media;

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- v. give media associations the right to complain to the courts in the event of a violation of human rights;
 - vi. finance and start new equality projects in the media;
 - vii. encourage, within their national systems, the setting up and financing of centres to monitor national media, including the new information and communications technologies;
 - viii. encourage advertisers to increase self-regulation through their own system of professional ethics, in so far as freedom of expression permits;
 - ix. use positive discrimination measures or quota systems to guarantee a balance between women and men at every level of decision making;
 - x. encourage women to participate at every level of decision making in the media and to take posts of responsibility in the technological sector and on public advisory bodies;
 - xi. assign resources and implement programmes to increase women's access to communications resources and knowledge, particularly the new communications technologies;
 - xii. make substantial efforts to release the necessary funds for the provision of equality training for women and men, at schools of journalism, for example;
 - xiii. finance comparative studies with a view to ensuring that policy makers have a better image of gender equality.
11. The Assembly recommends that the Committee of Ministers:
- i. draw up international ethical standards based on equality between women and men;
 - ii. help to develop international co-operation with a view to giving priority to the strengthening of communications networks and of women's media and to the principle of gender equality;
 - iii. set up an observatory composed of female journalists under the aegis of the Council of Europe to study the way in which women are portrayed in the European media and to propose appropriate measures.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1586 (2002)⁶³

The digital divide and education

1. Digitalisation introduces a new risk of dividing those who can afford access for the purposes of education and research from those who cannot. The Parliamentary Assembly believes in ensuring fair access to digital material for educational and other socially necessary purposes.
2. In the age of printing, society developed a balance between the need to reward intellectual property owners for the use of their works, and the need for society to make some of these works available to a larger public.
3. In the digital age, this balance has to be re-established and legislation adopted, both nationally and internationally, to take account of the technological developments.
4. Access to information is essential for education and research. It is also a basic requisite for democracy, as this relies on the participation of informed and enlightened citizens.
5. Copyright questions related to digital material available on the Internet are being addressed by the European Union. UNESCO, together with the International Telecommunication Union, is preparing two world conferences (to take place in 2003 and 2005) to develop an international convention on the conditions for public access to material on the Internet.
6. The Council of Europe has itself begun to address these questions, notably the Assembly in Recommendation [1332](#) (1997) on the scientific and technical aspects of the new information and communications technologies and Resolution [1191](#) (1999) on the information society and a digital world, and the Committee of Ministers in its Declaration of May 1999 on a European policy for new information technologies.
7. The Assembly recommends that the Committee of Ministers:
 - i. join forces with other international bodies that are currently considering access to digital material on the Internet in order to establish the public service principle in the digital environment and in particular to develop norms for the use of such material for educational and other socially necessary purposes;
 - ii. give particular consideration in drawing up such norms to:
 - a. providing citizens with a certain amount of basic information as a public service;
 - b. limiting access only for reasons of privacy, confidentiality, security and law-enforcement;
 - c. providing public access points staffed by trained personnel;

⁶³ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 November 2002 (see Doc. [9616](#), report of the Committee on Culture, Science and Education, rapporteur: Mrs Isohookana-Asunmaa).

- d. developing special tools to help access for the disabled in concrete terms;
 - e. harmonising, clarifying and making user-friendly national and international copyright legislation applying to digital material;
 - f. encouraging the production of culturally and pedagogically suitable digital material;
 - g. facilitating quality appreciation of digital information;
- iii. ensure that these norms are properly and equally applied in member states.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1589 (2003)⁶⁴

Freedom of expression in the media in Europe

1. The Parliamentary Assembly recalls its [Recommendation 1506](#) (2001) on freedom of expression and information in the media in Europe and its decision to exert, through the general rapporteur on the media, moral and political pressure on governments which violate freedom of expression in the media, pursuing this issue on a country-by-country basis.
2. It regrets that since the adoption of Recommendation 1506 many problems persist and that further serious violations of freedom of expression have since taken place in Europe as well as in the rest of the world.
3. Violence continues to be a way of intimidating investigative journalists or of settling scores between rival political and economic groupings, for whom certain media act as mercenaries. The number of journalists attacked, or even murdered, in the Russian Federation is alarming. Violence has also recently been recorded in Armenia, "the former Yugoslav Republic of Macedonia", Georgia, Ukraine and Belarus. In particular, the Assembly strongly condemns the murder of Tigran Naghdalian, Chairman of the Public Television and Radio Council of Armenia. It is unacceptable that no substantial progress has been made in the investigation of crimes committed earlier, such as the murder of Heorhiy Gongadze in Ukraine and the disappearance of Dmitry Zavadsky in Belarus.
4. It is also unacceptable in a democracy that journalists should be sent to prison for their work, as in the cases of Mikola Markevich, Paval Mazheika and Viktar Ivashkevich in Belarus, and of Grigory Pasko in Russia. Criminal prosecution against journalists continues in Turkey.

⁶⁴ *Assembly debate* on 28 January 2003 (3rd Sitting) (see Doc. [9640 rev.](#), report of the Committee on Culture, Science and Education, rapporteur: Mrs Isohookana-Asunmaa).
Text adopted by the Assembly on 28 January 2003 (3rd Sitting).

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5. Other forms of legal harassment, such as defamation suits or disproportionately high fines that bring media outlets to the brink of extinction, continue to proliferate in several countries. Such cases were recently recorded in Azerbaijan, Belarus, Croatia, Russia and Ukraine. A dozen lawsuits have been brought against Presspublica, the publisher of the major Polish daily, Rzeczpospolita. Intimidation of the media also takes the form of police raids, tax inspections and other kinds of economic pressure.
6. In Ukraine, according to numerous journalists and the conclusions of the parliamentary hearings on freedom of speech and censorship, the presidential administration provides instructions to the media on the coverage of the main political events.
7. In most countries of the Commonwealth of Independent States the national television, the main source of information for the majority of the population, continues to be state-run or under tight government control. It is regrettable, for instance, that despite explicit Council of Europe recommendations to the Moldovan authorities and despite mass protests at Teleradio Moldova last spring, the newly adopted broadcasting law provides for many forms of direct political interference. The same problem exists with the proposed draft for a law on public television in Azerbaijan.
8. In certain countries it is still far too easy to replace heads of public media according to the whims of the authorities.
9. Even the most advanced new democracies still face difficulties in ensuring genuinely independent public service broadcasting and a proper balance between government and opposition.
10. In certain west European countries, courts continue to violate the right of journalists to protect their sources of information, and this despite the case-law of the European Court of Human Rights.
11. The media legislation in some of these countries is outdated (for instance the French press law dates back to 1881) and although restrictive provisions are no longer applied in practice, they provide a suitable excuse for new democracies not willing to democratise their own media legislation.
12. In Italy, the potential conflict of interest between the holding of political office by Mr Berlusconi and his private economic and media interests is a threat to media pluralism unless clear safeguards are in place, and sets a poor example for young democracies.
13. Media concentration is a serious problem across the continent. In certain countries of central and eastern Europe a very small number of companies now predominantly own the printed press. Access to digital television also tends to be highly concentrated.
14. The recent terrorist attacks can provide a pretext for introducing new restrictions to freedom of information, as with the adoption by the Russian Duma of amendments to the Laws on Mass Media and the Law on the Fight against Terrorism, but which President Putin had asked to be reformulated using his right of veto.

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15. The Assembly therefore stresses the need for the Council of Europe, through its appropriate bodies, to continue to monitor closely the state of freedom of expression and media pluralism across the continent and to put all its weight behind the active defence of its basic standards and principles, including the duty of journalists to observe ethical and responsible professional standards.

16. In this context, it asks the Committee of Ministers to make public the results of its monitoring procedure in the field of freedom of expression of the media.

17. The Assembly also asks the Committee of Ministers to urge all European states, where appropriate:

- i. to ensure that substantial progress is made in the investigation of murders of journalists and that the perpetrators of such crimes are punished;
- ii. to set free all journalists imprisoned for their legitimate professional work and to abolish legislation that makes journalistic freedom of expression subject to criminal prosecution;
- iii. to stop immediately all forms of legal and economic harassment of dissenting media;
- iv. to revise their media legislation according to Council of Europe standards and recommendations and to ensure its proper implementation;
- v. to revise in particular their broadcasting legislation and implement it with a view to the provision of a genuine public service;
- vi. to abolish restrictions on the establishment and functioning of private media broadcasting in minority languages;
- vii. to incorporate the case-law of the European Court of Human Rights in the field of freedom of expression into their domestic legislation and ensure the relevant training of judges;
- viii. to ensure the plurality of the media market through appropriate anti-concentration measures, especially in fairness of access to digital radio and television platforms, and to press for relevant international mechanisms in that respect to be introduced;
- ix. to refrain from adopting unnecessary restrictions to the free flow of information under cover of the fight against terrorism, while respecting Article 10 paragraph 2 of the European Convention on Human Rights.

18. The Assembly should continue to devote special attention to freedom of expression in the mass media in all European states. It considers active international co-ordination necessary in order to react immediately to cases of violence and pressure on journalists.

OF THE
COUNCIL OF EUROPE

Recommendation 1641 (2004)⁶⁵

Public service broadcasting

1. Public service broadcasting, a vital element of democracy in Europe, is under threat. It is challenged by political and economic interests, by increasing competition from commercial media, by media concentrations and by financial difficulties. It is also faced with the challenge of adapting to globalisation and the new technologies.
2. Public service broadcasting, whether run by public organisations or privately-owned companies, differs from broadcasting for purely commercial or political reasons because of its specific remit, which is essentially to operate independently of those holding economic and political power. It provides the whole of society with information, culture, education and entertainment; it enhances social, political and cultural citizenship and promotes social cohesion. To that end, it is typically universal in terms of content and access; it guarantees editorial independence and impartiality; it provides a benchmark of quality; it offers a variety of programmes and services catering for the needs of all groups in society and it is publicly accountable. These principles apply, whatever changes may have to be introduced to meet the requirements of the twenty-first century.
3. It is a matter of concern that many European countries have so far failed to meet the commitment that their governments undertook, at the 4th European Ministerial Conference on Mass Media Policy held in Prague in 1994, to maintain and develop a strong public broadcasting system. It is also worrying that the fundamental principle of the independence of public service broadcasting contained in Recommendation No. R (96) 10 of the Committee of Ministers is still not firmly established in a number of member states. Moreover, governments across the continent are in the process of reorienting their media policies in the light of the development of digital technology and are in danger of leaving public service broadcasting without enough support.
4. Public service broadcasting was born in western Europe and has evolved by adapting itself naturally to the needs of a mature democracy. In central and eastern Europe it is not yet socially embedded, since it was "transplanted" into an environment that lacked the necessary political and management culture, and in which civil society is still weak, has inadequate resources and little dedication to public service values.
5. The situation varies across Europe. At one extreme national broadcasting continues to be under strict governmental control and there is little prospect of introducing public service broadcasting by legislation in the foreseeable future. In the Russian Federation, for instance, the lack of independent public service broadcasting was a major contributing factor to the absence of balanced political debate in the lead-up to the recent parliamentary elections, as mentioned by the international election observation mission. Hardly any progress has been

⁶⁵ *Assembly debate* on 27 January 2004 (3rd Sitting) (see [Doc.10029](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney).
Text adopted by the Assembly on 27 January 2004 (3rd Sitting).

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made in adopting the necessary public service broadcasting legislation that might meet Council of Europe standards in Azerbaijan, Georgia and Ukraine.

6. In Bosnia and Herzegovina and in Kosovo public service broadcasting still only operates under regulations imposed from outside by the international community. Adoption of a proper law has been delayed in Bosnia and Herzegovina as a result of internal resistance to structural change and in Kosovo because of attempts to undermine the funding of public service broadcasting.

7. In other countries laws on public service broadcasting have been adopted, but certain provisions and practices contradict European standards. In Armenia all the members of the Council for Public Radio and Television are appointed by the President. It remains to be seen whether the day-to-day operation of Teleradio Moldova will be able to be independent after two changes made to the law in 2003. The appointment of a Serbian broadcasting agency has been marred by scandals that have yet to be resolved.

8. More substantial progress has been made in other countries, although problems still remain. Changes to broadcasting laws, making broadcasting corporations more politically independent and financially viable, have been recommended by the Council of Europe in Bulgaria and "the former Yugoslav Republic of Macedonia". There are still attempts to change laws in order to make them more suitable for a ruling majority, as with the new Croatian Law on Radio and Television. Severe financial difficulties are experienced with public service broadcasting in the Czech Republic, Hungary and Slovakia.

9. There is political pressure on public service broadcasting in western Europe too. The BBC was attacked by the British Government over its coverage of the war in Iraq. In Greece, Italy, Portugal and Spain, situations variously defined as "political clientelism", "state paternalism" and "partitocrazia" have prevented the full emancipation of public service broadcasters from direct, "hands-on" political control. Manipulation of information under political influence led to the unprecedented sentencing of TVE for its coverage of the general strike in Spain in June 2002. The politicisation of RAI caused by a unique division of the three Italian channels between the main political parties has been further aggravated by the current government.

10. There is a growing tendency to go beyond hitherto existing forms of public service broadcasting regulation and define its obligations more precisely, often by contracts backed up by accountability reports to the parliament, the government and/or a regulatory agency. Increasing attention is paid to the financial aspects of the operation of the public service broadcaster. While such moves are to be welcomed in so far as they give public service broadcasting organisations greater stability, it should be ensured that they are not used by governments to undermine the financial and statutory situation of these organisations. Recent government decisions in the Netherlands and France have seriously affected the funding of their public service broadcasters.

11. Governments have been examining possible structural changes that would affect the very nature of public service broadcasting. Privatisation plans have been discussed in Denmark and Portugal, and in Italy with the recently proposed broadcasting legislation (the "Gasparri Law"), which has since then been referred back to Parliament by the President. In the United Kingdom, there is growing concern at the government's attitude to the renewal of

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the charter of the BBC, fuelled by the very public row between the corporation and the government.

12. In a large majority of countries, digital channels have not yet been defined in broadcasting legislation. There is also a clear absence of legal provisions concerning Internet activities by public service broadcasters in most countries. This might affect their ability to expand to new platforms.

13. The coexistence of public and commercial media has largely contributed to innovating and diversifying the supply of content and has had a positive impact on quality. However, commercial interests are trying to reduce competition from the public sector to a minimum. European Union competition law is often used to attack the funding systems for public service broadcasting. In this respect, the Assembly welcomes the judgment of the European Court of Justice in the Altmark case, regarding compensation for discharging public service obligations, and urges that the situation concerning public service broadcasting be further clarified on the basis of this judgment. Commercial broadcasters also challenge the possibility of public service broadcasting expanding into new areas and new services. Recent examples include the BBC's Internet activities and the plans of the German ARD to turn the Internet into its "third pillar", which had to be abandoned under commercial pressure.

14. Commercial broadcasters also claim that the shift to the multi-channel, on-demand broadcasting offered by digitalisation will enable the market to cater for all needs and therefore also fulfil the public service obligations currently assigned to public broadcasting institutions. However, there is no guarantee about the quality and independence of such provision, or that it would be free-to-air, universally accessible and constant over time.

15. It is recognised that there can be an overlap with commercial broadcasting in popular genres. However, the growing commercialisation and concentration of the media sector with the resulting "dumbing-down" of general quality vindicates, when this concerns public service broadcasters, those who criticise the use of public money for such purposes. Public service broadcasting is suffering an identity crisis, as it is in many instances striving to combine its public service obligations with chasing ratings and the need to secure an audience to justify its "public" character or simply to attract advertising revenue.

16. European countries and the international community in general must become more actively involved in efforts to develop general standards and good practice as guidelines for national policies in this area.

17. Therefore the Parliamentary Assembly recommends that the Committee of Ministers:

- i. adopt a new major policy document on public service broadcasting, taking stock of developments since the Prague ministerial conference and defining standards and mechanisms of accountability for future public service broadcasting. The forthcoming Ministerial Conference on Mass Media Policy in Kyiv could include the preparation of such a document in its plan of action;
- ii. mobilise the relevant structures of the Council of Europe to ensure proper and transparent monitoring, assistance and, where necessary, pressure, so that member states undertake the appropriate legislative, political and practical measures in support of public service broadcasting;

- iii. consider specific measures to ensure that a legislation in this area in line with European standards is adopted as soon as possible in Azerbaijan, Georgia, the Russian Federation and Ukraine;
- iv. ensure close co-operation with other international organisations in maintaining its standards regarding freedom of expression;
- v. continue to press for audiovisual services to be regarded as more than simply a commodity in the negotiations of the World Trade Organization (WTO) and the General Agreement on Trade in Services (GATS);
- vi. endeavour to ensure that the World Summit on the Information Society gives proper recognition to public service broadcasting as an important element in developing the information society and at the same time easing the shock of the rapid changes this development will involve;
- vii. call on the governments of member states to:
 - a. reaffirm their commitment to maintaining a strong and vibrant independent public broadcasting service, whilst adapting it to the requirements of the digital age, for instance, on the occasion of the next European Ministerial Conference on Mass Media Policy in 2004, taking concrete steps to implement this policy objective and refrain from any interference with the editorial independence and institutional autonomy of public service broadcasters;
 - b. define an appropriate legal, institutional and financial framework for the functioning of public service broadcasting and its adaptation and modernisation to suit the needs of the audience and the requirements of the digital era;
 - c. design education and training programmes, adapted to the digital media environment, for journalists.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1372 (2004)⁶⁶

Persecution of the press in the Republic of Belarus

1. The Parliamentary Assembly of the Council of Europe recalls that membership of the Council of Europe requires the commitment of a state to strive for greater European unity based on the common values shared by the family of democratic nations in Europe and

⁶⁶ *Assembly debate* on 28 April 2004 (12th Sitting) (see Doc. 10107, report of the Political Affairs Committee, rapporteur: Mr Pourgourides; and Doc. 10165, opinion of the Committee on Culture, Science and Education, rapporteur: Ms Muttonen).

Text adopted by the Assembly on 28 April 2004 (12th Sitting).

enshrined in the European Convention on Human Rights (ETS No. 5) and the other conventions and recommendations of the Council of Europe. Therefore, the authorities of each applicant state must show their willingness and capacity to adhere to these values and standards. One of the fundamental democratic rights guaranteed by the European Convention on Human Rights is the right to freedom of expression and freedom of the media.

2. The Assembly welcomes the wish expressed by the Parliament of Belarus to resume its Special Guest status with the Assembly as well as the desire of Belarus to accede to the Council of Europe. It is with regret, however, that the Assembly must note that neither the parliament nor the other state authorities of Belarus have made any progress towards democratic development since the suspension of the Special Guest status of the Parliament of Belarus in January 1997 due to the dissolution of the parliament by President Lukashenko's referendum and the subsequent non-democratic constitution of the new parliament. The Bureau of the Assembly consequently rejected, in January 2004, the application for re-granting Special Guest status to the Parliament of Belarus.

3. The Assembly recalls that freedom of expression and freedom of the media constitute one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every human being, as the European Court of Human Rights has consistently held. Where information is withheld from the people through state censorship and state propaganda reigns, true democracy can never exist.

4. The Assembly remains appalled by the fact that the disappearance, more than three years ago, of the journalist Mr Dmitri Zavadski and his alleged extra-judicial execution by agents of the state has not been properly and truly investigated. The conviction of four men for the abduction of Mr Zavadski cannot be regarded as a proper investigation for various reasons. Reference is made only to a few of them: firstly, the body of Mr Zavadski has not been traced and it has not been established that he has been murdered; secondly, the General Prosecutor of the Republic of Belarus is in charge of all criminal investigations. The present holder of the post of General Prosecutor is Mr Victor Sheyman, who is regarded by many people in Belarus as the mastermind behind this abduction and others.

5. The Assembly deplores the systematic harassment and intimidation carried out by state officials, in particular the Ministry of Information, against journalists, editors and media outlets which are critical of the President of the Republic or the Government of Belarus. The legal basis for such action is very often the requirement that print media receive a state licence from the Ministry of Information. Article 10 of the European Convention on Human Rights does not permit such licensing of print media.

6. Furthermore, the state allows a situation whereby the functioning of media outlets can be at the mercy of local administrations, of printing houses and distribution agencies. Independent media are forced to operate under discriminatory economic conditions.

7. The Assembly condemns, as totally unacceptable in a democratic society, the subjecting of journalists to imprisonment, including forced labour, for criticism of the President and state officials, which is currently possible under the provisions of Articles 367, 368 and 369 of the Criminal Code.

8. The Assembly is deeply concerned by the level of state control over the electronic media, in particular the public television and radio company of Belarus, which works under a

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presidential decree, but also private joint-stock companies, in which the state typically holds major shares and interests. It is also concerned that printing companies and companies distributing print media are largely state controlled. In a genuine democracy, public media must not function as a voice of the President and the executive branch of power, but should provide an impartial service for the public at large by disseminating news and commentary in an open, unbiased and truthful way.

9. The Assembly believes that the media landscape, under the controls it is currently subject to, does not provide for the freedom of information through the media that is necessary for the preparation and conduct of democratic parliamentary elections in autumn 2004. All political candidates, political parties and political civil society organisations must have equal access to the media without control by the state. Otherwise, voters in Belarus will not be able to receive the information necessary to form their own opinions about the situation in their own country.

10. The Assembly therefore regrets that reform of the Law on the Press and other Mass Media and other relevant laws, long announced and awaited, have not been finalised in time for the coming parliamentary elections by the President of the Republic, the ministers responsible and the parliament and that the Belarusian authorities have not fulfilled their commitment to send the draft to the Council of Europe for examination. The Assembly resolves to continue monitoring the situation concerning the media in the Republic of Belarus until the new Law on the Press and other Mass Media is enacted.

11. The Assembly notes with regret that the Parliament of Belarus refused to co-operate with the Organization for Security and Co-operation in Europe (OSCE) in the organisation of a seminar on the media in Belarus on 27 February 2004. Furthermore, the Assembly regrets that the Vice-Chairman of its Chamber of Representatives, Mr Vladimir Konoplev, refused to receive a joint delegation from the Council of Europe's Parliamentary Assembly, the OSCE Parliamentary Assembly and the European Parliament from 22 to 24 January 2004, which would have allowed the members of the Parliament of Belarus to hold a dialogue with European parliamentarians on a number of issues including freedom of the media.

12. The Assembly calls on all member and Observer states of the Council of Europe not to tolerate any longer the existing state of affairs in Belarus. Fundamental rights and freedoms are systematically violated in Belarus with the sole aim of keeping a non-democratic regime in power. The regime of President Lukashenko bases its existence on repression, intimidation and fear. The measures of repression and intimidation are directed not only towards the media but also towards all other democratic institutions, human rights activists and the people at large. Belarus remains, in the year 2004, a police state with conditions similar to those prevailing in the country during the Soviet Union era. It is imperative to do everything possible in order to bring democracy to Belarus. Millions of Belarusians were killed during the second world war bravely fighting against the forces of Hitler. However, freedom has not yet come to their land. All member and Observer states of the Council of Europe have a duty to ensure that Belarus ceases to be the last dictatorial state in Europe.

13. The Assembly calls on the Secretary General of the Council of Europe to:

- i. constantly bear in mind the people of Belarus and step up targeted action in favour of human rights, democracy and the rule of law in Belarus; and

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ii. allocate, in co-operation with the Committee of Ministers, sufficient resources for projects on strengthening democracy and freedom of the media in Belarus in preparation for the parliamentary elections in autumn 2004 and, more generally, aimed at enhancing the understanding of democratic standards in the media field and reinforcing public opposition to any form of repression of free speech.

14. The Assembly calls on the President of the Republic of Belarus, the Government of Belarus and the National Assembly of Belarus to:

i. launch a truly independent investigation into the disappearance and alleged extra-judicial execution of the journalist Mr Dmitri Zavadski which occurred more than three years ago and make the final results of this investigation public, a prior requirement to such an investigation being the removal from office of Mr Victor Sheyman;

ii. consider revising the penal laws and Article 5 of the Law on the Press and other Mass Media in order to allow political criticism of the President of the Republic and the members of the National Assembly; the honour and dignity of the President of the Republic and the heads of state bodies must not be protected unconditionally;

iii. take due account of Article 19 of the International Covenant on Civil and Political Rights of the United Nations as well as Articles 3 and 4 of the Law on the Press and other Mass Media; thus the courts of Belarus should not impose disproportionate penal sanctions against media and journalists criticising the President of the Republic;

iv. revise Article 9 of the Law on the Press and other Mass Media in order to abolish the licensing requirement for print media, because this is contrary to the right to freedom of the press as guaranteed by Article 10 of the European Convention on Human Rights;

v. abolish administrative sanctions and oral reprimands against the media by the Ministry of Information because they violate the fundamental principle of the separation of powers between the executive and the judiciary and are contrary to Article 10 of the European Convention on Human Rights; the Law on the Press and other Mass Media should be revised accordingly;

vi. initiate legislation which fully implements Article 33, third sentence, of the Constitution of Belarus and which would prohibit any monopoly over the mass media by the state; for this purpose, the high concentration of state interests in joint-stock media, printing companies and distributing companies should be reduced and the national broadcasting company should become a public service broadcaster independent of direct control by the President of the Republic or other state organs along the lines of Recommendation 1641 (2004) on public service broadcasting;

vii. ensure that printers and distributors of print media do not discriminate against private media independent of state support, or against the foreign press;

viii. ensure that the Central Electoral Committee and the national broadcasting company provide for free, equal and fair access to airtime for political parties as well as independent candidates before the elections in Belarus; the authorities may be guided by Recommendation No. R(99)15 of the Committee of Ministers on measures concerning

media coverage of election campaigns; this is particularly important in preparation of the coming parliamentary elections in autumn 2004;

ix. revise all presidential decrees which excessively restrict the right to receive and disseminate information about the state under Article 34 of the Constitution of Belarus;

x. ensure that the National Assembly can take up its role as legislator and become the initiator of legislation and legislative amendments in the media field; in this regard, the National Assembly should seek to include in the Constitution of Belarus a provision on freedom of the media and the inadmissibility of censorship similar to Articles 3 and 4 of the Law on the Press and other Mass Media;

xi. refrain from restricting the right to freedom of association of journalists and editors, as guaranteed by Article 22 of the International Covenant on Civil and Political Rights of the United Nations and by Article 11 of the European Convention on Human Rights; the state authorities of Belarus must not hinder the work of the Belarusian Association of Journalists by intimidating or harassing its staff and members.

15. The Assembly calls on the European Parliament, the Council of the European Union and the European Commission not to tolerate any longer the systematic violation by Belarusian authorities of the fundamental freedoms guaranteed under Articles 10 (freedom of expression) and 11 (freedom of association) of the European Convention on Human Rights, Articles 11 (freedom of expression) and 12 (freedom of association) of the Charter of Fundamental Rights of the European Union, and to take appropriate action in their relations with Belarus.

16. The Assembly calls on the OSCE Parliamentary Assembly, the Chairman-in-Office of the OSCE and the OSCE Representative on Freedom of the Media not to tolerate any longer the systematic violation by Belarusian authorities of the fundamental freedoms guaranteed under Articles 10 and 11 of the European Convention on Human Rights, Articles 19 (freedom of expression) and 22 (freedom of association) of the International Covenant on Civil and Political Rights of the United Nations in relation to the obligations of Belarus under the Helsinki Final Act, and paragraph 22 of the Istanbul Summit Declaration of the OSCE, and to take appropriate action against Belarus.

17. The Assembly calls on the United Nations and, in particular, the United Nations Commission on Human Rights, never to tolerate the systematic violation by Belarusian authorities of Articles 19 and 22 of the International Covenant on Civil and Political Rights of the United Nations, and to take appropriate action against Belarus.

Recommendation 1658 (2004)⁶⁷

Persecution of the press in the Republic of Belarus

The Parliamentary Assembly of the Council of Europe refers to its Resolution Resolution 1372 (2004) on the persecution of the press in the Republic of Belarus and recommends that the Committee of Ministers of the Council of Europe:

- i. take into account this resolution when deciding on action concerning Belarus;
- ii. forward this resolution to the governments of member states and Observer states and request them to support in their bilateral relations with Belarus the fulfilment of the catalogue of requirements contained in this resolution with regard to freedom of the media;
- iii. encourage member states to provide objective and impartial broadcasting programmes and print and Internet publications aimed specifically at the Belarusian public.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1387 (2004)⁶⁸

Monopolisation of the electronic media and possible abuse of power in Italy

1. Italy is a founding member of the Council of Europe and strongly supports the ideals for which it stands. The Parliamentary Assembly is therefore concerned by the concentration of political, commercial and media power in the hands of one person, Prime Minister Silvio Berlusconi.
2. The Parliamentary Assembly cannot accept that this anomaly be minimised on the grounds that it only poses a potential problem. A democracy is judged not only by its day-to-day operations but by the principles the country upholds with regard to its own citizens and internationally. The Assembly recalls that, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, states have a duty to protect and, when necessary, take positive measures to safeguard and promote media pluralism.
3. The Assembly deplores the fact that several consecutive Italian governments since 1994 have failed to resolve the problem of conflict of interest and that appropriate legislation has

⁶⁷ *Assembly debate* on 28 April 2004 (12th Sitting) (see Doc. 10107, report of the Political Affairs Committee, rapporteur: Mr Pourgourides; and Doc. 10165, opinion of the Committee on Culture, Science and Education, rapporteur: Ms Muttonen).

Text adopted by the Assembly on 28 April 2004 (12th Sitting).

⁶⁸ *Assembly debate* on 24 June 2004 (23rd Sitting) (see Doc. 10195, report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney; and Doc. 10228, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ates).

Text adopted by the Assembly on 24 June 2004 (23rd Sitting).

not yet been adopted by the present parliament. It disagrees that the leading principle of the Frattini Bill currently under consideration – that only managers, not owners, should be held responsible – provides a genuine and comprehensive solution to the conflict of interest concerning Mr Berlusconi.

4. Through Mediaset, Italy's main commercial communications and broadcasting group, and one of the largest in the world, Mr Berlusconi owns approximately half of the nationwide broadcasting in the country. His role as head of government also puts him in a position to influence indirectly the public broadcasting organisation, RAI, which is Mediaset's main competitor. As Mediaset and RAI command together about 90% of the television audience and over three quarters of the resources in this sector, Mr Berlusconi exercises unprecedented control over the most powerful media in Italy.

5. This duopoly in the television market is in itself an anomaly from an antitrust perspective. The status quo has been preserved even though legal provisions affecting media pluralism have twice been declared anti-constitutional and the competent authorities have established the dominant positions of RAI and the three television channels of Mediaset. An illustration of this situation was a recent decree of the Prime Minister, approved by parliament, which allowed the third channel of RAI and Mediaset's Retequattro to continue their operations in violation of the existing antitrust limits until the adoption of new legislation. Competition in the media sector is further distorted by the fact that the advertising company of Mediaset, Publitalia '80, has a dominant position in television advertising. The Assembly deplores the continued exclusion of a potential national broadcaster, Europa 7, winner of a 1999 government tender to broadcast on frequencies occupied by Mediaset's channel, Retequattro.

6. The Assembly believes that the newly-adopted "Gasparri Law" on the reform of the broadcasting sector may not effectively guarantee greater pluralism simply through the multiplication of television channels in the course of digitalisation. At the same time, it manifestly allows Mediaset to expand even further, as it gives the market players the possibility to have a monopoly in a given sector without ever reaching the antitrust limit in the overall integrated system of communications (SIC). The Assembly notes that these concerns led the President of the Republic to oppose the previous version of the law.

7. The Assembly is particularly concerned by the situation of RAI, which is contrary to the principles of independence laid down in Assembly Recommendation 1641 (2004) on public service broadcasting. RAI has always been a mirror of the political system of the country and its internal pluralism has moved from the proportionate representation of the dominant political ideologies in the past to the winner takes all attitude reflecting the present political system. The Assembly notes with concern the resignations of the president of RAI and of one of the most popular journalists in the country in protest against the lack of balanced political representation in the Council of Administration and against the political influence over RAI's programming.

8. While the printed media in Italy has traditionally provided greater pluralism and political balance than the broadcasting sector, most Italians receive their news through the medium of television. The high cost of newspaper compared to television advertising is having a damaging effect on the Italian printed media. However, the Assembly wishes to record its approval of government measures to help small- and medium-sized newspapers and other measures to boost newspaper readership.

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9. The Assembly is extremely concerned that the negative image that Italy is portraying internationally because of the conflict of interest concerning Mr Berlusconi, could hamper the efforts of the Council of Europe aimed at promoting independent and unbiased media in the new democracies. It considers that Italy, as one of the strongest contributors to the functioning of the Organisation, has a particular responsibility in this respect.

10. The Assembly points out that several international bodies, such as the OSCE representative on Freedom of the Media and, most recently, the European Parliament, have expressed concerns similar to its own. It welcomes the measures for safeguarding media pluralism proposed in the European Parliament resolution on the risks of violation, in the European Union and especially in Italy, of freedom of expression and information (Article 11 (2) of the Charter of Fundamental Rights) of 22 April 2004, namely that the protection of media diversity should become a priority of European Union competition law.

11. The Assembly therefore calls on the Italian Parliament:

i. to pass as a matter of urgency a law resolving the conflict of interest between ownership and control of companies and discharge of public office, and incorporating penalties for cases where there is a conflict of interest with the discharge of public office at the highest level;

ii. to ensure that legislation and other regulatory measures put an end to the long-standing practice of political interference in the media, taking into account in particular the Committee of Ministers' Declaration on freedom of political debate in the media, adopted on 12 February 2004;

iii. to amend the Gasparri Law in line with the principles set out in Committee of Ministers' Recommendation No. R (99) 1 on measures to promote media pluralism, in particular:

a. by avoiding the emergence of dominant positions in the relevant markets within the SIC;

b. by including specific measures to bring an end to the current RAI-Mediaset duopoly;

c. by including specific measures to ensure that digitalisation will guarantee pluralism of content.

12. The Assembly calls on the Italian Government:

i. to initiate measures to bring the functioning of RAI into line with Assembly Recommendation 1641 (2004) on public service broadcasting, with the declaration of the 4th European Ministerial Conference on Mass Media Policy in Prague and with Committee of Ministers' Recommendations No. R (96) 10 on the guarantee of the independence of public service broadcasting and Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting;

- ii. to give a positive international example by proposing and supporting initiatives within the Council of Europe and the European Union aimed at promoting greater media pluralism at European level.

13. The Assembly asks the Venice Commission to give an opinion on the compatibility of the Gasparri Law and the Frattini Bill with the standards of the Council of Europe in the field of freedom of expression and media pluralism, especially in the light of the case-law of the European Court of Human Rights.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1438 (2005)⁶⁹

Freedom of the press and the working conditions of journalists in conflict zones

1. The Parliamentary Assembly of the Council of Europe recalls the importance of freedom of expression and information in the media for democratic societies and for each individual. It constitutes a core value guaranteed throughout Europe by the European Convention on Human Rights. Situations of war or conflict do not make the adequate provision of information through the media any less important; on the contrary, they enhance its relevance.

2. Journalists reporting from dangerous places, such as war zones, conflict areas or lawless areas, are often faced with difficult and dangerous working conditions and sometimes even with widespread and systematic targeting by terrorist groups in search of media attention, as is the case at present in Iraq. Freedom of expression and information may, depending on the individual circumstances, be weighed against other fundamental considerations, in particular the rights to life, liberty and security of journalists. These other rights must not be compromised by growing market pressure for more reports directly from dangerous places and a supposedly increasing public demand for sensational reporting.

3. The Assembly deplores the great number of murders, kidnappings and disappearances of journalists working in conflict areas or on dangerous subjects and regards these as grave acts of aggression against freedom of expression and information in the media. Widespread publicity and the fulfilment of terrorists' demands, such as paying large ransoms to kidnappers, considerably increase the risks run by journalists working in dangerous areas and thus reduce the possibility for the public to receive valuable information.

4. Concerned about the state of freedom of expression and information in the media in Iraq, the Assembly deplores the numerous deaths and disappearances of journalists there and the continued detention as hostages of Florence Aubenas, Hussein Hanoun al-Saadi, Sorin Dumitru Miscoci, Marie-Jeanne Ion and Eduard Ovidiu Ohanesian. It calls for the immediate release of those held hostage.

⁶⁹ *Assembly debate* on 28 April 2005 (14th Sitting) (see Doc. 10521, report of the Committee on Culture, Science and Education, rapporteur: Mr Jarab).

Text adopted by the Assembly on 28 April 2005 (14th Sitting).

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5. The Assembly pays tribute to non-governmental organisations such as the International News Safety Institute, the International Press Institute, Reporters Without Borders, the International Federation of Journalists, Article 19 and the Institute for War & Peace Reporting for providing help and advice to journalists working in dangerous situations and conflict areas.

6. Welcoming the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas drawn up by the organisation Reporters Without Borders, the Assembly recalls the importance of employing only experienced and well trained journalists, who volunteer to take up such tasks, and of providing them with adequate safety, communication and first-aid equipment, psychological counselling after their return and with insurance for illness, injury, repatriation, disability and loss of life.

7. The Assembly recalls and reaffirms that journalists must be considered civilians under Article 79 of Protocol I to the Geneva Conventions of 1949, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents, who are accredited to the armed forces and accompany them without actually being members thereof, to the status of prisoner of war under Article 4.A.4 of Geneva Convention III once fallen into the power of the enemy.

8. Recalling the Committee of Ministers' Declaration and Recommendation No. R (96) 4 on the protection of journalists in situations of conflict and tension, the Assembly calls on all member and Observer states to comply fully with them, in particular to:

- i. respect the right to freedom of expression and information;
- ii. refrain from restricting the use of communication equipment, such as fixed and mobile telephones, satellite telephones and radio communication devices;
- iii. instruct their military and police forces to give protection and assistance to journalists;
- iv. facilitate access to the territory of destination by issuing necessary visas and other travel documents to journalists;
- v. respect the confidentiality of journalists' sources.

9. All Council of Europe member and Observer states are called upon:

- i. to ensure that journalists can work safely on their territories;
- ii. to investigate all acts of violence or lethal incidents involving journalists which occur on their territories as well as those occurring abroad in which their armed or security forces may have been involved, including those due to friendly fire.

10. Furthermore, the Assembly calls on Council of Europe member and Observer states to set up compulsory training and information programmes for war correspondents embedded in military forces, to be provided prior to departure.

11. Media should indicate clearly to the public which reports are from war correspondents embedded in military or security forces.
12. The Assembly stresses that, if, for reasons of their own personal safety, 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.
13. Journalists' employers, and professional organisations should organise training courses to prepare journalists for the risks of working in conflict areas. The media should declare publicly that no financial payments or political concessions will be made to kidnappers and that political statements made by kidnapped journalists are made under coercion and are hence without any value.
14. All journalists and their employers are encouraged to adhere to the Charter for the Safety of Journalists Working in War Zones or Dangerous Areas drawn up by the organisation Reporters Without Borders.
15. With reference to the Committee of Ministers' Declaration of 3 May 1996 on the protection of journalists in situations of conflict and tension, the Assembly asks the Secretary General of the Council of Europe to pay particular attention to the fate of journalists in situations of conflict and tension and to regularly follow cases of journalists who are missing, detained or have been wounded or killed in the exercise of their profession in member or Observer states or in connection with military or peace-keeping operations conducted by Council of Europe member or Observer states abroad.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1702 (2005)⁷⁰

Freedom of the press and the working conditions of journalists in conflict zones

The Parliamentary Assembly of the Council of Europe, referring to its [Resolution 1438 \(2005\)](#) on freedom of the press and the working conditions of journalists in conflict zones, recommends that the Committee of Ministers:

- i. forward this resolution to the competent ministers;
- ii. monitor respect of freedom of expression and information in the media and the working conditions of journalists in situations of conflict in member states;
- iii. work on this issue with the United Nations, and in particular to collaborate with its Commission on Human Rights or with UNESCO, while maintaining the standards of the

⁷⁰ *Assembly debate* on 28 April 2005 (14th Sitting) (see [Doc. 10521](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Jarab).

Text adopted by the Assembly on 28 April 2005 (14th Sitting).

European approach towards this issue in accordance with the European Convention on Human Rights and the other relevant legal texts of the Council of Europe.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1706 (2005)⁷¹

Media and terrorism

1. The Parliamentary Assembly of the Council of Europe believes that terrorism should not affect the importance of freedom of expression and information in the media as one of the essential foundations of democratic society. This freedom carries with it the right of the public to be informed on matters of public concern, including terrorist acts and threats, as well as the response by the state and international organisations to these threats and acts.
2. Terrorist acts are acts which are intended to create terror, fear or chaos among the public. The spread of public terror, fear and feelings of chaos depends largely on the images and messages being carried by media reports about the terrorist acts and threats. The omnipresence of the mass media at global level frequently exaggerates these effects out of proportion.
3. The Assembly recalls its Resolution 1271 (2002) and Recommendation 1550 (2002) on combating terrorism and respect for human rights and reaffirms that the fight against terrorism must not be used as a pretext to restrict the fundamental rights and freedoms guaranteed under the European Convention on Human Rights and related legal texts of the Council of Europe. In this respect, it supports the Committee of Ministers' Guidelines on Human Rights and the Fight against Terrorism of 11 July 2002.
4. Referring to the Committee of Ministers' Declaration of 2 March 2005 on freedom of expression and information in the media in the context of the fight against terrorism, the Assembly emphasises that Article 15 of the European Convention on Human Rights cannot be invoked in cases of terrorism in order to restrict this freedom beyond the existing limitations of Article 10, paragraph 2 of the Convention, because terrorist action can neither be regarded as war in a legal sense, nor can it threaten the life of a democratic nation.
5. The Assembly considers it necessary for the public and media to be aware of the fact that terrorists direct their action towards the public and thus utilise the media in order to have the strongest possible impact. This is even more important because terrorists have learned how to use information technologies in order to disseminate their own audiovisual recordings, electronic messages or web sites on the Internet, which compels states and the media to react accordingly.

⁷¹ *Assembly debate* on 20 June 2005 (17th Sitting) (see Doc. 10557, report of the Committee on Culture, Science and Education, rapporteur: Mr Jarab).

Text adopted by the Assembly on 20 June 2005 (17th Sitting).

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6. With due regard to the privacy and human dignity of victims of terrorist acts and their families, the Assembly stresses the importance of fully informing the public about terrorist acts, particularly the suffering caused by these acts as well as the socio-cultural and political context of such acts. Informed public debate about concrete acts of terrorism can lead to forming adequate political responses to it and to preventing others from joining terrorist groups.
7. The Assembly trusts in the ability of the European political system and culture and in its citizens, politicians and journalists to avoid sensationalist media reports related to terrorism.
8. The Assembly invites media professionals:
 - i. to develop, through their professional organisations, a code of conduct for journalists, photographers and editors dealing with terrorist acts and threats, in order to keep the public informed without contributing unduly to the impact of terrorism;
 - ii. to organise training courses for media professionals aimed at increasing awareness of the sensitive nature of media reports on terrorism;
 - iii. to co-operate between themselves, for instance through their professional organisations, in order to avoid a race for sensationalist news and images which plays into the hands of terrorists;
 - iv. to avoid acting in the interests of terrorists by adding to the feeling of public fear which terrorist acts can create or by offering terrorists a platform for publicity;
 - v. to refrain from publishing shocking pictures or disseminating images of terrorist acts which violate the privacy and human dignity of victims or contribute to increase the terrorising effect of such acts on the public as well as on the victims and their families;
 - vi. to avoid aggravating, through their news and comments, the societal tensions underlying terrorism, and in particular to refrain from disseminating any kind of hate speech.
9. The Assembly asks all its member and observer delegations to take account of this recommendation in their national work and to hold a debate on this issue in their respective national parliaments.
10. The Assembly recommends that the Committee of Ministers ask member and observer states:
 - i. to inform the public and the media regularly about government strategies and action towards combating terrorism as well as its causes;
 - ii. to abstain from prohibiting or even restricting unduly the dissemination of information and opinions in the media about terrorism as well as about the reaction by state authorities to terrorist acts and threats under the pretext of fighting terrorism;
 - iii. to inform, upon their request, media dealing with terrorism about the specific security situation in each context, in order to avoid journalists investigating terrorism

being unnecessarily exposed to dangers caused by terrorists or the anti-terrorist action of state authorities;

iv. to include media literacy in their school curricula, in order to encourage a critical and informed consumption of media content and raise citizens' awareness of the horror of terrorist acts as early as possible;

v. to co-operate through their law enforcement authorities and police in order to prevent the dissemination of illegal messages and images by terrorists on the Internet;

vi. to apply the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems to terrorist content in so far as the latter advocates, promotes or incites hatred or violence against any individual or group of individuals based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

11. The Assembly asks the Committee of Ministers to:

i. to monitor the treatment of terrorism in European media in particular with regard to its Declaration on freedom of expression and information in the media in the context of the fight against terrorism;

ii. to prepare, under the guidance and in close co-operation with media professionals and their professional organisations, and with UNESCO and other organisations working in the same field, a handbook for journalists reporting about terrorist acts and violence;

iii. to initiate work towards an additional protocol to the Convention on Cybercrime setting up a framework for security co-operation between member and observer states for the prevention of cyber terrorism, in the form of large-scale attacks on and through computer systems which threaten a state's national security, public safety or economic well-being.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1510 (2006)⁷²

Freedom of expression and respect for religious beliefs

1. The Parliamentary Assembly of the Council of Europe reaffirms that there cannot be a democratic society without the fundamental right to freedom of expression. The progress of society and the development of every individual depend on the possibility of receiving and imparting information and ideas. This freedom is not only applicable to expressions that are

⁷² *Assembly debate* on 28 June 2006 (19th Sitting) (see Doc. 10970, report of the Committee on Culture, Science and Education, rapporteur: Mrs Hurskainen).

Text adopted by the Assembly on 28 June 2006 (19th Sitting).

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favourably received or regarded as inoffensive but also to those that may shock, offend or disturb the state or any sector of the population, in accordance with Article 10 of the European Convention on Human Rights (ETS No. 5).

2. Freedom of thought, conscience and religion constitutes a necessary requirement for a democratic society and one of the essential freedoms of individuals for determining their perception of human life and society. Conscience and religion are basic components of human culture. In this sense, they are protected under Article 9 of the European Convention on Human Rights.

3. Freedom of thought and freedom of expression in a democratic society must, however, permit open debate on matters relating to religion and beliefs. The Assembly recalls in this regard its Recommendation 1396 (1999) on religion and democracy. Modern democratic societies are made up of individuals of different creeds and beliefs. Attacks on individuals on grounds of their religion or race cannot be permitted but blasphemy laws should not be used to curtail freedom of expression and thought.

4. The Assembly emphasises the cultural and religious diversity of its member states. Christians, Muslims, Jews and members of many other religions, as well as those without any religion, are at home in Europe. Religions have contributed to the spiritual and moral values, ideals and principles which form the common heritage of Europe. In this respect, the Assembly stresses Article 1 of the Statute of the Council of Europe (ETS No. 1), which stipulates that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage.

5. The Assembly underlines its commitment to ensuring that cultural diversity becomes a source of mutual enrichment, not of tension, through a true and open dialogue among cultures on the basis of mutual understanding and respect. The overall aim should be to preserve diversity in open and inclusive societies based on human rights, democracy and the rule of law, by fostering communication and improving the skills and knowledge necessary for living together peacefully and constructively within European societies, between European countries and between Europe and its neighbouring regions.

6. Reactions to images perceived as negative, transmitted through books, films, cartoons, paintings and the Internet, have recently caused widespread debates about whether – and to what extent – respect for religious beliefs should limit freedom of expression. Questions have also been raised on the issues of media responsibility, self-regulation and self-censorship.

7. Blasphemy has a long history. The Assembly recalls that laws punishing blasphemy and criticism of religious practices and dogmas have often had a negative impact on scientific and social progress. The situation started changing with the Enlightenment, and progressed further towards secularisation. Modern democratic societies tend to be secular and more concerned with individual freedoms. The recent debate about the Danish cartoons raised the question of these two perceptions.

8. In a democratic society, religious communities are allowed to defend themselves against criticism or ridicule in accordance with human rights legislation and norms. States should support information and education about religion so as to develop better awareness of religions as well as a critical mind in its citizens in accordance with Assembly

Recommendation 1720 (2005) on education and religion. States should also develop and vigorously implement sound strategies including adequate legislative and judicial measures to combat religious discrimination and intolerance.

9. The Assembly also recalls that the culture of critical dispute and artistic freedom has a long tradition in Europe and is considered as positive and even necessary for individual and social progress. Only totalitarian systems of power fear them. Critical dispute, satire, humour and artistic expression should, therefore, enjoy a wider degree of freedom of expression and recourse to exaggeration should not be seen as provocation.

10. Human rights and fundamental freedoms are universally recognised, in particular under the Universal Declaration of Human Rights and international covenants of the United Nations. The application of these rights is not, however, universally coherent. The Assembly should fight against any lowering of these standards. The Assembly welcomes the United Nations Secretary-General's initiative on an alliance of civilisations which aims to mobilise concerted action at the institutional and civil society levels to overcome prejudice, misperceptions and polarisation. A true dialogue can only occur when there is genuine respect for and understanding of other cultures and societies. Values such as respect for human rights, democracy, rule of law and accountability are the product of mankind's collective wisdom, conscience and progress. The task is to identify the roots of these values within different cultures.

11. Whenever it is necessary to balance human rights which are in conflict with each other in a particular case, national courts and national legislators have a margin of appreciation. In this regard, the European Court of Human Rights has held that, whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, a wider margin of appreciation is generally available when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion. What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place.

12. The Assembly is of the opinion that freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups. At the same time, the Assembly emphasises that hate speech against any religious group is not compatible with the fundamental rights and freedoms guaranteed by the European Convention on Human Rights and the case law of the European Court of Human Rights.

13. The Assembly calls on parliaments in member states to hold debates on freedom of expression and respect for religious beliefs, and on parliamentarians to report back to the Assembly on the results of these debates.

14. The Assembly encourages religious communities in Europe to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding and a code of conduct for religious tolerance which is necessary in a democratic society.

15. The Assembly also invites media professionals and their professional organisations to discuss media ethics with regard to religious beliefs and sensitivities. It encourages the creation of press complaints bodies, media ombudspersons or other self-regulatory bodies,

where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions.

16. The Assembly encourages intercultural and interreligious dialogue based on universal human rights, involving – on the basis of equality and mutual respect – civil society, as well as the media, with a view to promoting tolerance, trust and mutual understanding, which are vital for building coherent societies and strengthening international peace and security.

17. The Assembly encourages the Council of Europe bodies to work actively on the prevention of hate speech directed to different religious and ethnic groups.

18. The Assembly resolves to revert to this issue on the basis of a report on legislation relating to blasphemy, religious insults and hate speech against persons on grounds of their religion, after taking stock of the different approaches in Europe, including the application of the European Convention on Human Rights, the reports and recommendations of the European Commission against Racism and Intolerance (ECRI) and of the European Commission for Democracy through Law (Venice Commission) and the reports of the Council of Europe Commissioner for Human Rights.

PARLIAMENTARY ASSEMBLY
OF THE
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Recommendation 1768 (2006)⁷³

The image of asylum seekers, migrants and refugees in the media

1. European history is strongly characterised by both emigration and immigration within and outside Europe. According to the International Organization for Migration, there are approximately 33 million migrants in Europe. This figure will continue to rise as Europe remains a destination of choice for migrants, asylum seekers and refugees; furthermore, Europe will need greater numbers of migrants to fill empty jobs and counterbalance declining fertility rates.

2. Many of these migrants, asylum seekers and refugees, from within and outside of Europe, will remain in Europe, thus contributing to cultural diversity whilst also making an important economic contribution to European society.

3. Their integration poses a challenge, both for the individuals concerned and for society as a whole. One of the obstacles to this integration is the hostility and xenophobia prevalent in certain parts of society, arising from fears fed by populist beliefs that Europe is being overwhelmed by migrants, asylum seekers and refugees. Other common fears are that they take jobs away from nationals, contribute to rising criminality and pose a terrorist threat. Another obstacle to integration is the lack of information on the integration process for

⁷³ *Assembly debate* on 5 October 2006 (30th Sitting) (see Doc. 11011, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs de Zulueta).

Text adopted by the Assembly on 5 October 2006 (30th Sitting).

migrants, asylum seekers and refugees, as well as a misreading or misunderstanding of the process and what it entails.

4. The Parliamentary Assembly recognises the essential role of freedom of expression in a democratic society and reaffirms its profound commitment to this right outlined in Article 10 of the European Convention on Human Rights (ETS No. 5). In its Resolution 1510 (2006) on freedom of expression and respect for religious beliefs, the Assembly confirmed that “freedom of expression should not be further restricted to meet increasing sensitivities of certain religious groups”.

5. The media plays an essential role in ensuring that issues linked to migration, refugees and asylum are portrayed in a fair and balanced way. It is therefore the media’s responsibility to also reflect the positive contribution to society made by these persons, and to protect them from negative stereotyping. It is also important that media professionals among the migrants and asylum seekers represent their communities in the media, and that their views, and issues of interest to them and concerning them, be reflected in the media.

6. The Assembly has already expressed concern about the portrayal of migrants and ethnic minorities in the media in its Recommendation 1277 (1995) on migrants, ethnic minorities and media. Since this recommendation was adopted, the Council of Europe has taken major steps to tackle issues of racism and intolerance, including in the media. Noteworthy in this respect has been the ongoing work of the European Commission against Racism and Intolerance (ECRI) and the adoption of two important recommendations of the Committee of Ministers, namely Recommendation No. R (97) 20 on “hate speech” and Recommendation No. R (97) 21 on the media and the promotion of a culture of tolerance.

7. The Assembly considers that the fight against racism, discrimination and every form of intolerance requires the constant vigilance of the Council of Europe and that the media, supported by member states, plays an essential role in this fight.

8. The Assembly therefore recommends that the Committee of Ministers:

8.1. invite the Steering Committee on the Media and New Communication Services (CDMC) to examine and make recommendations on the operation and functioning of media complaints procedures and media complaints bodies established in member states, taking into account any difficulties faced by individuals and groups affected by statements in the media to obtain redress through these mechanisms;

8.2. provide full support and adequate resources for ECRI to carry out its important monitoring work on racism and intolerance, and invites it to:

8.2.1. pay particular attention to the legislation and policy in member states impacting on racism and intolerance in the media;

8.2.2. carry out a media watch study, reporting on xenophobia, racism and intolerance in the media;

8.2.3. prepare a report on the effectiveness of legislation prohibiting incitement to hatred;

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8.3. promote, through the Eurimages Fund and the European Convention on Cinematographic Co-Production (ETS No. 147), the production of films dealing with issues relevant to migrants, refugees and asylum seekers and produced by persons coming from these groups;

8.4. invite the member states of the Council of Europe to:

8.4.1. ensure the protection of freedom of expression in conformity with Article 10 of the European Convention on Human Rights;

8.4.2. adopt and implement legislation prohibiting incitement to hatred, violence or discrimination where this is lacking, and enforce such legislation where it exists;

8.4.3. adopt and implement penal legislation against, *inter alia*, the public dissemination or public distribution, or the production or storage of material with a racist content or purpose, and also to adopt and implement legislation penalising leaders of groups promoting racism, and suppress public financing of organisations carrying out or supporting such activities;

8.4.4. ensure that legislation is adopted and implemented in member states to prevent excessive media concentrations, which pose a threat to quality, pluralism and diversity in the media;

8.4.5. sign and ratify, where this has not already been done, the European Convention on Transfrontier Television (ETS No. 132);

8.4.6. sign and ratify, where this has not already been done, the Convention on Cybercrime (ETS No. 185) and the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);

8.4.7. urge all democratic political parties to adopt or reaffirm the Charter of European Political Parties for a Non-Racist Society;

8.5. invite the media to:

8.5.1. adopt, in so far as they have not already done so, codes of conduct laying down the ethical principles that should guide the work of their professionals;

8.5.2. supplement media codes of conduct, by drawing up guidelines to tackle particular challenges for the media, such as avoiding the stereotyping of migrants, asylum seekers and refugees, and avoiding anti-Semitism, anti-Christianism, Islamophobia, anti-Gypsyism and other forms of intolerance;

8.5.3. negotiate conscience clauses in contracts for media professionals, allowing reporters and journalists to refuse to produce reports on materials that they feel would be in breach of ethical commitments;

8.5.4. establish national complaints procedures to investigate, *inter alia*, complaints about media materials that foster intolerant, racist or xenophobic attitudes towards migrants, asylum seekers or refugees, and provide effective remedies where complaints are upheld;

8.5.5. obtain consent from refugees or asylum seekers prior to using information or images which may identify their status as refugees or asylum seekers;

8.5.6. refrain from revealing the ethnic origin or nationality of migrants, asylum seekers or refugees when arrested or convicted of crimes where such information is irrelevant;

8.6. invite member states of the Council of Europe and the media to:

8.6.1. encourage the employment of migrants and refugees in the media, including through the provision of specialised training programmes for persons belonging to these groups;

8.6.2. facilitate, fund and encourage the training and sensitisation of media professionals to issues linked with multiculturalism, pluralism and the importance of tolerance, integration and equality for all;

8.6.3. provide backing and support, including financial support, for national and European competitions and prizes for media professionals who contribute to the fight against racism and intolerance and promote a fair and balanced portrayal of migrants, asylum seekers and refugees in the media;

8.6.4. promote and subsidise the production and broadcasting of programmes for and by migrants and refugees, including in their own languages, as well as promote the visibility of migrants and refugees in society by their inclusion in mainstream television programmes and at peak viewing times;

8.6.5. enhance the role of local media as a means of promoting the integration and acceptance of migrants, refugees and asylum seekers in the communities in which they live;

8.6.6. encourage youth and media to work together to promote awareness of the multicultural and pluralistic dimension of European societies, as well as the importance of tolerance, integration and equality for all.

Resolution 1535 (2007)⁷⁴

Threats to the lives and freedom of expression of journalists

1. The Parliamentary Assembly is deeply concerned by the numerous attacks and threats to the lives and freedom of expression of journalists in Europe in 2006 and January 2007. It strongly condemns the murders of Hrant Dink in Turkey and Anna Politkovskaya in the Russian Federation and the brutal attacks on Fikret Huseynli, Bahaddin Khaziyev and Nijat Huseynov in Azerbaijan, Ion Robu in Moldova and Ihor Mosiyshuck, Sergei Yanovski and Lilia Budjurova in Ukraine. It is also shocked by the recent death decrees by Iranian religious leaders against Rafiq Tagi and Samir Sedagetoglu in Azerbaijan, and against Robert Redeker in France, as well as by the death threats to Mubarak Asani in Bosnia and Herzegovina, Drago Hedl and Ladislav Tomicic in Croatia, Slavica Jovanovic and Jahja Fehratovic in Serbia and Vassil Ivanov in Bulgaria for their journalistic work. Other attacks on journalists may have happened in Europe without having been noted by a wider public. The Assembly strongly deplores the fact that journalists in Europe have to work under fear for their lives and physical safety.
2. The Assembly pays tribute to all journalists and media that further democracy and the rule of law by investigative journalism into political and social issues which are of public concern while respecting the standards of journalistic ethics. Hate journalism, which confuses propaganda with reporting, defames individuals and inflames rather than illuminates public debate, is also growing and needs to be confronted.
3. Freedom of expression and information in the media includes the right to express political opinions and criticise the authorities and society, expose governmental mistakes, corruption and organised crime, and question religious dogmas and practices. This freedom is guaranteed under Article 10 of the European Convention on Human Rights (ECHR) (ETS No. 5) as one of the fundamental requirements of a democratic society. The member states of the Council of Europe have committed themselves to human rights, democracy and the rule of law, and the vast majority of European citizens have embraced these values after a sometimes long and often painful history of having been deprived of their enjoyment. Where journalists must fear for their lives and security, democracy is at risk. Freedom of expression is one of the cornerstones of democracy in Europe.
4. The Assembly believes that to make democracy meaningful, freedom of expression and freedom of religion should go hand in hand. Violent attacks and threats, by any group invoking their religion, against expressions of opinion by words, speech or visual images, have no place in European democracies.
5. The Assembly recalls the legal obligation of member states, in accordance with Articles 2 and 10 of the ECHR, to investigate any murders of journalists as well as acts of severe physical violence and death threats against them. This obligation stems from the individual journalist's rights under the Convention as well as from the necessity for any democracy to have functioning media free from intimidation and political threats. Where attacks against journalists can be carried out with impunity, democracy and the rule of law suffer.

⁷⁴ *Assembly debate* on 25 January 2007 (7th Sitting) (see Doc. 11143, report of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh).
Text adopted by the Assembly on 25 January 2007 (7th Sitting).

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6. Public authorities should use restraint and respect proportionality when applying legal restrictions to freedom of expression. Administrative acts, such as the granting of licences for the electronic media or awarding subsidies to the media, must be fair and provide equal treatment for all journalists and media companies. Where arbitrary or politically motivated discrimination of journalists and the media occurs, freedom of the media is violated.

7. While being aware of the importance of Article 10 of the ECHR for the protection of media freedom throughout Europe, the Assembly believes that additional measures are needed to effectively protect the lives and freedom of expression of journalists in Europe. Applications to the European Court of Human Rights can only be made after the violation has taken place and national legal remedies have been exhausted; therefore judgments are delivered long after the violation.

8. The Assembly appreciates that several thousand signatures have been collected and forwarded to the President of the Assembly by Reporters Without Borders in Paris, demanding an investigation into the murder of Anna Politkovskaya. The Assembly also welcomes the initiatives of the International Press Institute in Vienna, ARTICLE 19 in London, the Glasnost Defence Foundation in Moscow and the South East Europe Media Organisation (SEEMO) in Vienna, as well as other organisations, to make publicly known all murders of journalists and attacks against them because of their journalistic work. Professional organisations of journalists and the media can help their members when they are faced with threats and attacks by providing assistance and training to journalists and by raising awareness among politicians and the public at large. The work of such professional organisations is protected under Articles 10 and 11 of the ECHR against undue restrictions by state authorities.

9. The Assembly has regularly defended freedom of the media in Europe. It recalls in this context its Recommendation 1506 (2001) on freedom of expression and information in the media in Europe, Recommendation 1589 (2003) on freedom of expression in the media in Europe, Resolution 1372 (2004) and Recommendation 1658 (2004) on the persecution of the press in the Republic of Belarus, Resolution 1438 (2005) and Recommendation 1702 (2005) on freedom of the press and the working conditions of journalists in conflict zones, Recommendation 1706 (2005) on media and terrorism and Resolution 1510 (2006) on freedom of expression and respect for religious beliefs.

10. The Assembly calls on national parliaments to:

10.1. closely monitor the progress of such criminal investigations and hold the authorities accountable for any failures to investigate or prosecute – for example, the Russian Parliament as regards the murder of Anna Politkovskaya;

10.2. abolish laws which place disproportionate limits on freedom of expression and are liable to be abused to incite extreme nationalism and intolerance – for example, the Turkish Parliament as regards Article 301 of the Turkish Penal Code on the “denigration of Turkishness”.

11. The Assembly calls on all parliaments concerned to conduct parliamentary investigations into the unresolved murders of journalists as well as attacks and death threats against them, in order to shed light on individual cases and develop as a matter of urgency

effective policies for the greater safety of journalists and their right to carry out their work without threats.

12. The Assembly condemned the disappearance in 2000 and murder of Ukrainian journalist Georgiy Gongadze and called for investigations by the competent authorities. It is concerned at the lack of progress in these investigations and stresses the need to ensure an environment for independent judgment.

13. After the arrest of the alleged assassin of Hrant Dink, the Assembly now unites in calling for the deletion of Article 301 of the Turkish Penal Code, under which Dink and other journalists were prosecuted. The continuing presence of such a law limiting freedom of expression validates legal and other assaults on journalists.

14. The Assembly resolves to establish a specific monitoring mechanism for identifying and analysing attacks on the lives and freedom of expression of journalists in Europe as well as the progress made by national law enforcement authorities and parliaments in their investigations of these attacks, and consequently invites Reporters Without Borders, the International Press Institute, the International Federation of Journalists and other organisations to report such attacks to the Assembly. The Assembly believes that fully representative, independent organisations and unions of journalists are an important form of protection for freedom of expression and rejects any concept of state licensing or control over the profession of journalism.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1783 (2007)⁷⁵

Threats to the lives and freedom of expression of journalists

1. The Parliamentary Assembly recalls its Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists and its determination to set up a specific monitoring mechanism for identifying and analysing attacks on the lives and freedom of expression of journalists in Europe.

2. It recommends that the Committee of Ministers:

2.1. express its unequivocal condemnation of the attacks on journalists in Europe, following the declarations made by the President of the Parliamentary Assembly, the Secretary General of the Council of Europe and the Commissioner for Human Rights of the Council of Europe after the murder of Anna Politkovskaya and the most recent declarations after the murder of Hrant Dink;

⁷⁵ *Assembly debate* on 25 January 2007 (7th Sitting) (see Doc. 11143, report of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh).
Text adopted by the Assembly on 25 January 2007 (7th Sitting).

- 2.2. call on police and law enforcement authorities in member states to react swiftly to threats against journalists linked to their work and develop specific strategies for the protection of journalists who have been the targets of serious threats, without hindering their work;
- 2.3. instruct its competent steering committee to draw up policy guidelines on possible action by police and law enforcement authorities to protect journalists who are the targets of serious threats;
- 2.4. establish a mechanism for identifying and analysing attacks against journalists and other serious violations of media freedom in Europe, with a view to developing policy recommendations to member states on how to better protect journalists and the freedom of the media, and report back regularly on this matter to the Assembly;
- 2.5. promote work on this issue at United Nations level while maintaining the standards of the European approach towards this issue in accordance with the European Convention on Human Rights (ETS No. 5) and other relevant legal texts of the Council of Europe.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1789 (2007)⁷⁶

Professional education and training of journalists

1. The Parliamentary Assembly of the Council of Europe believes that free and independent media are one of the fundamental backbones of democratic society, one of the engines of democratic transition and one of the requirements of democratic stability. For the media to function properly, journalists must show responsibility and professionalism, and this calls in turn for professional education and training.
2. The Assembly is aware of the challenges faced by media and journalists in Europe, in particular the transition from totalitarianism to democracy throughout Europe, the technological progress of new digital media as well as the growing globalisation of information flows and markets. The media in Europe work more and more without national borders: journalists move between states and deal with subjects from abroad or with relevance to an audience abroad, and media products are disseminated across borders. These developments both open up new opportunities for journalists and place new demands on them, such as requiring new skills, greater knowledge and ongoing training.
3. In this context, the Assembly recalls its Resolution 1003 (1993) and Recommendation 1215 (1993) on the ethics of journalism, Resolution 1165 (1998) on the right to privacy, Resolution 1438 (2005) and Recommendation 1702 (2005) on freedom of the press and the working conditions of journalists in conflict zones, Recommendation 1706 (2005) on media

⁷⁶ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 16 March 2007 (see Doc. 11170, report of the Committee on Culture, Science and Education, rapporteur: Mr R. Huseynov).

and terrorism as well as Resolution 1510 (2006) on freedom of expression and respect for religious beliefs.

4. The Assembly recalls the successful assistance and co-operation provided by the Council of Europe for more than a decade now in most member states in the field of media legislation and media training. Many of those activities have been funded by voluntary contributions of member and observer states as well as by the European Union. The Council of Europe, as the prime standard-setting organisation in Europe concerning freedom of the media, has thus been enabled to make its expertise available to all European states. This experience and expertise must be exploited further.

5. The Assembly welcomes the long-standing co-operation under the joint Council of Europe – European Commission programmes for media training in Europe and expresses the hope that the new MEDIA Programme and the European Neighbourhood and Partnership initiative under the EU budget for 2007-2013 will provide for opportunities to make greater use of the experience and geographic reach of the Council of Europe by continuing joint programmes at an intensified level.

6. The Assembly also recalls that the Council of Europe has set up a network of independent schools of political studies in many cities, which will familiarise journalists, among others, with the European project, based on human rights, democracy, the rule of law and civic values. Further targeted activities for journalists and the media are desirable in this framework.

7. In view of the globalisation of media and the differences in cultural and media practices, the Assembly is of the opinion that an intensified co-operation with non-European countries of the Mediterranean Basin is necessary in the field of media education along the lines mentioned in Assembly Resolution 1313 (2003) on cultural co-operation between Europe and the south-Mediterranean countries.

8. The Assembly also welcomes the training efforts for journalists pursued by many media companies in Europe and by professional organisations such as the International and European Federations of Journalists, the European Broadcasting Union, as well as the World Association of Newspapers and the European Newspaper Publishers Association. The professional education and training of their journalists is one of the most valuable assets for media companies in an increasingly competitive media environment. With regard to media content, quality should be promoted and such content should be prepared professionally by well-educated and trained journalists.

9. The Assembly notes, however, that not all media companies in Europe have the possibility of providing training to their journalists because of lack of funds and training schemes. While many institutions of higher education offer specialised courses and programmes for students wishing to become journalists, very few address the practical training needs of working journalists. Therefore, the Assembly is of the opinion that specialised courses should be created to provide vocational training and continuing education for journalists.

10. The Assembly refers to the emphasis placed on freedom of expression and the media in the commitments undertaken by the heads of state and government in their Action Plan

adopted at the 3rd Summit in Warsaw (May 2005), as well as those undertaken at the 7th European Ministerial Conference on Mass Media Policy in Kyiv on 10 and 11 March 2005.

11. The Assembly recommends that the Committee of Ministers:

11.1. call on all member states to support professional training courses of journalists nationally and through the Council of Europe, possibly in co-operation with the media and their professional organisations;

11.2. consider establishing Council of Europe chairs for media training, possibly through voluntary contributions from governments as well as financial support from media companies and in co-operation with universities in Europe;

11.3. establish, together with media companies and in co-operation with institutions of higher education in Europe, a network of training centres for journalists;

11.4. organise pan-European exchanges for journalists with educational institutions and media companies, possibly through joint programmes with the European Union, in order to promote European standards and understanding among journalists;

11.5. organise, possibly with the North-South Centre of the Council of Europe in Lisbon, a conference on professional education and training for journalists in Europe and the Mediterranean Basin.

12. The Assembly resolves to provide assistance to the parliaments of member states in setting up departments responsible for relations with independent media in order to enhance the transparency of parliamentary work as well as the professionalism of media reporting about this work.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1557 (2007)⁷⁷

Image of women in advertising

1. The Parliamentary Assembly notes that images of women which are totally at odds with their actual roles in our contemporary societies are still common in advertising today.

2. Too often, advertising shows women in situations which are humiliating and degrading, or even violent and offensive to human dignity.

⁷⁷ *Assembly debate* on 26 June 2007 (21st Sitting) (see Doc. 11286, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Bilgehan).
Text adopted by the Assembly on 26 June 2007 (21st Sitting).

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3. The Assembly is angered by the fact that it is nearly always women who are reduced to the role of mere consumer commodities or sex objects in certain advertisements.
4. Respect for human dignity should, however, be one of the advertisers' constant aims.
5. The Assembly is aware that much work will be required to change attitudes and demolish stereotypes which do women a disservice in their fight for equality. Its fundamental aim is accordingly to ensure that women everywhere can at last see their real image faithfully reflected in the world in which they lead their daily lives.
6. It welcomes the fact that certain governments, non-governmental organisations and European governmental agencies have made progress on the image of women in the media and advertising. Studies have been carried out and laws have even been strengthened in order to combat discrimination between women and men.
7. However, the Assembly deplores the persistence of negative images and representations of women in advertising, which is partly due to the fact that many European states lack adequate laws and that national advertising codes are either ignored or are sometimes even non-existent.
8. It accordingly asks the Council of Europe's member states to take the necessary action to ensure that, whatever form it may take, the image of women is respected in a dignified and non-discriminatory way, while respecting the basic principle of freedom of expression, which rules out any form of censorship.
9. It denounces the harm done to the health of young girls, such as anorexia and, in later life, the development of conditions such as osteoporosis, provoked by certain advertisements that present thin women as a standard of beauty.
10. It recalls the importance of the Declaration and Platform for Action of the United Nations 4th World Conference on Women (Beijing, September 1995), which recommends, among other things, that the media and advertising bodies develop, consistent with freedom of expression, professional guidelines and codes of conduct and other forms of self-regulation to promote the presentation of non-stereotyped images of women.
11. Basing itself on the United Nations Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979, the Assembly emphasises the need for action of three kinds: regulation, self-regulation and education to help people to react critically to advertising.
12. The Assembly accordingly recommends that the Council of Europe member states:
 - 12.1. ratify the Optional Protocol to the 1979 Convention on the Elimination of all Forms of Discrimination against Women, make a declaration accepting the amendment to Article 20, paragraph 1, of the convention, bring their laws into line with those texts and submit, if they are not already doing so, regular reports to the Committee on the Elimination of Discrimination against Women on the legislative, judicial, administrative and other measures they have adopted to implement the convention and on progress made in this regard;

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12.2. implement the Beijing Platform for Action on women and the media and take stock every year of progress made in this area;

12.3. adopt appropriate domestic laws:

12.3.1. making incitement to discrimination an offence in all advertising media;

12.3.2. giving women's associations the right to take legal action in defence of a collective interest – the elimination of discrimination against women in advertising;

12.4. encourage the introduction of national self-regulating schemes and reinforce the self-regulating machinery set up by national advertising standards authorities by:

12.4.1. amending national ethical codes to prevent the dissemination of advertising images or messages which could be interpreted as inciting discrimination against women or as violating human dignity;

12.4.2. including consumer representatives (women and men) on national advertising standards authorities;

12.4.3. strengthening the binding character of decisions taken by advertising standards authorities;

12.4.4. attaching to national advertising standards authorities a group of experts to make an in-depth study of the mechanisms of advertising;

12.5. take the following educational measures in respect of advertising:

12.5.1. provide further training for advertising professionals, and also basic training in advertising schools, on respecting equality between women and men and, more generally, non-discrimination;

12.5.2. set up programmes to help consumers to analyse the effects of advertising;

12.5.3. provide adequate resources and run programmes in schools to teach children to distinguish between advertising and reality;

12.5.4. run press campaigns to make the public aware of sexist or violent advertising and tell them what they can do to curb it;

12.5.5. provide toll-free phone numbers and e-mail and postal addresses which the public can use to complain when advertisements use images of women which violate human dignity;

12.5.6. introduce a prize awarded by advertising professionals, and a prize awarded by the public, for the advertising campaign which breaks most effectively with sexist stereotypes.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1799 (2007)⁷⁸

The image of women in advertising

1. The Parliamentary Assembly refers to its Resolution 1557 (2007) on the image of women in advertising and asks the Committee of Ministers to ensure that the member states implement it.
2. It asks the Committee of Ministers to appoint an international committee of experts to make an in-depth study of the image of women and men in advertising.
3. On the basis of the findings of this study, the Committee of Ministers will be asked to draw up a European code of good conduct encouraging advertising professionals to present images which are not discriminatory and respect the dignity of women and men.
4. The Assembly also asks the Committee of Ministers to:
 - 4.1. introduce a European prize to be awarded to the advertising campaign which breaks most effectively with sexist stereotypes and promotes equality between women and men;
 - 4.2. urge the governments of member states to organise national campaigns to raise public awareness of sexist or violent advertising and suggest means of reacting to it.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1804 (2007)⁷⁹

State, religion, secularity and human rights

1. The Parliamentary Assembly notes that religion is an important feature of European society. This is because of the historic fact that certain religions have been present for centuries and because of their influence in Europe's history. Religions are still multiplying on our continent today, with a wide variety of churches and beliefs.
2. Organised religions as such are part and parcel of society and must therefore be considered as institutions set up by and involving citizens who have the right to freedom of

⁷⁸ *Assembly debate* on 26 June 2007 (21st Sitting) (see Doc. 11286, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Bilgehan).
Text adopted by the Assembly on 26 June 2007 (21st Sitting).

⁷⁹ *Assembly debate* on 29 June 2007 (27th Sitting) (see [Doc. 11298](#), report of the Committee on Culture, Science and Education, rapporteur: Mr de Puig). *Text adopted by the Assembly* on 29 June 2007 (27th Sitting).

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religion, but also as organisations that are part of civil society, with all its potential for providing guidance on ethical and civic issues, which have a role to play in the national community, be it religious or secular.

3. The Council of Europe must recognise this state of affairs and welcome and respect religion, in all its plurality, as a form of ethical, moral, ideological and spiritual expression of certain European citizens, taking account of the differences between the religions themselves and the circumstances in the country concerned.

4. The Assembly reaffirms that one of Europe's shared values, transcending national differences, is the separation of church and state. This is a generally accepted principle that prevails in politics and institutions in democratic countries. In Recommendation 1720 (2005) on education and religion, for instance, the Assembly noted that "each person's religion, including the option of having no religion, is a strictly personal matter".

5. The Assembly notes that, while protecting freedom of expression and freedom of religion, the European Court of Human Rights recognises the right of individual countries to organise and enact legislation regarding the relationship between the state and the church in compliance with the provisions of the European Convention on Human Rights (ETS No. 5), and notes that the Council of Europe member states today show varying degrees of separation between government and religious institutions in full compliance with the Convention.

6. Over the last twenty years, religious worship has declined markedly in Europe. Fewer than one European in five attends a religious service at least once a week, whereas twenty years ago the figure was more than twice that. At the same time, we are witnessing the growing strength of the Muslim communities in virtually all the Council of Europe member states.

7. As a result of globalisation and the rapid development of new information and communication technology, some groups are particularly visible. What is undeniable, however, is that religion has, in recent years, again become a central issue of debate in our societies. Roman Catholics, members of the Orthodox Church, Evangelists and Muslims seem to be the most active.

8. The Assembly recognises the importance of intercultural dialogue and its religious dimension and is willing to help devise a comprehensive Council of Europe strategy in this area. It considers, however, in light of the principle of the separation of church and state, that inter-religious and interdenominational dialogue is not a matter for states or for the Council of Europe.

9. In Recommendation 1396 (1999) on religion and democracy, the Assembly stated that there was "a religious aspect to many of the problems contemporary society [faced], such as ... fundamentalist movements and terrorist acts, racism and xenophobia, and ethnic conflicts". This affirmation is as relevant as ever.

10. Governance and religion should not mix. Religion and democracy are not incompatible, however, and sometimes religions play a highly beneficial social role. By addressing the problems facing society, the civil authorities can, with the support of religions, eliminate much of what breeds religious extremism, but not everything.

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11. Governments should take account of the special capacity of religious communities to foster peace, co-operation, tolerance, solidarity, intercultural dialogue and the dissemination of the values upheld by the Council of Europe.

12. Education is the key to combating ignorance, stereotypes and misunderstanding of religions and their leaders, and plays a central role in forging a democratic society.

13. Schools are an essential forum for intercultural dialogue and also lay the foundations of tolerant behaviour; they can effectively combat fanaticism by teaching children the history and philosophy of the main religions with restraint and objectivity. The media and families can also play an important part in this field.

14. A knowledge of religions is an integral part of knowledge of human history and civilisations. It is different from belief in, and practice of, a particular religion. Even countries where one religion prevails have a duty to teach the origins of all religions.

15. Various situations coexist in Europe. In some countries, one religion still predominates. Religious representatives may play a political role, as in the case of the bishops who sit in the United Kingdom House of Lords. Some countries have banned the wearing of religious symbols in schools. The legislation of several Council of Europe member states still contains anachronisms dating from times when religion played a more important part in our societies.

16. Freedom of religion is protected by Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration of Human Rights. Such freedom is not unlimited, however: a religion whose doctrine or practice ran counter to other fundamental rights would be unacceptable. In any case, the restrictions that can be placed on such freedom are those that “are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” (Article 9.2 of the Convention).

17. Nor may states allow the dissemination of religious principles which, if put into practice, would violate human rights. If doubts exist in this respect, states must require religious leaders to take an unambiguous stand in favour of the precedence of human rights, as set forth in the European Convention on Human Rights, over any religious principle.

18. Freedom of expression is one of the most important human rights, as the Assembly has repeatedly affirmed. In Recommendation 1510 (2006) on freedom of expression and respect for religious beliefs it expresses the view that “freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups”.

19. While we have an acknowledged duty to respect others and must discourage gratuitous insults, freedom of expression cannot, needless to say, be restricted out of deference to certain dogmas or the beliefs of a particular religious community.

20. With regard to relations between the Council of Europe and religious communities, certain steps have been taken in order to promote a closer relationship.

21. It will be remembered in this connection that religious leaders have addressed the Assembly on several occasions in the past, and that it has accepted, in return, to attend major

conferences organised by the religious communities. Moreover, dozens of religious and humanist organisations are already represented at the Council of Europe by virtue of the participatory status of non-governmental organisations.

22. The Assembly welcomes the Committee of Ministers' proposal that "annual exchanges on the religious dimension of intercultural dialogue" be organised on an experimental basis with representatives of religions traditionally present in Europe and of civil society.

23. The Assembly therefore recommends that the Committee of Ministers:

23.1. ensure that religious communities may exercise the fundamental right of freedom of religion without hindrance in all Council of Europe member states in accordance with the provisions of Article 9 of the European Convention on Human Rights and Article 18 of the Universal Declaration of Human Rights;

23.2. rule out any interference in religious affairs, but consider religious organisations as part of civil society and call on them to play an active role in the pursuit of peace, co-operation, tolerance, solidarity, intercultural dialogue and the dissemination of the Council of Europe's values;

23.3. reaffirm the principle of the independence of politics and law from religion;

23.4. continue to give thought to the religious dimension of intercultural dialogue, particularly by organising meetings with religious leaders and representatives of humanist and philosophical worlds;

23.5. exclude from the consultation any grouping that does not clearly support the Council of Europe's fundamental values, namely human rights, democracy and the rule of law;

23.6. identify and disseminate examples of good practice in respect of dialogue with leaders of religious communities;

23.7. consider setting up an institute to devise syllabuses, teaching methods and educational material for the study of the religious heritage of the Council of Europe member states; such syllabuses should be drawn up in close co-operation with representatives of the different religions traditionally present in Europe.

24. The Assembly further recommends that the Committee of Ministers encourage the member states to:

24.1. promote initial and in-service training for teachers with a view to the objective, balanced teaching of religions as they are today and of religions in history, and to require human rights training for all religious leaders, in particular those with an educational role in contact with young people;

24.2. gradually to remove from legislation, if such is the will of the people, elements likely to be discriminatory from the angle of democratic religious pluralism.

COUNCIL OF EUROPE

Recommendation 1805 (2007)⁸⁰

Blasphemy, religious insults and hate speech against persons on grounds of their religion

1. The Parliamentary Assembly recalls its Resolution 1510 (2006) on freedom of expression and respect for religious beliefs and reiterates its commitment to the freedom of expression (Article 10 of the European Convention on Human Rights, ETS No. 5, hereafter “the Convention”) and the freedom of thought, conscience and religion (Article 9 of the Convention), which are fundamental cornerstones of democracy. Freedom of expression is not only applicable to expressions that are favourably received or regarded as inoffensive, but also to those that may shock, offend or disturb the state or any sector of population within the limits of Article 10 of the Convention. Any democratic society must permit open debate on matters relating to religion and religious beliefs.
2. The Assembly underlines the importance of respect for, and understanding of, cultural and religious diversity in Europe and throughout the world and recognises the need for ongoing dialogue. Respect and understanding can help avoid frictions within society and between individuals. Every human being must be respected, independently of religious beliefs.
3. In multicultural societies it is often necessary to reconcile freedom of expression and freedom of thought, conscience and religion. In some instances, it may also be necessary to place restrictions on these freedoms. Under the Convention, any such restrictions must be prescribed by law, necessary in a democratic society and proportionate to the legitimate aims pursued. In so doing, states enjoy a margin of appreciation as national authorities may need to adopt different solutions taking account of the specific features of each society; the use of this margin is subject to the supervision of the European Court of Human Rights.
4. With regard to blasphemy, religious insults and hate speech against persons on the grounds of their religion, the state is responsible for determining what should count as criminal offences within the limits imposed by the case law of the European Court of Human Rights. In this connection, the Assembly considers that blasphemy, as an insult to a religion, should not be deemed a criminal offence. A distinction should be made between matters relating to moral conscience and those relating to what is lawful, matters which belong to the public domain, and those which belong to the private sphere. Even though today prosecutions in this respect are rare in member states, they are legion in other countries of the world.
5. The Assembly welcomes the preliminary report adopted on 16 and 17 March 2007 by the European Commission for Democracy through Law (Venice Commission) on this subject and agrees with it that in a democratic society, religious groups must tolerate, as must other groups, critical public statements and debate about their activities, teachings and beliefs, provided that such criticism does not amount to intentional and gratuitous insults or hate speech and does not constitute incitement to disturb the peace or to violence and

⁸⁰ *Assembly debate* on 29 June 2007 (27th Sitting) (see Doc. 11296, report of the Committee on Culture, Science and Education, rapporteur: Mrs Hurskainen; Doc. 11319, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany; and Doc. 11322, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Dupraz). *Text adopted by the Assembly* on 29 June 2007 (27th Sitting).

discrimination against adherents of a particular religion. Public debate, dialogue and improved communication skills of religious groups and the media should be used in order to lower sensitivity when it exceeds reasonable levels.

6. Recalling its Recommendation 1720 (2005) on education and religion, the Assembly emphasises the need for greater understanding and tolerance among individuals of different religions. Where people know more about the religion and religious sensitivities of each other, religious insults are less likely to occur out of ignorance.

7. In this context, the Assembly welcomes the initiative of the United Nations to set up a new body under the theme “Alliance of Civilizations” to study and support contacts between Muslim and so-called western societies, but feels that such an initiative should be enlarged to other religions and non-religious groups.

8. The Assembly recalls the relevant case law on freedom of expression under Article 10 of the Convention developed by the European Court of Human Rights. Whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, the Court accepts a wider margin of appreciation on the part of contracting states when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion.

9. However, the Assembly stresses that this margin of appreciation is not unlimited and that any restrictions on the freedom of expression must comply with the case law of the European Court of Human Rights. Freedom of expression – guaranteed under Article 10 of the Convention – is of vital importance for any democratic society. In accordance with the Statute of the Council of Europe, common recognition of democratic values is the basis for membership of the Organisation.

10. The Assembly is aware that, in the past, national law and practice concerning blasphemy and other religious offences often reflected the dominant position of particular religions in individual states. In view of the greater diversity of religious beliefs in Europe and the democratic principle of the separation of state and religion, blasphemy laws should be reviewed by the governments and parliaments of the member states.

11. The Assembly notes that under the International Convention on the Elimination of All Forms of Racial Discrimination of the United Nations, signatory parties are obliged to condemn discrimination and take effective measures against it. All member states signatory to this convention must ensure that members of a particular religion are neither privileged nor disadvantaged under blasphemy laws and related offences.

12. The Assembly reaffirms that hate speech against persons, whether on religious grounds or otherwise, should be penalised by law in accordance with General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination produced by the European Commission against Racism and Intolerance (ECRI). For speech to qualify as hate speech in this sense, it is necessary that it be directed against a person or a specific group of persons. National law should penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion.

13. The Assembly emphasises that freedom of religion as protected by Article 9 of the Convention also protects religions through establishing values for their followers. While

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religions are free to penalise in a religious sense any religious offences, such penalties must not threaten the life, physical integrity, liberty or property of an individual, or women's civil and fundamental rights. In this context, the Assembly recalls its Resolution 1535 (2007) on threats to the lives and freedom of expression of journalists and strongly condemns the death threats issued by Muslim leaders against journalists and writers. Member states have the obligation to protect individuals against religious penalties which threaten the right to life and the right to liberty and security of a person under Articles 2 and 5 of the Convention. Moreover, no state has the right to impose such penalties for religious offences itself.

14. The Assembly notes that member states have the obligation under Article 9 of the Convention to protect freedom of religion including the freedom to manifest one's religion. This requires that member states protect such manifestations against disturbances by others. However, these rights may sometimes be subject to certain justified limitations. The challenge facing the authorities is how to strike a fair balance between the interests of individuals as members of a religious community in ensuring respect for their right to manifest their religion or their right to education, and the general public interest or the rights and interests of others.

15. The Assembly considers that, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention, national law should only penalise expressions about religious matters which intentionally and severely disturb public order and call for public violence.

16. It calls on national parliaments to initiate legislative action and scrutiny regarding the national implementation of this recommendation.

17. The Assembly recommends that the Committee of Ministers:

17.1. take note of Resolution 1510 (2006) on freedom of expression and respect for religious beliefs together with this recommendation and forward both texts to the relevant national ministries and authorities;

17.2. ensure that national law and practice:

17.2.1. permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the Convention;

17.2.2. penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds;

17.2.3. prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society in accordance with Article 10, paragraph 2, of the Convention;

17.2.4. are reviewed in order to decriminalise blasphemy as an insult to a religion;

17.3. encourage member states to sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177);

17.4. instruct its competent steering committee to draw up practical guidelines for national ministries of justice intended to facilitate the implementation of the recommendations contained in paragraph 17.2 above;

17.5. instruct its competent steering committee to draw up practical guidelines for national ministries of education intended to raise understanding and tolerance among students with different religions;

17.6. initiate, through their national ministries of foreign affairs, action at the level of the United Nations in order to ensure that:

17.6.1. national law and practice of signatory states of the International Convention on the Elimination of All Forms of Racial Discrimination do not privilege persons with a particular religion;

17.6.2. the work of the Alliance of Civilizations avoids the stereotype of a so-called western culture, widens its scope to other world religions and promotes more open debates between different religious groups and with non-religious groups;

17.7. condemn on behalf of their governments any death threats and incitements to violence by religious leaders and groups issued against persons for having exercised their right to freedom of expression about religious matters;

17.8. invite member states to take more initiatives to promote tolerance, in co-operation with ECRI.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1577 (2007)⁸¹

Towards decriminalisation of defamation

1. The Parliamentary Assembly, recalling its [Recommendation 1589 \(2003\)](#) on freedom of expression in the media in Europe and its [Resolution 1535 \(2007\)](#) on threats to the lives and freedom of expression of journalists, unequivocally reiterates that freedom of expression is a cornerstone of democracy. Where there is no real freedom of expression, there can be no real democracy.

2. The Assembly states from the outset that the press plays a fundamental role in promoting debates on issues of public concern; and debates of that kind – as open as possible – are vital to democracy.

⁸¹ Assembly debate on 4 October 2007 (34th Sitting) (see [Doc. 11305](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany). Text adopted by the Assembly on 4 October 2007 (34th Sitting).

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3. The Assembly draws attention to its [Resolution 1003 \(1993\)](#) on the ethics of journalism and emphasises that those who exercise the right to freedom of expression also have duties and obligations. They must act in good faith and provide accurate, trustworthy information in compliance with journalistic ethics.
4. As established in the case law of the European Court of Human Rights (the Court), Article 10 of the European Convention on Human Rights (ETS No. 5) guarantees freedom of expression in respect not only of “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also of those that offend, shock or disturb.
5. The Assembly notes that freedom of expression is not unlimited and that it may prove necessary for the state to intervene in a democratic society, provided that there is a solid legal basis and that it is clearly in the public interest, in accordance with Article 10, paragraph 2, of the European Convention on Human Rights.
6. Anti-defamation laws pursue the legitimate aim of protecting the reputation and rights of others. The Assembly nonetheless urges member states to apply these laws with the utmost restraint since they can seriously infringe freedom of expression. For this reason, the Assembly insists that there be procedural safeguards enabling anyone charged with defamation to substantiate their statements in order to absolve themselves of possible criminal responsibility.
7. In addition, statements or allegations which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.
8. The Assembly deplores the fact that in a number of member states prosecution for defamation is misused in what could be seen as attempts by the authorities to silence media criticism. Such abuse – leading to a genuine media self-censorship and causing progressive shrinkage of democratic debate and of the circulation of general information – has been denounced by civil society, notably in Albania, Azerbaijan and the Russian Federation.
9. The Assembly concurs with the clear position adopted by the Secretary General of the Council of Europe, who has denounced threats of prosecution for libel as “a particularly insidious form of intimidation”. The Assembly views such aberrant use of anti-defamation laws as unacceptable.
10. The Assembly also welcomes the efforts of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) in favour of decriminalising defamation, and his unfaltering commitment to media freedom.
11. It notes with great concern that in many member states the law provides for prison sentences for defamation and that some still impose them in practice – for example, Azerbaijan and Turkey.
12. Every case of imprisonment of a media professional is an unacceptable hindrance to freedom of expression and entails that, despite the fact that their work is in the public interest, journalists have a sword of Damocles hanging over them. The whole of society suffers the consequences when journalists are gagged by pressure of this kind.

13. The Assembly consequently takes the view that prison sentences for defamation should be abolished without further delay. In particular it exhorts states whose laws still provide for prison sentences – although prison sentences are not actually imposed – to abolish them without delay so as not to give any excuse, however unjustified, to those countries which continue to impose them, thus provoking a corrosion of fundamental freedoms.

14. The Assembly likewise condemns abusive recourse to unreasonably large awards for damages and interest in defamation cases and points out that a compensation award of a disproportionate amount may also contravene Article 10 of the European Convention on Human Rights.

15. The Assembly is aware that abuse of freedom of expression can be dangerous, as history shows. As recently acknowledged in a framework decision applicable to member countries of the European Union, it must be possible to prosecute those who incite violence, promote negationism or racial hatred, conduct inimical to the values of pluralism, tolerance and open-mindedness which the Council of Europe and the European Convention on Human Rights promote.

16. Lastly, the Assembly would reaffirm that protection of journalists' sources is of paramount public interest. Journalists prosecuted for defamation must be allowed to protect their sources or to produce a document in their own defence without having to show that they obtained it through lawful channels.

17. The Assembly accordingly calls on the member states to:

17.1. abolish prison sentences for defamation without delay;

17.2. guarantee that there is no misuse of criminal prosecutions for defamation and safeguard the independence of prosecutors in these cases;

17.3. define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection of the dignity of persons affected by defamation;

17.4. in accordance with General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI), make it a criminal offence to publicly incite to violence, hatred or discrimination, or to threaten an individual or group of persons, for reasons of race, colour, language, religion, nationality or national or ethnic origin where those acts are deliberate;

17.5. make only incitement to violence, hate speech and promotion of negationism punishable by imprisonment;

17.6. remove from their defamation legislation any increased protection for public figures, in accordance with the Court's case law, and in particular calls on:

17.6.1. Turkey to amend Article 125.3 of its Criminal Code accordingly;

17.6.2. France to revise its law of 29 July 1881 in the light of the Court's case law;

17.7. ensure that under their legislation persons pursued for defamation have appropriate means of defending themselves, in particular means based on establishing the truth of their assertions and on the general interest, and calls in particular on France to amend or repeal Article 35 of its law of 29 July 1881 which provides for unjustified exceptions preventing the defendant from establishing the truth of the alleged defamation;

17.8. set reasonable and proportionate maxima for awards for damages and interest in defamation cases so that the viability of a defendant media organ is not placed at risk;

17.9. provide appropriate legal guarantees against awards for damages and interest that are disproportionate to the actual injury;

17.10. bring their laws into line with the case law of the Court as regards the protection of journalists' sources.

18. The Assembly calls on journalists' professional organisations to draw up codes of journalistic ethics if they have not already done so.

19. Furthermore, it welcomes the moves by the Turkish authorities to amend Article 301 of the Turkish Criminal Code concerning "denigration of Turkishness" and strongly encourages these authorities to pursue that course of action without delay.

COUNCIL OF EUROPE

Recommendation 1814 (2007)⁸²

Towards decriminalisation of defamation

1. The Parliamentary Assembly, referring to its [Resolution 1577](#) (2007) entitled “Towards decriminalisation of defamation”, calls on the Committee of Ministers to urge all member states to review their defamation laws and, where necessary, make amendments in order to bring them into line with the case law of the European Court of Human Rights, with a view to removing any risk of abuse or unjustified prosecutions;

2. The Assembly urges the Committee of Ministers to instruct the competent intergovernmental committee, the Steering Committee on the Media and New Communication Services (CDMC) to prepare, following its considerable amount of work on this question and in the light of the Court’s case law, a draft recommendation to member states laying down detailed rules on defamation with a view to eradicating abusive recourse to criminal proceedings.

3. In addition, bearing in mind the considerable work done on hate speech by the Steering Committee for Human Rights (CDDH), particularly its Committee of Experts for the Development of Human Rights (DH-DEV), the Assembly suggests to the Committee of Ministers that it instruct the CDMC and the CDDH to revise its Recommendation No. R (97) 20 on “hate speech” or to prepare guidelines taking into account new developments on this subject, notably as regards the European Court of Human Rights’ case law.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1636 (2008)⁸³

Indicators for media in a democracy

1. The Parliamentary Assembly recalls the importance of media freedom. Freedom of expression and information in the media is an essential requirement of democracy. Public participation in the democratic decision-making process requires that the public is well informed and has the possibility of freely discussing different opinions.

2. All Council of Europe member states have committed themselves to respecting democratic standards. Democracy and the rule of law are necessary conditions for membership of the Council of Europe. Therefore, member states themselves must permanently monitor their state of democracy. However, democratic standards are also part of universally recognised human rights in Europe and hence are not merely an internal affair of a

⁸² Assembly debate on 4 October 2007 (34th Sitting) (see Doc. [11305](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany). Text adopted by the Assembly on 4 October 2007 (34th Sitting).

⁸³ Assembly debate on 3 October 2008 (36th Sitting) (see [Doc. 11683](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Wodarg). Text adopted by the Assembly on 3 October 2008 (36th Sitting).

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state. Council of Europe member states must also analyse the state of democracy in all the member states, in particular at the Assembly level.

3. The Council of Europe has set standards for Europe on media freedom through Article 10 of the European Convention on Human Rights (ETS No. 5) and a number of related recommendations by the Committee of Ministers as well as resolutions and recommendations by the Parliamentary Assembly.

4. The Assembly also monitors media freedom before national elections and produces an analysis on the basis of standards set by the Council for Democratic Elections comprising representatives of the European Commission for Democracy through Law (Venice Commission), the Congress of Local and Regional Authorities of the Council of Europe and the Parliamentary Assembly.

5. The Assembly welcomes the comparative assessments of national media situations prepared, for example, by Reporters Without Borders (Paris), the International Press Institute (Vienna), Article 19 (London), and other organisations. This work provides for important public scrutiny over media freedom, but it does not relieve national parliaments and governments of their political duty to look at their own media situation.

6. The Assembly also welcomes the UNESCO media development indicators drawn up in consultation with experts from Article 19, the West African Newsmedia and Development Centre and others, which shall help determine communication development strategies within the overall context of national development.

7. The Assembly considers it necessary for a number of principles concerning media freedom to be respected in a democratic society. A list of such principles would facilitate analyses of national media environments in respect of media freedom, which could identify problematic issues and potential shortcomings. This will enable member states to discuss, at European level, possible actions to address those problems.

8. The Assembly invites national parliaments to analyse their own media situation regularly in an objective and comparable manner in order to be able to identify shortcomings in their national media legislation and practice and take appropriate measures to remedy them. Such analyses should be based on the following list of basic principles:

8.1. the right to freedom of expression and information through the media must be guaranteed under national legislation, and this right must be enforceable. A high number of court cases involving this right is an indication of problems in the implementation of national media legislation and should require revised legislation or practice;

8.2. state officials shall not be protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty. Journalists should not be imprisoned, or media outlets closed, for critical comment;

8.3. penal laws against incitement to hatred or for the protection of public order or national security must respect the right to freedom of expression. If penalties are imposed, they must respect the requirements of necessity and proportionality. If a politically motivated application of such laws can be implied from the frequency and the intensity of the penalties imposed, media legislation and practice must be changed;

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8.4. journalists must not be subjected to undue requirements by the state before they can work;

8.5. political parties and candidates must have fair and equal access to the media. Their access to media shall be facilitated during election campaigns;

8.6. foreign journalists should not be refused entry or work visas because of their potentially critical reports;

8.7. media must be free to disseminate their content in the language of their choice;

8.8. the confidentiality of journalists' sources of information must be respected;

8.9. exclusive reporting rights concerning major events of public interest must not interfere with the public's right to freedom of information;

8.10. privacy and state secrecy laws must not unduly restrict information;

8.11. journalists should have adequate working contracts with sufficient social protection, so as not to compromise their impartiality and independence;

8.12. journalists must not be restricted in creating associations such as trade unions for collective bargaining;

8.13. media outlets should have editorial independence from media owners, for instance by agreeing with media owners on codes of conduct for editorial independence, to ensure that media owners do not interfere in daily editorial work or compromise impartial journalism;

8.14. journalists must be protected against physical threats or attacks because of their work. Police protection must be provided when requested by journalists who feel threatened. Prosecutors and courts must deal adequately, and in a timely manner, with cases where journalists have received threats or have been attacked;

8.15. regulatory authorities for the broadcasting media must function in an unbiased and effective manner, for instance when granting licences. Print media and Internet-based media should not be required to hold a state licence which goes beyond a mere business or tax registration;

8.16. media must have fair and equal access to distribution channels, be they technical infrastructure (for example, radio frequencies, transmission cables, satellites) or commercial (newspaper distributors, postal or other delivery services);

8.17. the state must not restrict access to foreign print media or electronic media including the Internet;

8.18. media ownership and economic influence over media must be made transparent. Legislation must be enforced against media monopolies and dominant market positions among the media. In addition, concrete positive action should be taken to promote media pluralism;

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8.19. if media receive direct or indirect subsidies, states must treat those media fairly and with neutrality;

8.20. public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations;

8.21. public service broadcasters should establish in-house codes of conduct for journalistic work and editorial independence from political sides;

8.22. “private” media should not be run or held by the state or state-controlled companies;

8.23. members of government should not pursue professional media activities while in office;

8.24. government, parliament and the courts must be open to the media in a fair and equal way;

8.25. there should be a system of media self-regulation including a right of reply and correction or voluntary apologies by journalists. Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented. These measures should be recognised legally by the courts;

8.26. journalists should set up their own professional codes of conduct and they should be applied. They should disclose to their viewers or readers any political and financial interests as well as any collaboration with state bodies such as embedded military journalism;

8.27. national parliaments should draw up periodic reports on the media freedom in their countries on the basis of the above catalogue of principles and discuss them at European level.
9. The Assembly invites the Council of Europe Commissioner for Human Rights to draw up information reports on member states where problems exist in the implementation of the above list of basic principles as regards freedom of expression.

10. The Assembly also invites media professionals and companies, as well as media associations, to apply and develop further the above list of basic principles applicable to the media.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1848 (2008)⁸⁴

Indicators for media in a democracy

1. The Parliamentary Assembly refers to its [Resolution 1636](#) (2008) on indicators for media in a democracy and recommends that the Committee of Ministers:

⁸⁴ Assembly debate on 3 October 2008 (36th Sitting) (see [Doc. 11683](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Wodarg). Text adopted by the Assembly on 3 October 2008 (36th Sitting).

- 1.1. endorse the list of basic principles contained in the above-mentioned resolution;
- 1.2. take this list into account when assessing the media situation in member states;
- 1.3. establish indicators for a functioning media environment in a democracy, based on this list, and draw up periodical reports with country profiles of all member states concerning their media situations.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1878 (2009)⁸⁵

Funding of public service broadcasting

1. The Parliamentary Assembly notes that public service broadcasters exist today in an environment which is marked by the simultaneous offer of a multitude of private channels that are free of charge, on-demand media services and the rapid increase of audiovisual content accessible on the Internet. This increased competition in the audiovisual media sector has led to political debates on the funding of public service broadcasting in Europe.
2. While the establishment and maintenance of broadcasting services were very costly and depended on the scarce infrastructural resource of radio-frequency spectrum, technological progress in the transmission of audiovisual content via cable, satellite and analogue or digital terrestrial means, including fixed and mobile telephony, has considerably changed the environment of audiovisual media.
3. Business models for commercial broadcasters, audiovisual content providers and the audiovisual advertising industry are also changing: advertising revenue is spread out over a wider range of media; pay-per-view broadcasting is challenged by growing thematic content on the Internet; the downloading of music from the Internet might also extend to audiovisual content.
4. Audience behaviour and user demands are changing accordingly, indicating a future trend away from linear broadcasting programmes to thematic channels and interactive or on-demand services also using the Internet as another platform for providing such services.
5. Public service broadcasters must be an important public source of unbiased information and diverse political opinions; they must function under high editorial standards of objectivity, fairness and independence from party political or economic interference; they should be subject to higher public scrutiny and accountability for their programming than commercial broadcasters; they should contribute decisively to the production of audiovisual works of high quality; they should provide a wide audience with free access to informal educational and cultural programmes; they have the possibility and obligation also to serve minority viewers and people with special needs who would not be served in a purely commercial market; they should therefore support non-commercial objectives, such as social

⁸⁵ Assembly debate on 25 June 2009 (25th Sitting) (see [Doc. 11848](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Laukkanen; and [Doc. 11915](#), opinion of the Political Affairs Committee, rapporteur: Mr MacShane). Text adopted by the Assembly on 25 June 2009 (25th Sitting).

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progress, public interest in democratic processes, intercultural understanding and societal integration. When they fulfil these functions, public service broadcasters constitute an important public asset which should not be diminished or abandoned.

6. Recalling its [Recommendation 1641](#) (2004) on public service broadcasting, the Assembly reaffirms that public service broadcasting remains an essential element for member governments in meeting the needs of individuals and society as a whole with regard to information, education and culture. Such needs may be different among states in Europe depending on the national or regional circumstances, including the national or regional media landscape, the cultural diversity of a given society and geographical and infrastructural characteristics.

7. Therefore, the Assembly strongly supports the commitments made fifteen years ago at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994) in the resolution on the future of public service broadcasting, in particular to:

7.1. guarantee at least one comprehensive wide-range service comprising information, education, culture and entertainment which is accessible to all members of the public, while acknowledging that public service broadcasters must also be permitted to provide, where appropriate, additional programme services such as thematic services;

7.2. define clearly the role, missions and responsibilities of public service broadcasters and to ensure their editorial independence against political and economic interference;

7.3. guarantee public service broadcasters secure and appropriate means necessary for the fulfilment of their missions.

8. The Assembly recalls the further standards on public service media set by its [Resolution 1636](#) (2008) on indicators for media in a democracy, its [Recommendation 1855](#) (2009) on the regulation of audiovisual media services, as well as Committee of Ministers [Recommendations Nos. R \(96\) 10](#) on the guarantee of the independence of public service broadcasting, [CM/Rec\(2007\)3](#) on the remit of public service media in the information society and [CM/Rec\(2007\)16](#) on measures to promote the public service value of the Internet as well as the Committee of Ministers' declaration on the guarantee of the independence of public service broadcasting in the member states of 27 September 2006 and its declaration on the allocation and management of the digital dividend and the public interest of 20 February 2008.

9. As media markets converge further, and users' demands change, public service broadcasters should diversify their services through thematic channels, on-demand media, recorded media and Internet-based media services in order to offer a comprehensive and competitive range of media services to the public at large in accordance with their public service mission. Technological progress in the field of audiovisual media and electronic communications means that public service broadcasters should also make use of new technologies.

10. Representing national parliaments in Europe, the Assembly emphasises the power and responsibility of national legislators to decide on the specific mission, structure and funding of their public service broadcasters in accordance with national or regional circumstances and requirements. The Assembly is concerned by tendencies within the European Union to restrict

those national powers under internal market regulations and the growing number of complaints against European Union member states brought by private operators before the European Commission. The application of European Union law should not restrict member states' powers to adapt the public service broadcasting remit to their own national needs. In this respect, the Assembly recalls that the 1997 Amsterdam Protocol to the Treaty establishing the European Union clearly favours subsidiarity and national competencies for European Union member states in this field.

11. The Assembly recalls the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, which recognises that, within the framework of its cultural policies and measures and taking into account its own particular circumstances and needs, each party to that convention may adopt measures aimed at protecting and promoting the diversity of cultural expressions within its territory, in particular measures aimed at providing public financial assistance and enhancing diversity of the media, including through public service broadcasting (Article 6, paragraph 2.d and h of the convention). The UNESCO convention has also been signed by the European Union.

12. Member states have developed different rules for the funding of their public service broadcasters in accordance with their national traditions and circumstances. Smaller countries, countries with several languages and countries where the pluralism of commercial broadcasters is less developed may need specific funding for their public service broadcasting. However, public acceptance of funding public service broadcasting is decreasing in view of the increasing audiovisual content available through converging media platforms and the Internet.

13. Recalling that public service broadcasters must be independent from the government and be able to function without its political interference, the Assembly emphasises that their funding model should reflect this independence.

14. The funding of public service media may be ensured, through a flat broadcasting licence fee, taxation, state subsidies, subscription fees, advertising and sponsoring revenue, specialised pay-per-view or on-demand services, the sale of related products such as books, videos or films, and the exploitation of their audiovisual archives. In this regard, public service media may have mixed funding similar to other public cultural institutions such as orchestras, theatres or museums. Each of these forms of funding must enable public service broadcasters to meet the public service requirement of accessibility and affordability for the public at large.

15. While the funding of public service broadcasting is in the public interest, public service broadcasters must meet quality standards concerning audiovisual content and services. This requires that legislators and regulatory bodies define the public service mission as well as general policy guidelines for such quality standards, but leave daily editorial and managerial independence to public service broadcasters. Therefore, public accountability mechanisms for quality control should be established, including evaluations by users. However, audience share should not be a decisive factor.

16. The Assembly notes with interest the discussions currently being held in national parliaments on the mission and funding of their public service broadcasters and calls on parliaments of all member states to:

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- 16.1. ensure that their public service broadcasters have a clear mission and adequate long-term funding possibilities for fulfilling this mission in accordance with the resolution on the future of public service broadcasting of the 4th European Ministerial Conference on Mass Media Policy;
 - 16.2. ensure a sustainable structure of their public service broadcasters, which provides for adequate safeguards for their editorial and managerial independence in accordance with Committee of Ministers [Recommendation No. R \(96\) 10](#) on the guarantee of the independence of public service broadcasting;
 - 16.3. ensure the accountability of public service broadcasters including regular reviews of their public service mission and their meeting public service objectives and user demands;
 - 16.4. ensure the allocation of an adequate radio-frequency spectrum for public service broadcasters during the digital switch-over and after analogue radio frequencies have been switched off, in accordance with the Committee of Ministers' declaration on the allocation and management of the digital dividend and the public interest;
 - 16.5. analyse possibilities for commercial media to fulfil public service missions, for instance by providing specific audiovisual works, programmes, channels or services, and thus to receive public financial support;
 - 16.6. ask their governments to sign and ratify the European Convention for the Protection of the Audiovisual Heritage (ETS No. 183), if they have not yet done so, and analyse possibilities for preserving the audiovisual archives of their public service broadcasters as part of cultural heritage in accordance with this convention.
17. The Assembly welcomes the Action Plan on public service media adopted by the ministers participating in the Council of Europe's Conference of Ministers responsible for Media and New Communication Services (Reykjavik, 28-29 May 2009) and invites the ministers to reaffirm at national level:
- 17.1. the importance of public service media responding to their national or regional requirements through a clear mission, a sustainable structure and adequate long-term funding determined at national level;
 - 17.2. that public service broadcasters should, in accordance with changing user demands, utilise new technologies to increase the accessibility of their services and offer new services including interactive and on-demand media services on all available platforms so as to reach all audiences, and in particular young people;
 - 17.3. the importance of co-ordinating Europe-wide their national policies for public service broadcasting through regular ministerial meetings at the level of the Council of Europe as well as its Steering Committee for the Media and New Communication Services.
18. The Assembly recommends that the Committee of Ministers:

- 18.1. forward this recommendation to competent ministries, regulatory bodies for broadcasting and public service broadcasters in their country;
- 18.2. ask the European Audiovisual Observatory to collect information about the funding of public service media in Europe;
- 18.3. analyse, together with the European Broadcasting Union, possibilities for cross-border co-operation of national public service broadcasters, for example in the joint production of audiovisual works and programmes, the joint use of archives, technical equipment and human resources and the joint acquisition of transmission rights;
- 18.4. call on member states' governments as well as the European Community to sign and ratify the European Convention for the Protection of the Audiovisual Heritage, if they have not yet done so.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1897 (2010)⁸⁶

Respect for media freedom

1. Recalling its [Resolution 1535](#) (2007) on threats to the lives and freedom of expression of journalists, the Parliamentary Assembly notes with great concern that the number of attacks on the media and journalists and other serious violations of media freedom have increased and that at least 20 journalists have been killed in Europe since 2007. These alarming facts require the resolute reaffirmation that media freedom is a necessary condition for democracy and thus for membership with the Council of Europe. Member states and the Council of Europe must do more to ensure respect for media freedom and the safety of journalists.
2. In its [Resolution 1535](#) (2007), the Assembly resolved to establish a specific monitoring mechanism for identifying and analysing attacks on the lives and freedom of expression of journalists in Europe as well as the progress made by national law enforcement authorities and parliaments in their investigations of these attacks. In support of this resolution, the Assembly welcomes and supports the appointment of a rapporteur on media freedom in its Committee on Culture, Science and Education.
3. The Assembly values highly the work of the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE) and looks forward to continued and increased collaboration. It also appreciates the active contribution of such organisations as the International Federation of Journalists, the Association of European Journalists, the European Newspaper Publishers Association, Article 19, the International Press Institute and Reporters Without Borders in identifying violations of media freedom.

⁸⁶ Assembly debate on 27 January 2010 (6th Sitting) (see [Doc. 12102](#), report of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh). Text adopted by the Assembly on 27 January 2010 (6th Sitting).

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4. The Assembly deplores the fact that, since the adoption of [Resolution 1535](#) (2007), the Russian Federation has failed to conduct a proper investigation and to bring those responsible for the murder of Anna Politkovskaya in Moscow on 7 October 2006 to justice and to ensure that journalists can work freely and in safety. Since 2007, 13 more journalists have lost their lives in Russia: Ivan Safronov, Vyacheslav Ifanov, Ilyas Shurpayev, Gadji Abashilov, Sergey Protazanov, Magomed Yevloyev, Telman Alishayev, Shafiq Amrakhov, Anastasia Baburova, Vyacheslav Yaroshenko, Natalia Estemirova, Abdulmalik Akhmedilov and Olga Kotovskaya.
5. The Assembly also deplores the fact that organised crime in several member states is threatening the safety of journalists, while law enforcement authorities remain ineffective against such threats. The Assembly is saddened by the murders of Georgi Stoev in Bulgaria on 7 April 2008, Ivo Pukanic and Niko Franjic in Croatia on 23 October 2008, as well as Cihan Hayirsevener in Turkey on 18 December 2009. Critical media play an important role in discovering and shedding light on corruption and organised crime. The public has the right to be informed about such facts by the media, which should be supported by member states.
6. Recalling its [Resolution 1438](#) (2005) on freedom of the press and the working conditions of journalists in conflict zones, the Assembly deplores the fact that the war between Russia and Georgia in 2008 took the lives of Alexander Klimchuk, Grigol Chikhladze, Stan Storimans and Giorgi Ramishvili.
7. The Assembly welcomes amendments made to Article 301 of the Turkish Penal Code but deplores the fact that Turkey has neither abolished Article 301 nor completed investigations into the murder of Hrant Dink in Istanbul on 19 January 2007, especially as regards possible failures of the police and security forces. Criminal charges have been brought against many journalists under the slightly revised Article 301, which still violates Article 10 of the European Convention on Human Rights.
8. Referring to its [Resolution 1577](#) (2007) “Towards decriminalisation of defamation”, the Assembly reaffirms that defamation and insult laws must not be used to silence critical comment and irony in the media. The reputation of a nation, the military, historic figures or a religion cannot and must not be protected by defamation or insult laws. Governments and parliaments should clearly and openly reject false notions of national interest evoked against the work of journalists. Nationalism must never again become the misguided reason for killing journalists, or depriving them of their rights or liberty.
9. The Assembly notes with concern that excessive sanctions have been imposed on media outlets. Government members and parliamentarians should not use their political influence to silence critical media, but engage in a constructive debate through all media.
10. The Assembly reaffirms that the introduction of digital broadcasting must not be used to discriminate for party political reasons against individual broadcasters.
11. The Assembly therefore recommends that the Committee of Ministers:
 - 11.1. review national legislation and practice to ensure that anti-terrorism measures fully respect media freedom in accordance with [Recommendation 1706](#) (2005) on media and terrorism;

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- 11.2. assist member states in training their judges, law enforcement authorities and police in respecting media freedom, in particular as regards protection of journalists and media against violent threats;
 - 11.3. give its full support to the mechanism proposed by the Steering Committee on the Media and New Communication Services for promoting compliance with Article 10 of the European Convention on Human Rights and other Council of Europe standards on media freedom;
 - 11.4. call on the governments of all member states, and in particular those of Azerbaijan, the Russian Federation and Turkey, to revise their defamation and insult laws and their practical application in accordance with Assembly [Resolution 1577](#) (2007);
 - 11.5. call on the governments of all member states, and in particular of Armenia, Azerbaijan, Moldova, the Russian Federation and Ukraine as well as Belarus, to ensure fair and equal access of all political parties and candidates to the media before elections and pay particular attention to this issue when assessing future elections;
 - 11.6. call on the Government of the Russian Federation to ensure that the high number of murders of critical journalists are investigated and brought to justice;
 - 11.7. call on the Government of Armenia to revise their legislation on the allocation of broadcasting licences, which was passed as a countermeasure to the judgment of the European Court of Human Rights in the case of Meltex Ltd and Mesrop Movsesyan v. Armenia of 17 June 2008.
12. Referring to its [Resolution 1636](#) (2008) on indicators for media in a democracy and on the basic principles for assessing media freedom, the Assembly asks the Secretary General of the Council of Europe to allocate the resources necessary to:
 - 12.1. collate information on a continuing basis from media freedom organisations including the International Federation of Journalists, the Association of European Journalists, the European Newspaper Publishers Association, Article 19, the International Press Institute, and Reporters Without Borders, identifying violations of media freedom;
 - 12.2. analyse this information on a systematic basis, country by country, using the indicators for media freedom set out in [Resolution 1636](#) (2008);
 - 12.3. make such information publicly available in electronic form on the website of the Council of Europe, as well as in print form;
 - 12.4. issue electronic and print reports on this information and analysis to the governments and parliaments of member states and to the media, at least every three months, highlighting the important events of the most recent period in each country and requiring remedy when necessary.
 13. Referring to its [Resolution 1387](#) (2004) on monopolisation of the electronic media and possible abuse of power in Italy, and taking into account the very fast development of the Italian audiovisual market from 2004 to the present day, the Assembly asks the European

Commission for Democracy through Law (Venice Commission) to prepare an opinion on whether, and to what extent, legislation in Italy has been adapted to take account of its Opinion on the compatibility of the laws “Gasparri” and “Frattoni” of Italy with Council of Europe standards in the field of freedom of expression and pluralism of the media, adopted by the Venice Commission at its 63rd Plenary Session (Venice, 10-11 June 2005).

14. The Assembly notes with concern the official warning addressed by the Justice Ministry of Belarus on 13 January 2010 to the Belarusian Association of Journalists, challenging the association’s internationally recognised work in the interests of journalists, media and media freedom. Recalling its [Resolution 1372](#) (2004) on the persecution of the press in the Republic of Belarus, the Assembly reaffirms that media freedom is an essential condition for democracy and a requirement for membership with the Council of Europe. The Assembly calls on the authorities in Belarus not to abuse arbitral administrative regulations to restrict unduly the rights to freedom of expression and freedom of association under Articles 19 and 22 of the International Covenant on Civil and Political Rights and Articles 10 and 11 of the European Convention on Human Rights. As Belarus is an associate member of the Venice Commission, the Assembly furthermore asks the Venice Commission to analyse the compatibility of such a warning by the Justice Ministry of Belarus with universal human rights standards.

15. The Assembly invites the parties to the Group of States against Corruption (GRECO) Partial Agreement to emphasise in their work the importance of media freedom and the role of investigative journalism in combating corruption and to ask the European Union to accede to GRECO.

16. The Assembly invites the European Union Agency for Fundamental Rights as well as national human rights institutions in member states to co-operate with the Council of Europe in assisting governments, courts and media organisations with their pursuit of remedies for serious violations of media freedom.

17. For the purposes of the publication proposed in paragraph 12 above, the Assembly invites the International Federation of Journalists, the Association of European Journalists, the European Newspaper Publishers Association, Article 19, the International Press Institute, Reporters Without Borders and other media freedom organisations to continue to provide regular information to the Assembly and the rapporteur on media freedom of the Committee on Culture, Science and Education on serious violations of media freedom in Europe which may require interparliamentary attention and follow-up.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Provisional edition

Rethinking creative rights for the Internet age

Recommendation 1906 (2010)⁸⁷

⁸⁷ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 12 March 2010 (see [Doc. 12101](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Arnaut, and [Doc. 12142](#), opinion of the Committee on Economic Affairs and Development, rapporteur: Mr Lambert).

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1. The Parliamentary Assembly notes that the extraordinary development of the digital society has significantly upset the balance between the copyrights of authors of intellectual works, investors and the general public, and raises questions and issues as to the functioning of democracy, the protection of human rights, and the viability of the rule of law. It also raises ethical questions and questions relating to property, particularly intellectual property.
2. The possibility of sharing without respecting copyright written documents, music, photos and films, and the plans for electronic libraries are examples of this development. The consequences are manifold. The drastic decline in sales of musical and cinematographic works is a reality and the same tendency could be seen in publishing with the advent of electronic libraries. Moreover, some governments are considering enacting laws to allow for the surveillance of digital exchanges between individuals.
3. The international instruments for the protection of copyright no longer seem capable of guaranteeing creators and investors a fair return on their respective activities while ensuring the public's access to information and respect for privacy. On one hand, the very survival of the creative profession is at stake; on the other, there is a danger of the emergence of police states controlling all information exchanged by their citizens.
4. "Pirate Parties" are springing up throughout Europe and worldwide, rebelling against all state control over Internet communication and calling for the safeguarding of privacy and the right to information and of sharing free of charge music, films and other products of artistic, scientific or literary creation. The Swedish Pirate Party has a member in the European Parliament, and the German Pirate Party, until the recent elections, had a member in the Bundestag.⁵
5. There would not appear to be any threat to the public's right of access to information and no justification for the provision of music, films and literary or scientific works free of cost. The Assembly considers that unrestricted and free access to information by no means presupposes cost-free access to the products of artistic, scientific or literary creation, even if the freedom to copy for private use must remain. The relevant exceptions in the spheres of education and research would appear to be properly safeguarded.
6. It is incumbent on the public authorities to work towards restoring the balance between the rights of the various players in the process of intellectual creation while guaranteeing respect for privacy. The Council of Europe, whose fundamental values are precisely democracy, human rights and the rule of law, has a duty to be involved in assessing foreseeable developments and in framing the standards required at European level.
7. The Committee of Ministers of the Council of Europe has stated its position through its Recommendation Rec(2001)7 on measures to protect copyright and neighbouring rights and combat piracy, especially in the digital environment. The Assembly focused on two questions related to these matters in its [Recommendations 1586](#) (2002) on the digital divide and education and 1833 (2008) on promoting the teaching of European literature. The European Union considered the question in several directives from 1991 to 2006. But at this stage no satisfactory solution has yet been proposed.
8. Consequently, the Assembly recommends that the Committee of Ministers:

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- 8.1 initiate a future-oriented study on copyright in the digital environment and give thought to the changes required to guarantee a flexible legal apparatus, enabling copyright to be protected despite technical, economic and social changes;
- 8.2. initiate reflection on the system of exceptions and limitations by opening a transparent public debate, enabling each interested group to express its point of view in order to identify the exceptions and limitations essential for freedom of expression and information in a democratic society and ensure that these are fully effective, as well as identifying the exceptions and limitations which are merely incidental to this objective and propose a differentiated approach;
- 8.3. assist and encourage - for example by drawing up model clauses - contractual initiatives to provide improved access to works and their content, particularly in the fields of education and research, and verify their effectiveness and implementation by means of empirical studies;
- 8.4. initiate reflection on the legal status of certain Internet stakeholders (access providers, content- sharing platforms, search engines) with regard to compliance with copyright rules;
- 8.5. investigate what arrangements and mechanisms might help rights holders to receive fair and equitable remuneration, on which the economic operators concerned have been consulted, for access to protected works;
- 8.6. explore the possibility of introducing compulsory collective management systems, especially where exclusive rights are very difficult to enforce and could have adverse effects on access to information (for example, in the case of “orphan” works, which are still covered by copyright but whose owners cannot be identified or located);
- 8.7. facilitate and propose a framework for interdisciplinary work (economic, philosophical, sociological, historical, psychological and technical) on copyright.

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Appendix II

Supplement to DH-MC(2010)002

Selected relevant texts adopted by the PACE

not included in the compilation,

especially from 12 March 2010 – 25 January 2011

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PARLIAMENTARY ASSEMBLY
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Recommendation 1623 (2003)⁸⁸

Rights of national minorities

1. The Parliamentary Assembly recalls its earlier [Recommendation 1492 \(2001\)](#) on the rights of national minorities, and takes note of the Committee of Ministers' reply to this recommendation ([Doc 9492](#)), as well as of the opinions of the intergovernmental committees, the European Commissioner for Human Rights and the European Court of Human Rights.
2. The Assembly welcomes the success of the Framework Convention for the Protection of National Minorities, a privileged instrument in the field of protection of national minorities, which celebrated the fifth anniversary of its entry into force this year. The entry into force of the framework convention marked a new stage in the development of the minority protection system within the Council of Europe. Instead of elaborating basic standards for minority protection, the Organisation is concentrating on monitoring mechanisms and improving the efficiency of institutions and procedures aimed at ensuring the compliance with these basic principles by all Council of Europe member states. In this regard, the Assembly commends the outstanding work of the advisory committee of the framework convention.
3. The Assembly welcomes the important role of the European Charter for Regional or Minority Languages, confirmed by the Secretary General in his communication on the application of the charter contained in [Document 9540](#), and the growing number of signatures and ratifications made since the last report, and stresses the importance of obtaining more signatures and ratifications. The Assembly also welcomes the valuable work of the committee of experts of the charter.
4. To date, three of the four member states mentioned in Recommendation 1492 (2001) have yet to sign the framework convention, namely Andorra, France and Turkey. The Assembly, recalling its [Resolution 1301 \(2002\)](#), reiterates its regret about the reservation made on signature of the instrument by Belgium.
5. The Assembly reiterates the positions it undertook in [Recommendation 1492 \(2001\)](#) with regard to the framework convention, that is the demand for a swift signature and ratification by member states without reservations or declarations. Persistent refusal to sign or ratify this instrument, and to implement its standards, should be the subject of particular attention in the monitoring procedures conducted by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe (CLRAE), as appropriate.
6. In a number of opinions, the advisory committee stated that although states parties have a margin of appreciation in respect of the scope of application of the framework convention, this must be exercised in accordance with the fundamental principles set out in Article 3 of

⁸⁸ *Assembly debate* on 29 September 2003 (27th Sitting) (see [Doc. 9862](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevics).
Text adopted by the Assembly on 29 September 2003 (27th Sitting).

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the convention; in no case can the interpretation given by the states parties be a source of arbitrary or unjustified distinctions. In turn, the Committee of Ministers asked the states parties to put the possibility of submitting reservations and declarations to careful use. In line with these views, the Assembly considers that the states parties do not have an unconditional right to decide which groups within their territories qualify as national minorities in the sense of the framework convention. Any decision of the kind must respect the principle of non-discrimination and comply with the letter and spirit of the framework convention.

7. The Assembly reiterates the views, reflected in its [Recommendation 1589 \(2003\)](#) on the freedom of expression in the media in Europe, that all European states should abolish restrictions on the establishment and functioning of private media broadcasting in minority languages. Such restrictions are contrary to Article 10 of the European Convention on Human Rights as developed by the case-law of the European Court of Human Rights.

8. The Assembly considers that the states parties to the framework convention and the charter should respect more scrupulously the deadlines set for the submission of reports.

9. The work of the advisory committee of the framework convention and the committee of experts of the charter should be facilitated as much as possible, especially with a view to the second phase of monitoring.

10. The Assembly considers that the Council of Europe bodies involved with the protection of the rights of national minorities and with the struggle against discrimination, racism, xenophobia and intolerance should reinforce the co-ordination of their work to achieve a better synergy. In the meantime, the co-operation between the Council of Europe's bodies and other relevant European organisations (including the European Union and the OSCE) as well as sub-regional organisations (including the Council of the Baltic Sea States, the Central European Initiative and other organisations) should be stepped up.

11. The Assembly calls on:

i. member states who have not already done so (that is, Andorra, France and Turkey) to swiftly sign and ratify, without reservations or declarations, the framework convention;

ii. member states who have signed but have not ratified (Belgium, Georgia, Greece, Iceland, Latvia, Luxembourg and the Netherlands) to swiftly ratify, without reservations or declarations, the framework convention;

iii. those states parties which have ratified the framework convention but have made declarations or reservations, to drop them in order to exclude arbitrary and unjustified distinctions, as well as the non-recognition of certain minorities;

iv. the states parties to pay particular attention to the fair implementation of Article 9 of the framework convention (Freedom of expression) by abolishing undue restrictions imposed on private broadcasting and the publishing of written news in minority languages;

v. the states parties to pay particular attention to the free use of national minorities' languages in geographical areas where they live in substantial numbers and to ensure parliamentary representation of minorities;

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vi. the states parties to pay particular attention to the possibility for the most vulnerable Roma minorities to fully benefit from the protection envisaged in the framework convention.

12. The Assembly also recommends that the Committee of Ministers:

i. draft an additional protocol to the framework convention conferring on the European Court of Human Rights the power to give advisory opinions on its interpretation of the framework convention;

ii. take the necessary steps to chase up the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN) as an appropriate intergovernmental forum for policy discussions on questions relating to national minorities, including co-operation with the European Union and other international organisations in this field;

iii. enhance efforts aimed at the speedy ratification of Protocol No. 12 to the European Convention on Human Rights;

iv. consider the holding of tours de table on signature and ratification of the framework convention;

v. reinforce as a matter of priority the financial and human resources at the disposal of the secretariat of the advisory committee of the framework convention, in view of the approaching second cycle of monitoring and effective follow-up activities, as well as the financial and human resources at the disposal of the secretariat of the committee of experts of the charter;

vi. consider the possibility of abolishing the whole mandate requirement for seeking information from a variety of sources as well as for meeting with NGOs;

vii. revise the rules governing the monitoring procedure of the framework convention so that the advisory committee may visit any state party under consideration if it deems it necessary;

viii. reconsider the confidentiality requirements set by Resolution (97) 10 of the Committee of Ministers, so as to allow the advisory committee, if it deems it necessary, to hold joint meetings with the representatives of governments and of civil society;

ix. encourage the advisory committee to consider thematic issues and to comment on them, so as to assist states and minorities in developing good practices;

x. ensure availability of the framework convention and the charter, as well as related texts, in different languages, including the languages of national minorities;

xi. encourage early publication of the advisory committee's opinions by states parties, so that an open dialogue might develop between the authorities and civil society on implementation of the framework convention and on the conclusions drawn by the committee.

13. Lastly, the Assembly recommends that the Committee of Ministers take the necessary measures to continue co-operation with the European Union, with a view to achieving common policies in the field of the protection of national minorities, including the ongoing process of enlargement and the evaluation by the European Commission of measures taken by

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the candidate countries, and to ensure the respect by all member states of the Copenhagen criteria related to the respect and protection of national minorities.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1495 (2006)⁸⁹

Combating the resurgence of Nazi ideology

1. In May 1945, the Allied Powers defeated the Nazi German regime and put an end to Hitler's National-Socialism, the most cruel and barbaric regime that Europe had ever known.

2. More than just a defeat of the Nazi armies, the victory of the Allies was a triumph over the Nazi xenophobic doctrine of "natural inequality of races" according to which persons of "German blood" made up a "master race" with a special, heroic destiny and were accordingly entitled, in the quest for "living space", to subjugate, dominate or exterminate other "races" and peoples.

3. The Parliamentary Assembly pays special tribute to the glory of all those who fought in the ranks of the "anti-Hitler coalition" and saved humanity from the Nazi "new order". Grateful Europeans will never forget their courage and sacrifices which delivered Europe from the Nazi rule. It opened the path to developing a community of free, sovereign and peaceful nations in western Europe after the Second World War. Many parts of Europe had to suffer further oppression under communist rule. The changes in eastern Europe opened up the chance for them to join the community of states based on democracy and the rule of law.

4. The Assembly mourns the loss of millions of innocent victims of the Nazi aggression and racial policies. The horrors of the Shoah and the Nazi plans and policies of physical extermination or enslavement of entire nations must never be forgotten.

5. The Assembly regrets the death and suffering of millions of humans, civilian and military, in Nazi Germany and in its satellite countries, hostages of criminal acts and policies of their leaders.

6. The criminal nature of the Nazi policies and actions was overwhelmingly substantiated and irrevocably condemned by the Nuremberg International Military Tribunal in 1945-46. Key figures of the Nazi Party and state apparatus were found guilty of massive crimes against peace, war crimes and crimes against humanity. The main components of the Nazi machinery of mass murder, such as the leadership organs of the Nazi Party, of the Gestapo, the SD (secret service) and the SS, were declared criminal organisations.

7. The rulings of the Nuremberg Tribunal remain of great historical importance. The principles recognised at the Tribunal form a cornerstone of modern international law, and led to the drafting of major international legal instruments such as the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Universal Declaration of Human Rights (1948), the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968), the Geneva Conventions on the laws and customs of war (1949) and their Additional Protocols (1977) and

⁸⁹ *Assembly debate* on 12 April 2006 (13th Sitting) (see [Doc.10766](#), report of the Political Affairs Committee, rapporteur: Mr Margelov).

Text adopted by the Assembly on 12 April 2006 (13th Sitting).

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the European Convention on Human Rights (1949) (ETS No. 5), as well as to the creation of institutions for the effective implementation and adjudication of these rights, such as the United Nations Commission on Human Rights, the European Court of Human Rights, the special criminal tribunals and the International Criminal Court.

8. Modern Europe has been conceived on the basis of a total rejection of the Nazi ideas and principles, to ensure that such horrendous crimes as those committed by the Nazi regime in the name of “racial superiority” will never be repeated. The Council of Europe, as the oldest European political organisation aimed at protecting and furthering democracy, human rights and the rule of law, has a special responsibility in preventing the resurgence of the Nazi ideology.

9. Against this background, the Assembly is extremely worried about some developments which indicate that the public awareness of the danger of the Nazi ideology and its rejection by society are weakening.

10. The Assembly is particularly concerned as regards:

10.1. cases of desecration of memorials and graves of soldiers of the “anti-Hitler coalition”;

10.2. attempts to rehabilitate, justify and even glorify those who participated in the war on the Nazi side, especially in the ranks of groupings found to be criminal organisations at the Nuremberg Tribunal;

10.3 the increasingly common use of Nazi symbols such as the fascist swastika, flags, uniforms, and others which clearly relate to Naziism;

10.4. denying or minimising the significance of the crimes committed by the Nazi regime, in particular of the Shoah.

11. Furthermore, the Assembly is worried about political and social phenomena which, while making no direct reference to Naziism, should be seen in the light of its ideology, such as:

11.1. the growing number of manifestations of racial, ethnic and religious intolerance in daily life, including, *inter alia*, the desecration of Jewish cemeteries and attacks on religious sites;

11.2. attempts to create, through the media, a negative perception of some ethnic or religious groups;

11.3. growing support for political parties and movements with a xenophobic agenda.

12. Moreover, the Assembly is worried that such manifestations do not always receive enough attention and response on behalf of the political leaders and that public opinion seems now more receptive to racist, xenophobic and extremist ideas.

13. In this connection, the Assembly deems it necessary to recall that Hitler’s ideas, outrageous as they look today, found sympathy and support in many European countries.

14. The Assembly believes that it is urgent to step up co-ordinated action in order to resist efforts aiming at revitalising Nazi ideology, to fight xenophobia, intolerance and hatred based

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on racial and ethnic grounds, political and religious extremism, and all forms of totalitarian action. The Council of Europe must play a leading role in this process.

15. In this context, the Assembly welcomes the relevant activities already conducted by various Council of Europe bodies, in particular by the European Commission against Racism and Intolerance (ECRI), but believes that, in order to bring about concrete results, these activities need to be re-oriented to include a wider involvement of society.

16. The Assembly resolves to organise an international conference in order to carefully study the recurrence of racist and nationalist phenomena in European societies, exchange best experiences and develop common approaches in combating the resurgence of Nazi ideas.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1773 (2006)⁹⁰

The 2003 guidelines on the use of minority languages in the broadcast media and the Council of Europe standards: need to enhance co-operation and synergy with the OSCE

1. The Parliamentary Assembly considers linguistic diversity to be a source of mutual enrichment which member states should encourage and maintain. Minorities must enjoy full and effective equality with the majority, including the right to preserve and develop their distinct identities. Genuine integration policies must respect differences and diversity.
2. The Assembly stresses that languages, which play a fundamental role in society as a tool for building communities, are particularly important for people belonging to minorities, since they are essential in the exercise of their right to maintain and develop their identity and culture as stipulated in the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter for Regional or Minority Languages (ETS No. 148) and other Council of Europe instruments as well as in the 2003 guidelines on the use of minority languages in the broadcast media developed under the auspices of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities.
3. The Assembly recalls that media can make a positive contribution to democracy and the fight against intolerance, especially where they foster public debate and a culture of understanding between different ethnic and linguistic groups in society and avoid presenting society in mono-cultural and mono-linguistic terms.
4. The Assembly notes moreover that languages play an important role in access to information and that providing information in minority languages not only has an obvious cultural dimension but also guarantees that minorities actually have full and equal access to information.
5. The Assembly deeply regrets that such access is sometimes deliberately made difficult or denied to minorities.
6. In this context, the Assembly recalls that, in [Recommendation 1623](#) (2003) on rights of national minorities, it “reiterates the views [...] that all European states should abolish restrictions on the establishment and functioning of private media broadcasting in minority languages. Such restrictions are contrary to Article 10 of the European Convention on Human Rights as developed by the case law of the European Court of Human Rights”.
7. Moreover, the Assembly notes that the relevant Council of Europe and OSCE instruments, which aim to guarantee that minorities can use their own languages and that these languages are broadcast by the media, are complementary.

⁹⁰ Text adopted by the Standing Committee, acting on behalf of the Assembly, on 17 November 2006 (see [Doc. 11030](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Cilevičs, and [Doc. 11081](#), opinion of the Committee on Culture, Science and Education, rapporteur: Mr Sahlberg).

8. The Assembly recognises the significant role of the OSCE High Commissioner on National Minorities in conflict prevention and supports his continuous efforts to identify and seek early resolution of ethnic tensions.

9. In its [Recommendation 1623](#) (2003) the Assembly stated that “the co-operation between the Council of Europe’s bodies and other relevant European organisations (including the European Union and the OSCE) [...] should be stepped up”, and, in [Recommendation 1743](#) (2006), that it attaches “great importance to relations between the Council of Europe and other institutions”.

10. The heads of state and government of the member states of the Council of Europe, meeting at the 3rd Summit in Warsaw on 16 and 17 May 2005, stated that they wished to foster “European identity and unity, based on shared fundamental values, respect for our common heritage and cultural diversity”.

11. In the Warsaw Declaration they undertook to continue their “work on national minorities, thus contributing to the development of democratic stability”, while declaring that they were “resolved to secure improved practical co-operation between the Council of Europe and the OSCE and [welcomed] the prospect of enhanced synergy opened up by the joint declaration endorsed at this Summit”.

12. The Assembly welcomes the Action Plan adopted at the Warsaw Summit, in which attention is drawn to the decision taken at the Strasbourg Summit “to step up co-operation in respect of the protection of all persons belonging to national minorities”.

13. The Assembly therefore recommends that the Committee of Ministers:

13.1. invite member states which have not yet done so to sign and ratify, without reservations and restrictive declarations, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which are fundamental instruments for the protection of national and linguistic minorities, as well as the European Convention on Transfrontier Television (ETS No. 132), and that it increase its efforts in this respect;

13.2. invite member states to ensure that people belonging to national minorities or using regional or minority languages have a balanced access to public broadcast media and an effective right to establish and use private broadcast media, in accordance with Article 11 of the European Charter for Regional or Minority Languages, Article 9 of the Framework Convention for the Protection of National Minorities, the opinions of the Advisory Committee on the Framework Convention and the reports of the Committee of Experts on the Charter, Parliamentary Assembly recommendations and resolutions on specific linguistic minorities and the 2003 guidelines on the use of minority languages in the broadcast media;

13.3. in the framework of the monitoring of the implementation of the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, regularly take into account the 2003 guidelines on the use of minority languages in the broadcast media;

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13.4. instruct the competent committee, when revising the European Convention on Transfrontier Television, to amend Article 10 of this convention in order to strengthen multilingual audiovisual works as well as audiovisual works produced in regional or minority languages.

14. The Assembly considers that there is a potential for enhanced co-operation and contacts between the Council of Europe and the Office of the OSCE High Commissioner on National Minorities and encourages further synergies including through practical projects of common interest, in which civil society representatives could be involved.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1563 (2007)⁹¹

Combating anti-Semitism in Europe

1. The Parliamentary Assembly remains deeply concerned about the persistence and escalation of anti-Semitic phenomena and notes that no member state is shielded from, or immune to, this fundamental affront to human rights.
2. Such phenomena, which are a cause of fear for personal safety and a sign of lack of respect for the faith of Jewish citizens are unacceptable in Council of Europe member states.
3. Far from having been eliminated, anti-Semitism is today on the rise in Europe. It appears in a variety of forms and is becoming relatively commonplace, to varying degrees, in all Council of Europe member states. This upsurge should prompt Council of Europe member states to be more vigilant and tackle the threat which anti-Semitism represents for the fundamental values which it is the Council of Europe's role to defend.
4. Anti-Semitism, conveyed frequently – but not exclusively – by extreme-right movements, Islamist ideologists and extreme-left political factions, is reflected in hostility towards the Jews, their religion, their culture or their collective identity. Such hostility, which may extend to overt hatred, is expressed through behaviour and actions of varying types: desecration of religious sites, vandalism, publications, insults, threats, aggression or even murder.
5. The Assembly regrets that the Middle East conflict has had an impact on the growth of anti-Semitism in Europe. Although it is not the sole cause, the Israeli-Palestinian conflict continues to fuel anti-Semitic violence in Europe. This is especially the case among many immigrants in European cities. This new form of anti-Semitism is the cause of angry reactions among the majority of the population and will provoke hatred against immigrants in general, thereby inducing xenophobia.
6. Anti-Semitism represents a danger for all democratic states as it serves as a pretext for the use of and justification for violence. It splits the national community by placing one category of individuals against another and one religion against another. It constitutes a serious violation of both fundamental rights and freedoms and the principles of democracy. The political and civil authorities therefore have a duty to do all they can to halt this growing threat.
7. The Assembly is aware that the fight against anti-Semitism presents democracies with a dilemma, as they must on the one hand guarantee freedom of expression, freedom of assembly and association and allow for the existence and political representation of the full spectrum of political views and on the other, defend and protect themselves against a phenomenon which undermines their core values.

⁹¹ *Assembly debate* on 27 June 2007 (24th Sitting) (see [Doc. 11292](#), report of the Political Affairs Committee, rapporteur: Mr Margelov; and [Doc. 11320](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Wohlwend). *Text adopted by the Assembly* on 27 June 2007 (24th Sitting).

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8. The Assembly, referring to [Recommendation 1222](#) (1993) on the fight against racism, xenophobia and intolerance and [Resolution 1345](#) (2003) on racist, xenophobic and intolerant discourse in politics, is convinced that states must combat any trivialisation of anti-Semitism and take resolute action against its manifestations by applying or, where such do not exist, adopting all necessary political and legislative measures to preserve the rule of law based on respect for democratic principles and human rights.

9. The Assembly also notes that civil society, with its grass roots experience, is often the first to become aware of the rise of phenomena such as anti-Semitism, and therefore has an important role to play in mobilising the public response to it.

10. The Assembly considers that the principles enshrined in the European Convention on Human Rights (ETS No. 5), the United Nations International Convention on the Elimination of All Forms of Racial Discrimination in its Article 4, the International Covenant on Civil and Political Rights in its Article 20 and in the general policy recommendations of the European Commission against Racism and Intolerance (ECRI), in particular Recommendation No. 9 on the fight against anti-Semitism, adopted in June 2004, represent fundamental elements which should guide member states in their fight against anti-Semitism.

11. The Assembly strongly supports the work undertaken by the ECRI to encourage all relevant actors in Europe to combine their efforts in order to find an effective and lasting response to anti-Semitism, at all administrative levels (national, regional, local) and by including representatives of different communities, religious leaders, civil society organisations and other key institutions.

12. Accordingly, the Assembly calls on the governments of the Council of Europe member states to:

12.1. vigorously and systematically enforce legislation criminalising anti-Semitic and other hate speech, in particular any incitement to violence;

12.2. prosecute any political party which puts forward anti-Semitic arguments in its activities, manifestos or publications;

12.3. make a criminal offence the public denial, trivialisation, justification or praise, with racist intentions, of crimes of genocide, crimes against humanity or war crimes in accordance with ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, adopted in December 2002;

12.4. suspend or withdraw public financing, domestically and internationally, for organisations and associations promoting anti-Semitism;

12.5. reinforce their legislation to punish anti-Semitic acts and ensure that any anti-Semitic motivation constitutes an aggravating factor in criminal cases;

12.6. sign and ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177);

12.7. intensify teaching of the history and culture of the main religions in schools, in accordance with [Recommendation 1720](#) (2005) on education and religion, in order to promote

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tolerance and to combat ignorance which is so often the source of intolerance; education and training are among the most basic and lasting ways of guarding against anti-Semitism;

12.8. ensure that anti-Semitism and attacks on Jews do not take place in any educational institutions, especially universities;

12.9. promote intercultural and inter-faith dialogue between different communities;

12.10. acquire the means of suppressing anti-Semitic statements on the Internet and therefore sign and ratify the Additional Protocol to the Convention on Cybercrime, concerning criminalisation of acts of a racist or xenophobic nature committed through computer systems (ETS No. 189);

12.11. not endorse the construction of monuments and the holding of ceremonies celebrating those guilty of genocide or crimes against humanity during the Second World War;

12.12. take resolute action against any anti-Semitic act in sport in accordance with Recommendation Rec(2001)6 of the Committee of Ministers to member states on the prevention of racism, xenophobia and racial intolerance in sport;

12.13. encourage the media to exercise self-discipline, to promote tolerance and mutual respect and to counter anti-Semitic stereotypes and prejudices which have entered everyday speech;

12.14. strengthen media self-control mechanisms aimed at preventing anti-Semitism and other forms of hate speech;

12.15. continue the implementation of Recommendation Rec(2001)15 of the Committee of Ministers to member states on history teaching in twenty-first-century Europe, in preparing and organising a “Holocaust memorial and prevention of crimes against humanity day” in their schools, in order to contribute to global action for the promotion of tolerance, human rights and the fight against all forms of racism;

12.16. make use of the ECRI to alert the public authorities to anti-Semitic activities;

12.17. co-operate more actively with civil society and non-governmental organisations and support them in the fight against anti-Semitism;

12.18. support the activities of the ECRI, whose role is to combat racism, xenophobia, anti-Semitism and intolerance throughout Europe and to ensure that member states give practical follow-up to its recommendations;

12.19. actively and vigorously condemn all states sponsoring anti-Semitism, Holocaust denial and incitement to genocide.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1565 (2007)⁹²

How to prevent cybercrime against state institutions in member and observer states?

1. The Parliamentary Assembly recalls its [Opinion No. 226](#) (2001) on the draft convention on cybercrime in which it considered the fight against cybercrime to be a crucially important challenge in view of the obstacles which this form of crime may pose to the development of new technologies and, more generally, to legal and economic security.
2. The Assembly considers that cybercrime is a real threat to democratic stability and national security, and raises fundamental issues as regards the respect for human rights and the rule of law. Thus, this issue should be treated as a matter of top priority.
3. Politically-motivated attacks against military or government websites of a number of Council of Europe member and observer states are increasingly frequent and sophisticated. Indeed, for the first time, criminal cyber attacks have targeted a state as a whole, attempting to paralyse the functioning of infrastructure vital to the Republic of Estonia. A few attacks have also been noted in other countries at the same time.
4. This shows that cybercrime is a dangerous reality which has to be taken seriously at the highest level and that it represents a real threat to states whose technology-based infrastructures can be paralysed or even destroyed. This threat can emanate from private individuals, organised groups or states.
5. As all states are vulnerable in the face of this danger; it is of utmost importance that an efficient protection and reaction system be developed at international level.
6. The Assembly recalls that the Convention on Cybercrime (ETS No. 185, hereinafter “the convention”), contains extensive legislative provisions to counter cyber attacks against critical infrastructure. This treaty – the only binding one on this subject to date – has received widespread international support and therefore, in order to fight such crime effectively, all member states of the Council of Europe should urgently sign and ratify it and, more importantly, fully implement its provisions.
7. The Assembly also recalls that the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) offers an additional instrument in the fight against cyberterrorism, as well as against the use of the Internet for terrorist purposes.
8. The Assembly deplores the fact that a large number of member and observer states have not yet ratified these important conventions.

⁹² *Assembly debate* on 28 June 2007 (25th Sitting) (see [Doc. 11325](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Sasi; [Doc. 11335](#), opinion of the Political Affairs Committee, rapporteur: Mr Agramunt; and [Doc. 11333](#), opinion of the Committee on Economic Affairs and Development, rapporteur: Mrs Lilliehöök). *Text adopted by the Assembly* on 28 June 2007 (25th Sitting).

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9. The Assembly notes that the fight against cybercrime requires urgent international co-operation between governments, the private sector and non-governmental organisations, as cybercriminals rely on their ability to operate across borders and to exploit differences in national law. The lack of co-operation by the member states exposes them to considerable danger.

10. The Assembly recalls that the convention is an open treaty and therefore invites non-member states to accede to it as soon as possible to reinforce international co-operation on this important subject.

11. In this context, the Assembly welcomes the various initiatives taken in order to enhance international co-operation and co-ordination in the fight against cybercrime, *inter alia*, the 24/7 points of contact and the “Check the Web” programme, and strongly encourages member states to continue to reinforce their efforts, to strengthen international co-operation and to support concrete, co-ordinated measures for more efficient protection.

12. In so doing, the Assembly emphasises that measures to fight and prevent cybercrime must be based on laws that fully respect human rights and civil liberties.

13. Furthermore, the relevant laws need to be standardised, or at least compatible with one another, to permit the required level of international co-operation.

14. Cyber attacks are not only a legal challenge; countries should develop policies and strategies to effectively protect their critical infrastructures, an undertaking which entails providing the necessary human, financial and technical resources for that purpose. In doing so, they should involve private actors, including computer, networking and software industries.

15. The Assembly consequently invites member and observer states to:

15.1. consider the question of fighting against and preventing cybercrimes as a matter of priority;

15.2. sign and ratify the Council of Europe Convention on the Prevention of Terrorism and the Convention on Cybercrime and its Additional Protocol concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems (ETS No. 189) without delay, and fully implement them as soon as possible;

15.3. evaluate their respective legal frameworks to assess whether they provide appropriate sanctions for cybercrime, in particular provisions for cases of computer-based terrorist attacks, and to amend their legislation if necessary, while fully respecting individual freedoms, in particular freedom of expression and information;

15.4. ensure that their relevant legislation is compatible with that of other states in order to facilitate international co-operation and exchange of information;

15.5. develop a framework for facilitating urgent political consultations and exchange of information, at all necessary levels of the countries concerned, in situations of extensive cyber attacks;

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15.6. develop policies and strategies, on the basis of relevant technical studies, to effectively protect their critical infrastructures and to provide the necessary human, financial and technical resources for that purpose;

15.7. associate the private sector more closely, notably by building public-private partnerships for more effective and cross-sector international co-operation against cybercrime;

15.8. take effective national measures to prevent cybercrime activities;

15.9. give every assistance to the Government of Estonia in ensuring that a full and exhaustive investigation of the recent cyber attacks in that country is undertaken so as to inform future international efforts to combat cybercrime.

16. While considering that the convention should be regularly examined in the light of technological advances and new challenges, the Assembly awaits eagerly the findings of the Committee of Experts on Terrorism (CODEXTER) – which is currently examining the question of whether gaps in existing instruments (including the Convention on Cybercrime) require the development of additional instruments – before addressing its recommendations to the Committee of Ministers. The Assembly resolves to return to this matter as soon as possible.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1605 (2008)⁹³

European Muslim communities confronted with extremism

1. The attacks in Paris in 1995, New York in 2001, the subsequent spate of bombings which hit Madrid and Istanbul in 2003 and London in 2005, and the foiling of many other terrorist plots on European soil have shown the extent and gravity of the threat of terrorism from people who invoke Islamic fundamentalism as a source of inspiration. In addition to the shock caused by the attacks, it has been disconcerting for many to realise that some young Muslims who were born and brought up in Europe had been involved in their organisation and execution.

2. The Parliamentary Assembly warns against any confusion between Islam as a faith and Islamic fundamentalism as an ideology. Islam is the second religion in Europe and a constituent component of European societies. In some Council of Europe member states, it is traditionally the religion professed by the majority of the population; in others, it is the religion of the majority of immigrants and of citizens with an immigrant background, who represent a growing proportion of the population. On the other hand, Islamic fundamentalism is an extremist ideology with a political agenda, which promotes a model of society which is not compatible with human rights values and standards of democracy, and which, in its worst form, calls for the use of violence to achieve its aims.

3. It is regrettable but undeniable that, at the moment, Islamic fundamentalism as an ideology has proved to have a power of attraction for some individuals. European governments and European Muslim communities should work in close collaboration and synergy to neutralise this power of attraction and prevent it from escalating into terrorism.

4. The Assembly congratulates those Muslim leaders, opinion-makers and organisations who have firmly and unequivocally condemned terrorism inspired by Islamic fundamentalism as well as other extremist manifestations, such as the hate speech employed by some official or self-appointed imams or other Muslim personalities. Similarly, the Assembly commends the efforts of Muslim organisations to highlight the compatibility between Islam as a religion and democratic and human rights values, as well as their work with groups that are more at risk of radicalisation, such as young people and prison detainees.

5. In parallel to these efforts, European governments bear a special responsibility to address the root causes which create a fertile ground for extremism, such as poverty, discrimination and social exclusion; to ensure full respect for the freedoms of thought, speech and religion, as laid down in the European Convention on Human Rights (ETS No. 5); and to contribute to a climate in which all religious faiths, or the absence of any faith, are equally respected. In

⁹³ *Assembly debate* on 15 April 2008 (13th Sitting) (see [Doc. 11540](#), report of the Political Affairs Committee, rapporteur: Mr João Bosco Mota Amaral; [Doc. 11575](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mr Hakki Keskin; [Doc. 11570](#), opinion of the Committee on Culture, Science and Education, rapporteur: Mr Mehmet Tekelioğlu; and [Doc. 11569](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Gisela Wurm). *Text adopted by the Assembly* on 15 April 2008 (13th Sitting).

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this regard, Council of Europe member states should continue to be vigilant in their work to prevent and combat the phenomenon of Islamophobia.

6. Moreover, Council of Europe member states should take a range of positive steps to enable immigrants and citizens of immigrant descent, including Muslim communities, to integrate into society through non-discriminatory access to employment, education, vocational training, housing and public services. The engagement and active participation of immigrants and people with an immigrant background in society also need encouragement and support from the whole of society, which must do more to accommodate diversity and remove barriers to integration.

7. Likewise, as already recommended by the Assembly, European governments, in their aim of creating a citizenship of inclusiveness and participation, should remedy the current limited capacity of immigrants and citizens from an immigrant background to play an active role in public and political life. In the long term, this state of affairs, which is due both to legislative and social constraints, cannot but reinforce the grievances and sense of injustice of a part of the population.

8. The Assembly welcomes the initiative taken by the governments of two member states – Spain and Turkey – to create the United Nations Alliance of Civilizations and its endorsement by the United Nations Secretary-General, who has designated former Portuguese President Jorge Sampaio as its High Representative. The Assembly also expresses support for the activities so far undertaken in this context.

9. In light of the above, the Assembly calls on the member states of the Council of Europe to:

9.1. act strongly against discrimination in all areas;

9.2. condemn and combat Islamophobia;

9.3. act resolutely against hate speech and all other forms of behaviour which run counter to core human rights and democratic values, even when their authors seek to justify them on religious grounds;

9.4. combat all forms of discrimination and violence (particularly forced marriages, sexual mutilation of women and so-called “honour crimes”) which, in the name of misinterpreted religious texts or customs, violate the fundamental rights of women and equality between women and men;

9.5. combat all forms of cultural or religious relativism which justify discriminatory practices and human rights violations, particularly those directed at women or other groups in society;

9.6. ensure the strictest compliance with human rights and the rule of law in the enforcement of anti-terrorist measures;

9.7. promote the social cohesion, integration, political and civic participation of immigrants and citizens with an immigrant background, both men and women, in particular by:

9.7.1. taking a range of positive steps to enable immigrants and people with an immigrant background to integrate into society through fair and non-discriminatory access to

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employment, education, vocational training, housing in mixed areas and public services, and eventually via democratic participation through citizenship;

9.7.2. developing specific activities to encourage integration and tolerance among young people;

9.7.3. signing and ratifying the European Convention on the Legal Status of Migrant Workers (ETS No. 93);

9.7.4. granting lawfully-residing immigrants the right to vote and to be elected, at least in local and regional elections, so as to have an impact on public administration and local government;

9.7.5. signing and ratifying the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144);

9.7.6. encouraging the participation of people with an immigrant background in political parties, trade unions and non-governmental organisations;

9.7.7. taking all the necessary measures to eliminate the inequality of opportunity faced by immigrants, including unemployment and inadequate education;

9.7.8. removing unnecessary legal or administrative obstacles to the construction of a sufficient number of appropriate places of worship for the practice of Islam;

9.7.9. ensuring that school textbooks do not portray Islam as a hostile or threatening religion;

9.8. promote and support activities intended to improve the standing and role of Muslim women in Europe and overcome stereotypes confining them to subordinate and passive roles, for example, through appropriate teaching in schools and awareness-raising campaigns in the media;

9.9. monitor the role played by foreign states in the financing of mosques and appointment of imams, in order to ensure that these actions are not used to promote extremist views;

9.10. support the establishment of courses, if possible at university level, to train imams locally;

9.11. encourage a public and inclusive debate concerning the consequences of their foreign policy on the phenomenon of radicalisation;

9.12. encourage informative projects about Islam's contribution to western societies in order to overcome stereotypes on Islam.

10. The Assembly calls on leaders and opinion-makers to act responsibly to avoid encouraging discrimination and Islamophobia.

11. Furthermore, the Assembly calls on European Muslim organisations, leaders and opinion-makers to:

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11.1. act with a high sense of responsibility in their public statements and condemn terrorism and extremism unequivocally, being aware of their influence on Muslim communities;

11.2. encourage Muslims to fully participate in society without questioning the secular character of the society and the institutions of the country where they live;

11.3. formally endorse the European Convention on Human Rights;

11.4. promote the transmission of core European values within Muslim communities, and among young people in particular, by highlighting their compatibility with the Muslim faith;

11.5. ensure the teaching of core European values in Muslim faith schools;

11.6. encourage young European Muslims to become imams;

11.7. set up projects aimed at reducing the risk of radicalisation among the young generation and in prisons, if appropriate in co-operation with other organisations, or with local or other authorities;

11.8. encourage the promotion of fair coverage of Muslim reality and views in the media and ensure that the voice of moderate Muslims is also reported;

11.9. develop ethical guidelines to combat Islamophobia in the media and in favour of cultural tolerance and understanding, in co-operation with appropriate media organisations;

11.10. encourage the development of a secular intelligentsia.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1831 (2008)⁹⁴

European Muslim communities confronted with extremism

1. Referring to its [Resolution 1605](#) (2008) on European Muslim communities confronted with extremism, the Parliamentary Assembly expresses its support to Council of Europe activities in the field of intercultural dialogue and its religious dimension, which make a remarkable contribution to the mutual understanding and peaceful coexistence of different groups in European societies. In this regard, the Assembly welcomes the forthcoming publication of a Council of Europe white paper on intercultural dialogue.

2. In addition, being aware of the global dimension of the issues at stake, the Assembly welcomes the recent letter of intent concerning the co-operation between the Council of Europe and the United Nations Alliance of Civilizations, and encourages further co-operation and the organisation of joint initiatives.

3. Furthermore, the Assembly recalls the activities of the European Commission against Racism and Intolerance (ECRI), and in particular its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims (2000).

4. In light of these considerations, the Assembly recommends the Committee of Ministers to:

4.1. consider the activities in the field of intercultural dialogue and its religious dimension as a priority, and allocate appropriate resources for them so as to ensure that they are properly carried out and publicised;

4.2. support and allocate appropriate resources for activities in the field of integration of immigrants and persons with an immigrant background, including specific activities for encouraging integration and tolerance among young people;

4.3. further to the letter of intent signed by the Secretary General of the Council of Europe and the High Representative for the Alliance of Civilizations, support the conclusion of a memorandum of understanding between the Council of Europe and the Alliance of Civilizations;

4.4. increase co-operation in the field of intercultural and inter-religious dialogue with the United Nations and its specialised agencies, the European Union, and in particular the institutions of the Barcelona Process, the Organization for Security and Co-operation in Europe (OSCE) and the Organisation of the Islamic Conference;

⁹⁴ *Assembly debate* on 15 April 2008 (13th Sitting) (see [Doc. 11540](#), report of the Political Affairs Committee, rapporteur: Mr João Bosco Mota Amaral; [Doc. 11575](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mr Hakki Keskin; [Doc. 11570](#), opinion of the Committee on Culture, Science and Education, rapporteur: Mr Mehmet Tekelioğlu; and [Doc. 11569](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Gisela Wurm). *Text adopted by the Assembly* on 15 April 2008 (13th Sitting).

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4.5. invite ECRI and the Council of Europe Commissioner for Human Rights to conduct specific research on the situation of Muslim communities in Europe, including examples of good practice of co-operation between Muslim organisations and the authorities in combating extremism both within Muslim communities and originating from Muslim communities.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1855 (2009)⁹⁵

The regulation of audio-visual media services

1. The Parliamentary Assembly recalls that all media regulation in Europe must respect the right to freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (ETS No. 5). The freedom to receive and impart information and ideas applies regardless of frontiers.
2. This freedom constitutes a necessary requirement for democracy and the cultural and social progress of each individual and society as a whole. Restrictions to this freedom are only admissible as far as they are necessary in a democratic society.
3. Traditional audio-visual and print media are increasingly converging into new forms of electronic media for images, sound and text which are accessible via different fixed or mobile platforms using analogue or digital terrestrial transmissions, satellite or cable. Much of what is now considered broadcasting may in future be delivered over the Internet, where the user controls his or her access to countless sources of content which know no geographic boundaries.
4. Article 10, paragraph 1, of the European Convention on Human Rights permits states to require “the licensing of broadcasting, television or cinema enterprises”. The Assembly believes that broadcasting and television in this sense should not include Internet radio or web television, which should not require national authorisations. Internet radio and web television should be treated like Internet-based newspapers or websites with text, images and sound.
5. Technological progress is increasing the number of channels, programmes and services accessible through audio-visual media. This provides viewers and listeners with a wide choice of programmes, comprising linear and on-demand services. However, more audio-visual content does not necessarily mean greater plurality, diversity and quality of content, which remain priorities for audio-visual policies.
6. The viewer, listener or reader of new audio-visual media services is having to bear greater responsibility for the content he or she may select and potentially even contribute to, while content regulation through national regulatory authorities is becoming less feasible. National legislators are, therefore, compelled to review their existing regulation and set up new means for achieving their objectives regarding audio-visual media policy, with the latter objectives also remaining valid in the new media environment.
7. The Assembly supports in this context the Committee of Ministers’ Declaration of 20 February 2008 on the allocation and management of the digital dividend and the public interest. When deciding on the allocation of the radio-frequency spectrum, member states should also balance the spectrum needs of various technologies relating to both broadcasting

⁹⁵ *Assembly debate* on 27 January 2009 (3rd Sitting) (see [Doc. 11775](#), report of the Committee on Culture, Science and Education, rapporteur: Mr McIntosh). *Text adopted by the Assembly* on 27 January 2009 (3rd Sitting).

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and telecommunications. It will be particularly relevant to look at the availability of the spectrum for countries outside the European Union and, for all countries, how spectrum resources can be allocated to optimise opportunities for public-service broadcasting.

8. Referring to the European Convention on Transfrontier Television (ECTT) (ETS No. 132), the Assembly notes that technological progress of electronic audio-visual media requires the revision of the ECTT and has led to legislative changes at national level, as well as to the new Audiovisual Media Services Directive for the member states of the European Union (AVMS Directive).

9. The Assembly notes that the European Union AVMS Directive has the main objective of ensuring freedom of services within the internal market of the European Union in accordance with primary European Community law. This approach differs from the ECTT, which has the aim of ensuring freedom of transmission and retransmission of broadcasting in Europe, regardless of frontiers, in accordance with Article 10 of the European Convention on Human Rights.

10. Having noted the current progress in drafting an amending protocol to the ECTT in order to transform it into a new Council of Europe convention, the Assembly believes that the following considerations should be taken into account:

10.1. the possibilities for guiding the interpretation and supervising the application of this new convention should be reinforced;

10.2. the “public service mission” for audio-visual media services should be defined and explained;

10.3. the role of the Standing Committee should be re-examined with regard to its supervisory function over the compliance of conventional obligations and arbitration;

10.4. the transmission of on-demand audio-visual media services should be treated in a comparable way to television broadcast services and should not be subjected to the more restrictive provisions taken from the AVMS Directive of the European Union;

10.5. guidance should be provided regarding the requirement of programme services of broadcasters being “wholly or mostly” directed towards the territory of a party with the intention of circumventing the national laws of that party;

10.6. procedural safeguards, such as a prior opinion from the Standing Committee or arbitration, should be required before a party can take measures directed against a broadcaster established abroad for having allegedly circumvented the receiving party’s national laws, as far as such measures restrict the right to freedom of information through audio-visual media services.

11. The Assembly invites the Parties to the ECTT to take this recommendation into account when revising the ECTT.

12. The Assembly recommends that the Committee of Ministers:

12.1. forward this recommendation to competent ministries;

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12.2. allocate sufficient resources to the Standing Committee set up by the ECTT to fulfil the required supervisory function over the compliance of states parties with their contractual obligations;

12.3. invite interested non-member states to accede to the revised convention with a view to extending the scope of this convention to other countries;

12.4. instruct the competent steering committee to analyse future challenges to the enforceability of existing broadcasting regulation in the increasingly converging audio-visual media sector and develop policy guidelines for new means of content control, including through media self- and co-regulation, content search and filtering tools for users, media literacy of users, public support for content of cultural quality, and international co-operation against illegal content, for instance in the framework of and through consideration of a possible protocol to, the Council of Europe Convention on Cybercrime (ETS No. 185);

12.5. instruct its competent steering committee to analyse the feasibility of setting up common standards among the Council of Europe member states for commercial audio-visual content falling outside the revised convention, as well as for audio-visual content produced and shared publicly by users.

13. The Assembly invites the ministers participating in the Council of Europe's Ministerial Conference on the Media and New Communication Services (Reykjavik, May 2009) to express their continued support for:

13.1. regulating their audio-visual media policies nationally as part of their general cultural policies, while ensuring international co-operation and respecting the right to freedom of information through audio-visual media services under Article 10 of the European Convention on Human Rights and Article 19 of the United Nations International Covenant on Civil and Political Rights;

13.2. ensuring, through appropriate regulation and practice, the independence of their national regulators for the audio-visual media sector from undue party political, governmental or commercial influences;

13.3. preserving the principle of public-service broadcasting in the changing media environment and extending it further to audio-visual media services as a whole.

14. The Assembly invites member states of the International Telecommunication Union of the United Nations to:

14.1. advance international co-ordination of the technological standards necessary for the technological convergence of audio-visual media, while ensuring the right to freedom of information regardless of frontiers under Article 19 of the International Covenant on Civil and Political Rights;

14.2. prepare for the World Radiocommunication Conference in 2011 decisions on the allocation of radio-frequency spectrum following the analogue switch-off of broadcasting in many countries.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1882 (2009)⁹⁶

The promotion of Internet and online media services appropriate for minors

1. Twenty years after the idea of setting up the World Wide Web was conceived at the European Organization for Nuclear Research (CERN) in Geneva, the Parliamentary Assembly of the Council of Europe recalls the decision of the heads of state and government, taken at their 3rd Summit in Warsaw in 2005, that the Council of Europe should pursue work on children in the information society, in particular as regards developing their media literacy skills and ensuring their protection against harmful content.
2. The Internet has enhanced opportunities for information and communication in an unprecedented way. The new technological dimension in information and data exchanges does not alter the established standards of freedom of expression and information, which also include proportional legal restrictions necessary in a democratic society for the protection of minors.
3. The Internet constitutes an increasingly important part of our culture. It conveys almost all kinds of cultural items in a faster and more efficient way than any other medium and has an impact on society and its culture by reshaping relations and by introducing new forms of communication, especially among minors. If we want a strong cultural base, we should implement appropriate measures for the use of the Internet by younger generations.
4. Children and adolescents are increasingly able to broaden their social and cultural horizons beyond traditional geographic boundaries, which may lead to greater international understanding and co-operation among people. New communication technologies and services provide new opportunities for informal and formal education, creativity, social interaction and civic participation. These opportunities should be used for the benefit of children and adolescents. Social interaction online should not, however, substitute real life with so-called virtual reality, the psychological and social impact of which is yet unknown.
5. Certain content on the Internet can have negative effects on children and adolescents. For example, content depicting women and girls as objects, or limiting their depiction to nefarious gender stereotypes, can lead in certain cases to gender-based violence both in the virtual and the real world, including (cyber-)bullying, harassment, rape, and can even lead to committing massacres in schools.
6. Minors often have access to Internet and mobile telephone services without supervision by parents or teachers. Pictures and sound can be transmitted and accessed easily. The availability of child pornographic material is of utmost concern in this respect and requires further action by states, as well as Internet service providers and telecommunications industries.

⁹⁶ *Assembly debate* on 28 September 2009 (28th Sitting) (see [Doc. 11924](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Kozma). *Text adopted by the Assembly* on 28 September 2009 (28th Sitting).

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7. A rapidly growing number of minors share parts of their private life publicly on the Internet, while many firms offer information on, and profiling of, individuals based on such private information. Private life and intimate details thus enter the public domain for an unforeseeable time. Individuals, commercial enterprises, universities, employers and others are increasingly using the information available on the Internet about individuals in order to predetermine their contacts with them. States have the obligation, however, to protect privacy under Article 8 of the European Convention on Human Rights.

8. The continuing increase in advertising and business on the Internet and online media leads to more aggressive commercial practices which also target minors. With the global dimension of the Internet, ethics and legal norms may differ drastically. It would be most useful, therefore, to elaborate standards which are recognised Europe-wide and possibly beyond.

9. Traditional media regulation prohibits or restricts media content which is likely to impair the physical, mental or moral development of children and adolescents. The Assembly emphasises that parents can and should define for their children what they consider harmful or not. School directors and librarians, for example, have the obligation to restrict access to harmful content and services at school or in libraries.

10. In order to handle the challenges of the Internet at home, parents need the support of social institutions for families and schools. The state has the responsibility to raise awareness, provide guidance, including against gender stereotypes, and set up minimum standards. These minimum standards should include access restrictions to violent content, pornography, advertising for tobacco and alcoholic products and gambling. Such access restrictions could be achieved by filters employed by parents, teachers, librarians or others at their access devices, as well as by providers of content or services for minors.

11. Technical security is constantly increased with regard to computer networks. Firewalls and individual security settings of personal computers are refined in order to keep pace with the technical progress of those seeking to bypass security systems. The Assembly therefore believes that it will be helpful, especially with regard to minors, to develop secure and restricted computer networks – often referred to as Intranets, walled gardens or gated communities – which are accessible to an identifiable group of users only, typically require adherence to a code of conduct, fall under a clear set of legal rules and the jurisdiction of a given country and filter content harmful to minors. Technical security systems, however, cannot replace widely accessible and adequate education.

12. The Assembly emphasises that anyone who produces or makes available illegal content or services should be held liable by law. Illegal content and behaviour online have unfortunately grown over the past years and thus increased the risks for minors. This development is aggravated by the steady growth in Internet use, the growing amount of content produced by individual users instead of institutional content providers, the rapid expansion of online social networks – often referred to as Web 2.0 – and the technological progress in transmitting and accessing audiovisual content. In contrast, traditional media such as newspapers, radio and television have a declining audience among children and adolescents, hence reducing the effectiveness of traditional media policies for the protection of minors.

13. The Assembly recalls the Council of Europe's Convention on Cybercrime (ETS No. 185) of 2001, which sets up the legal framework for international co-operation against illegal behaviour and content on the Internet and other computer networks. It regrets that this

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convention has not been signed by Andorra, Monaco, Russia, San Marino and Turkey, and not yet been ratified by Austria, Azerbaijan, Belgium, the Czech Republic, Georgia, Greece, Ireland, Liechtenstein, Luxembourg, Malta, Montenegro, Poland, Portugal, Spain, Sweden, Switzerland and the United Kingdom as well as Canada, Japan and the Republic of South Africa, although these states have signed it.

14. The Assembly welcomes the European Union Safer Internet Programme 2009-2013, as well as voluntary initiatives for child safety by the Internet and online media industry and civil society. Internet hotlines, for example provided by members of the International Association of Internet Hotlines (INHOPE), are a helpful tool for children and parents to signal potentially harmful or illegal content and behaviour. Internet content which may be harmful to minors can be rated voluntarily by content providers in accordance with the standards set by the Internet Content Rating Association (ICRA), which subsequently allow for parental filtering of adult websites, for instance.

15. The Assembly calls on member and observer states' parliaments to:

15.1. assess the technological possibilities of increasing the safety of minors using the Internet and online media services, including mobile audiovisual telecommunications, in particular filtering devices and access restriction technologies;

15.2. initiate, together with the Internet industry and child protection organisations, public awareness campaigns targeted at the risks and opportunities for minors using Internet and online media services as well as the technical opportunities to restrict harmful content;

15.3. support the creation and marketing of services adequate for children and adolescents, including restricted networks described in paragraph 11 above, as well as free software for parental filtering of content that parents deem to be potentially harmful to their children;

15.4. promote, in co-operation with the Internet industry and child protection, equal opportunities and other civil society organisations, public quality standards and ratings of Internet and online media services adequate for minors, and ensure that access to adult content is effectively restricted by age-verification systems installed by the providers of such content;

15.5 encourage public or private educational institutions, museums, orchestras and other cultural institutions, as well as public service broadcasters, to provide Internet and online content for children and adolescents, thus making European cultural heritage more competitive and attractive for minors via the Internet and online media;

15.6. ratify without delay the Convention on Cybercrime and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189), as well as the [Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (CETS No. 201), if their governments have signed them.

16. The Assembly recommends that the Committee of Ministers, in accordance with the decision taken at the Warsaw Summit in 2005:

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16.1. assist member states in the implementation of this recommendation as well as the relevant Committee of Ministers recommendations aiming at a safer use of the Internet and online media, in particular by minors;

16.2. promote policies to make the Internet safer for children at the level of the European Dialogue on Internet Governance (EuroDIG) and the United Nations Internet Governance Forum and provide general support to EuroDIG, including secretariat support;

16.3. establish co-operation with the European Union Safer Internet Programme and seek additional funding for Council of Europe action through voluntary contributions by member states, as well as the private sector;

16.4. instruct its competent steering committee to analyse the potential psychological risks for children and adolescents using the Internet and online media excessively, in particular social online networks suggesting virtual reality such as Second Life, sites containing nefarious gender stereotypes, as well as violent online games and networks such as World of Warcraft, and to propose appropriate action by the Council of Europe and member states;

16.5. call on those states that have not yet signed the Convention on Cybercrime and its Additional Protocol to do so without delay, and initiate an international campaign aimed at accession to the Convention on Cybercrime also by states outside Europe, in order to cover better the worldwide map of cyberspace and avoid geographical loopholes;

16.6. initiate work towards ensuring greater legal responsibility of Internet service providers for illegal content, whether or not this originates from third parties or users; this work may require the drafting of a new additional protocol to the Convention on Cybercrime;

16.7. analyse the feasibility of drawing up legal standards for the regulation of online gambling and other commercial online activities, which may be harmful to minors and are typically restricted by national legislation when provided offline.

17. The Assembly calls on member states to create a national institution for the co-operation between the Internet and media industries, civil society organisations and government in order to develop and implement the regulation of Internet and online media services.

18. The Assembly invites the Standing Conference of European Ministers of Education to define policy guidelines for teaching media literacy to children, adolescents, parents and teachers with a focus on Internet and online media services, in order to detect opportunities and risks linked to such services.

19. The Assembly appeals to the online media industry to develop and apply codes of conduct with regard to privacy protection, equal opportunities, commercial activities targeted at minors and content potentially harmful to them. Internet hotlines and other complaint mechanisms against potentially illegal and harmful content or conduct should be maintained by Internet service and content providers. Commercial services provided in conformity with high ethical standards and high safety protection for minors will be in growing demand in an ever expanding Internet and online media market. _____

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1728 (2010)⁹⁷

Discrimination on the basis of sexual orientation and gender identity

1. The Parliamentary Assembly recalls that sexual orientation, which includes heterosexuality, bisexuality and homosexuality, is a profound part of the identity of each and every human being. The Assembly also recalls that homosexuality has been decriminalised in all member states of the Council of Europe. Gender identity refers to each person's deeply felt internal and individual experience of gender. A transgender person is someone whose gender identity does not correspond to the gender he or she was assigned at birth.
2. Under international law, all human beings are born free and equal in dignity and rights. Sexual orientation and gender identity are recognised as prohibited grounds for discrimination. According to the European Court of Human Rights, a difference in treatment is discriminatory if it has no objective and reasonable justification. Since sexual orientation is a most intimate aspect of an individual's private life, the Court considers that only particularly serious reasons may justify differences in treatment based on sexual orientation. In its 1999 judgment in *Lustig-Prean and Beckett v. the United Kingdom*, it emphasised that negative attitudes on the part of a heterosexual majority against a homosexual minority cannot amount to sufficient justification for discrimination, any more than similar negative attitudes towards those of a different sex, origin or colour.
3. Nevertheless, lesbian, gay, bisexual and transgender (LGBT) people, as well as human rights defenders working for the rights of LGBT people, face deeply rooted prejudices, hostility and widespread discrimination all over Europe. The lack of knowledge and understanding about sexual orientation and gender identity is a challenge to be addressed in most Council of Europe member states since it results in an extensive range of human rights violations, affecting the lives of millions of people. Major concerns include physical and verbal violence (hate crimes and hate speech), undue restrictions on freedom of expression, freedom of assembly and association, violations of the right to respect for private and family life, violations of rights to education, work and health, as well as regular stigmatisation. As a consequence, many LGBT people across Europe live in fear and have to conceal their sexual orientation or gender identity.
4. Transgender persons face a cycle of discrimination and deprivation of their rights in many Council of Europe member states due to discriminatory attitudes and to obstacles in obtaining gender reassignment treatment and legal recognition of the new gender. One consequence is the relatively high suicide rate among transgender people.
5. Discrimination on the basis of sexual orientation and gender identity can be magnified on the basis of sex and gender, with lesbian, bisexual and transgender women, in particular,

⁹⁷ *Assembly debate* on 29 April 2010 (17th Sitting) (see [Doc. 12185](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gross; and [Doc. 12197](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Memecan). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting). See also [Recommendation 1915](#) (2010).

running an increased risk of violence. The LGBT community itself is also not immune to sex discrimination.

6. The Assembly is particularly concerned by the violation of the rights to freedom of assembly and freedom of expression for LGBT persons in a number of Council of Europe member states since these rights are pillars of democracy. This has been illustrated by the banning or attempted banning of peaceful rallies or demonstrations of LGBT persons and their supporters and the overt or tacit support some politicians have given to violent counter-demonstrations.

7. Hate speech by certain political, religious and other civil society leaders, and hate speech in the media and on the Internet are also of particular concern. The Assembly stresses that it is the paramount duty of all public authorities not only to protect the rights enshrined in human rights instruments in a practical and effective manner, but also to refrain from speech likely to legitimise and fuel discrimination or hatred based on intolerance. The boundary between hate speech inciting to crime and freedom of expression is to be determined in accordance with the case law of the European Court of Human Rights.

8. Homophobia and transphobia have particularly serious consequences for young LGBT people. They face widespread bullying, sometimes unhelpful or hostile teachers and curricula which either ignore LGBT issues or perpetuate homophobic or transphobic attitudes. A combination of discriminatory attitudes in society and rejection by the family can be very damaging for the mental health of young LGBT people, as evidenced by suicide rates which are much higher than those in the wider youth population.

9. It is important not to criticise the perceived or declared sexual orientation of young people, particularly of those aged under 18 still attending school, and to recognise that any exploitation of their perceived or declared sexual identity, or any humiliation or degrading treatment on that basis, can be both wrong in itself and potentially harmful to the well-being and personal growth of these young people both at that stage and later in life.

10. The denial of rights to de facto “LGBT families” in many member states must also be addressed, including through the legal recognition and protection of these families.

11. On the other hand, the Assembly welcomes the fact that, in some cases, political and judicial authorities have taken a number of measures against discrimination affecting LGBT persons.

12. In this context, the Assembly welcomes the work of the Committee of Ministers, which adopted Recommendation CM/Rec(2010)5 to member states on measures to combat discrimination on grounds of sexual orientation or gender identity on 31 March 2010, the high priority given by the Council of Europe Commissioner for Human Rights to this issue and the recent reports of the European Union Fundamental Rights Agency on homophobia and discrimination on grounds of sexual orientation in European Union member states.

13. Recalling its [Recommendations 1474](#) (2000) on the situation of lesbians and gays in Council of Europe member states and 1117 (1989) on the condition of transsexuals, the Assembly again condemns the various forms of discrimination suffered by LGBT people in Council of Europe member states. LGBT people should not have to fear being stigmatised and victimised, either in the public or private spheres.

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14. The Assembly considers that the Council of Europe has the duty to promote a clear message of respect and non-discrimination so that everybody can live in dignity in all its member states.

15. The eradication of homophobia and transphobia also requires political will in member states to implement a consistent human rights approach and to embark on a wide range of initiatives. In this respect, the Assembly stresses the specific responsibility of parliamentarians in initiating and supporting changes in legislation and policies in Council of Europe member states.

16. Consequently, the Assembly calls on member states to address these issues and in particular to:

16.1. ensure that the fundamental rights of LGBT people, including freedom of expression and freedom of assembly and association, are respected, in line with international human rights standards;

16.2. provide legal remedies to victims and put an end to impunity for those who violate the fundamental rights of LGBT people, in particular their right to life and security;

16.3. recognise that lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages) and provide protection commensurate with the increased risk;

16.4. condemn hate speech and discriminatory statements and effectively protect LGBT people from such statements while respecting the right to freedom of expression, in accordance with the European Convention on Human Rights and the case law of the European Court of Human Rights;

16.5. adopt and implement anti-discrimination legislation which includes sexual orientation and gender identity among the prohibited grounds for discrimination, as well as sanctions for infringements;

16.6. revoke legislative provisions which are not in conformity with the case law of the European Court of Human Rights;

16.7. ensure that discrimination on the basis of sexual orientation and gender identity can be effectively reported to judicial and non-judicial bodies and ensure that national human rights structures and equality bodies effectively address these issues;

16.8. sign and ratify Protocol No. 12 to the European Convention on Human Rights (ETS No. 177) providing for a general prohibition of discrimination;

16.9. ensure legal recognition of same-sex partnerships when national legislation envisages such recognition, as already recommended by the Assembly in 2000, by providing for:

16.9.1. the same pecuniary rights and obligations as those pertaining to different-sex couples;

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16.9.2. "next of kin" status;

16.9.3. measures to ensure that, where one partner in a same-sex relationship is foreign, this partner is accorded the same residence rights as would apply if she or he were in a heterosexual relationship;

16.9.4. recognition of provisions with similar effects adopted by other member states;

16.10. provide the possibility for joint parental responsibility of each partner's children, bearing in mind the interests of the children;

16.11. address the specific discrimination and human rights violations faced by transgender persons and, in particular, ensure in legislation and in practice their right to:

16.11.1. safety;

16.11.2. official documents that reflect an individual's preferred gender identity, without any prior obligation to undergo sterilisation or other medical procedures such as sex reassignment surgery and hormonal therapy;

16.11.3. access to gender reassignment treatment and equal treatment in health care areas;

16.11.4. equal access to work, goods, services, housing and other facilities, without prejudice;

16.11.5. relationship recognition, in accordance with the case law of the European Court of Human Rights;

16.12. introduce or develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of LGBT persons, in particular for public officials, the judiciary, law-enforcement bodies and the armed forces, as well as educational establishments, the media, the medical profession and sporting circles;

16.13. promote research on discrimination on the basis of sexual orientation and gender identity, establish and/or maintain regular contacts with human rights defenders working on the rights of LGBT persons and consult them on issues relating to such discrimination;

16.14. encourage dialogue between national human rights institutions, equality bodies, human rights defenders working for the rights of LGBT people and religious institutions, based on mutual respect, in order to facilitate public debates and reforms on issues concerning LGBT people;

16.15. recognise persecution of LGBT persons as a ground for granting asylum and implement the 2008 Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity of the Office of the United Nations High Commissioner for Refugees;

16.16. fully implement in their law and practice the recommendation of the Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity.

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17. Member states may grant exemptions to religious institutions and organisations when such institutions and organisations are either engaging in religious activities or when legal requirements conflict with tenets of religious belief and doctrine, or would require such institutions and organisations to forfeit any portion of their religious autonomy, and if such exemptions are compatible with the European Convention on Human Rights, as interpreted by the European Court of Human Rights.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1915 (2010)⁹⁸

Discrimination on the basis of sexual orientation and gender identity

1. Referring to its [Resolution 1728](#) (2010), the Parliamentary Assembly commends the Committee of Ministers for its recommendation on measures to combat discrimination based on sexual orientation or gender identity (CM/Rec(2010)5).

2. The Assembly considers that the Council of Europe has the duty to promote a clear message of respect and non-discrimination. In addition, the Council of Europe is particularly well placed to develop human rights standards, offer expertise and advice and serve as a forum for discussion on issues related to discrimination on the basis of sexual orientation and gender identity.

3. Consequently, the Assembly recommends that the Committee of Ministers:

3.1. monitor the implementation of its recent recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity;

3.2. define further Council of Europe action in this field, in particular:

3.2.1. instruct a relevant Council of Europe body to review and address issues related to discrimination on the basis of sexual orientation and gender identity in member states, and provide it with the necessary resources to carry out this task;

3.2.2. further mainstream issues relating to discrimination on the basis of sexual orientation and gender identity in its activities, and disseminate the case law of the European Court of Human Rights on sexual orientation and gender identity, including through publications and training materials;

3.2.3. in the framework of its work on children and violence, address in particular the issue of homophobic and transphobic bullying at school;

3.2.4. further develop anti-discrimination and awareness-raising programmes fostering tolerance, respect and understanding of lesbian, gay, bisexual and transgender people and, in particular, organise a campaign to combat discrimination on the basis of sexual orientation and gender identity;

3.3. instruct the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to include in the future Council of Europe convention the severest and most widespread forms of violence against women, in accordance with Assembly [Recommendation 1847](#) (2008) on combating violence against women: towards a

⁹⁸ *Assembly debate* on 29 April 2010 (17th Sitting) (see [Doc. 12185](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gross; and [Doc. 12197](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Memecan). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting).

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Council of Europe convention, and to recognise that lesbian, bisexual and transgender women face an increased risk of gender-based violence (in particular rape, sexual violence and harassment, as well as forced marriages) and provide protection commensurate with this increased risk.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1729 (2010)⁹⁹

Protection of “whistle-blowers”

1. The Parliamentary Assembly recognises the importance of whistle-blowers – concerned individuals who sound an alarm in order to stop wrongdoings that place fellow human beings at risk – as their actions provide an opportunity to strengthen accountability and bolster the fight against corruption and mismanagement, both in the public and private sectors.
2. Potential whistle-blowers are often discouraged by the fear of reprisals, or the lack of follow-up given to their warnings, to the detriment of the public interest in effective management and the accountability of public affairs and private business.
3. A series of avoidable disasters has prompted the United Kingdom to enact forward-looking legislation to protect whistle-blowers who speak up in the public interest. Similar legislation has been in force in the United States of America for many years, with globally satisfactory results.
4. Most member states of the Council of Europe have no comprehensive laws for the protection of whistle-blowers, though many have rules covering different aspects of whistle-blowing in their laws governing employment relations, criminal procedures, media and specific anti-corruption measures.
5. Whistle-blowing has always required courage and determination and whistle-blowers should at least be given a fighting chance to ensure that their warnings are heard without risking their livelihoods and those of their families. Relevant legislation must first and foremost provide a safe alternative to silence and not offer potential whistle-blowers a “cardboard shield” that would entrap them by giving them a false sense of security.
6. The Assembly invites all member states to review their legislation concerning the protection of whistle-blowers, keeping in mind the following guiding principles:
 - 6.1. Whistle-blowing legislation should be comprehensive:
 - 6.1.1. the definition of protected disclosures shall include all bona fide warnings against various types of unlawful acts, including all serious human rights violations which affect or threaten the life, health, liberty and any other legitimate interests of individuals as subjects of public administration or taxpayers, or as shareholders, employees or customers of private companies;
 - 6.1.2. the legislation should therefore cover both public and private sector whistle-blowers, including members of the armed forces and special services, and

⁹⁹ *Assembly debate* on 29 April 2010 (17th Sitting) (see [Doc. 12006](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting). See also [Recommendation 1916](#) (2010).

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6.1.3. it should codify relevant issues in the following areas of law:

6.1.3.1. employment law – in particular protection against unfair dismissals and other forms of employment-related retaliation;

6.1.3.2. criminal law and procedure – in particular protection against criminal prosecution for defamation or breach of official or business secrecy, and protection of witnesses;

6.1.3.3. media law – in particular protection of journalistic sources;

6.1.3.4. specific anti-corruption measures such as those foreseen in the Council of Europe Civil Law Convention on Corruption (ETS No. 174).

6.2. Whistle-blowing legislation should focus on providing a safe alternative to silence.

6.2.1. It should give appropriate incentives to government and corporate decision makers to put into place internal whistle-blowing procedures that will ensure that:

6.2.1.1. disclosures pertaining to possible problems are properly investigated and relevant information reaches senior management in good time, bypassing the normal hierarchy, where necessary;

6.2.1.2. the identity of the whistle-blower is only disclosed with his or her consent, or in order to avert serious and imminent threats to the public interest.

6.2.2. This legislation should protect anyone who, in good faith, makes use of existing internal whistle-blowing channels from any form of retaliation (unfair dismissal, harassment or any other punitive or discriminatory treatment).

6.2.3. Where internal channels either do not exist, have not functioned properly or could reasonably be expected not to function properly given the nature of the problem raised by the whistle-blower, external whistle-blowing, including through the media, should likewise be protected.

6.2.4. Any whistle-blower shall be considered as having acted in good faith provided he or she had reasonable grounds to believe that the information disclosed was true, even if it later turns out that this was not the case, and provided he or she did not pursue any unlawful or unethical objectives.

6.2.5. Relevant legislation should afford bona fide whistle-blowers reliable protection against any form of retaliation through an enforcement mechanism to investigate the whistle-blower's complaint and seek corrective action from the employer, including interim relief pending a full hearing and appropriate financial compensation if the effects of the retaliatory measures cannot reasonably be undone.

6.2.6. It should also create a risk for those committing acts of retaliation by exposing them to counter-claims from the victimised whistle-blower which could have them removed from office or otherwise sanctioned.

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6.2.7. Whistle-blowing schemes shall also provide for appropriate protection against accusations made in bad faith.

6.3. As regards the burden of proof, it shall be up to the employer to establish beyond reasonable doubt that any measures taken to the detriment of a whistle-blower were motivated by reasons other than the action of whistle-blowing.

6.4. The implementation and impact of relevant legislation on the effective protection of whistle-blowers should be monitored and evaluated at regular intervals by independent bodies.

7. The Assembly stresses that the necessary legislative improvements must be accompanied by a positive evolution of the cultural attitude towards whistle-blowing, which must be freed from its previous association with disloyalty or betrayal.

8. It recognises the important role of non-governmental organisations in contributing to the positive evolution of the general attitude towards whistle-blowing and in providing counselling to employers wishing to set up internal whistle-blowing procedures, to potential whistle-blowers and to victims of retaliation.

9. In order to set a good example, the Assembly invites the Council of Europe to put into place a strong internal whistle-blowing procedure covering the Organisation itself and all its partial agreements.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1916 (2010)¹⁰⁰

Protection of “whistle-blowers”

1. The Parliamentary Assembly, referring to its [Resolution 1729](#) (2010) on the protection of “whistle-blowers”, stresses the importance of whistle-blowing as a tool to increase accountability and strengthen the fight against corruption and mismanagement.
2. It recommends that the Committee of Ministers:
 - 2.1. draw up a set of guidelines for the protection of whistle-blowers, taking into account the guiding principles stipulated by the Assembly in its [Resolution 1729](#) (2010);
 - 2.2. invite member and observer states of the Council of Europe to examine their existing legislation and its implementation with a view to assessing whether it is in conformity with these guidelines;
 - 2.3. consider drafting a framework convention on the protection of whistle-blowers.
3. It further invites the Committee of Ministers to instruct the Secretary General of the Council of Europe to:
 - 3.1. organise a European conference on the protection of whistle-blowers;
 - 3.2. draw up a proposal for a strong internal whistle-blowing mechanism covering the Council of Europe and all its partial agreements.

¹⁰⁰ *Assembly debate* on 29 April 2010 (17th Sitting) (see [Doc. 12006](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Omtzigt). *Text adopted by the Assembly* on 29 April 2010 (17th Sitting).

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1740 (2010)¹⁰¹

The situation of Roma in Europe and relevant activities of the Council of Europe

1. The Roma constitute the largest minority in Europe and are present in virtually all Council of Europe member states. All member states – without exception – have the moral and legal duty to make concrete and sustained efforts to improve the situation of Roma and to ensure the full respect of their fundamental rights.
2. The Parliamentary Assembly is shocked by recent outrages against Roma in several Council of Europe member states, reflecting an increasing trend in Europe towards anti-Gypsyism of the worst kind.
3. Taking advantage of the financial crisis, extremist groups capitalise on fears deriving from the equation made between Roma and criminals, choosing a scapegoat that presents an easy target, as Roma are among the most vulnerable groups of all.
4. This situation is reminiscent of the darkest hours in Europe's history. The Council of Europe was founded precisely to prevent those dark hours from repeating themselves. The European Court of Human Rights regularly condemns states in which Roma have suffered from abuse or discrimination.
5. Besides the appalling rise in violence against Roma, the Assembly observes that the process of Roma integration has not reached its objectives over the last twenty years.
6. Assembly [Recommendation 1557](#) (2002) on the legal situation of Roma in Europe already stressed that the aims set out in its Recommendation 1203 (1993) on Gypsies in Europe had been achieved only to a limited extent. The Assembly now notes with great concern that the present situation is virtually unchanged, if not worse. This is a shamefully poor record considering the amount of paper – and money – dedicated to improving the situation of Roma at all levels.
7. The Roma people are still regularly victims of intolerance, discrimination and rejection based on deep-seated prejudices in many Council of Europe member states. The situation of Roma with regard to education, employment, housing, health care and political participation is far from satisfactory. The Assembly is convinced that effective and sustainable access to education and decent housing are the first decisive steps towards breaking the vicious circle of discrimination in which most of the Roma are locked.
8. The Assembly therefore urges all Council of Europe member states to face up to their responsibilities and to tackle the issue of the situation of Roma seriously and sustainably.

¹⁰¹ *Assembly debate* on 22 June 2010 (22nd Sitting) (see [Doc. 12174](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Berényi; [Doc. 12207](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Memecan; and [Doc. 12236](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Kovács). *Text adopted by the Assembly* on 22 June 2010 (22nd Sitting). See also [Recommendation 1924](#) (2010).

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9. The Assembly notes that many member states have already adopted national strategies for improving the situation and the integration of Roma. This is a positive but insufficient step. Such action plans need adequate and long-term funding as well as efficient co-ordination. Last but not least, the implementation of such action plans must be ensured also at local and regional levels.

10. The Assembly stresses that many initiatives remain too isolated and too limited – therefore offering only partial responses. The Assembly calls on member states to adopt national policies based on an integrated approach. Relevant ministries and other players must act in a concerted way, as the problems faced by the Roma are inextricably linked.

11. The Assembly also notes that the concrete results of a wide range of measures – including the national action plans – cannot be properly evaluated because many governments refuse to collect statistics based on ethnicity. In these circumstances, it seems to be impossible to identify successful measures or to improve the less successful ones.

12. Both the Advisory Committee on the Framework Convention for the Protection of National Minorities and the European Commission against Racism and Intolerance (ECRI) consider that the collection of data based on ethnicity is a valuable tool for evaluating the impact of minority policies and monitoring discrimination. Such data should, in addition, be gender disaggregated.

13. The Assembly notes with concern that Roma remain extremely under-represented in elected bodies and that their participation in public and political life is limited. Considering that Roma representation and involvement are just as important as official action, the Assembly urges the Roma community to use every opportunity to be as active as possible.

14. Finally, the Assembly notes a new trend within member states to consider that the Roma issue falls under the responsibility of international and European organisations. Whilst convinced of the importance of the role of international organisations – and especially of the Council of Europe – in this field, the Assembly reiterates that the main responsibility lies with the member states. There should be no shirking of responsibility: education, employment, social inclusion, health services and housing are almost entirely national responsibilities.

15. Therefore, the Assembly urges member states to:

15.1. treat the Roma issue not only from the perspective of a socially disadvantaged group, but from the perspective of a national minority entitled to enjoy the rights enshrined in the Framework Convention for the Protection of National Minorities (ETS No. 157) and in the European Convention on Human Rights (ETS No. 5), as interpreted by the European Court of Human Rights;

15.2. protect Roma from discrimination including, where not in place already, through the adoption, implementation and regular monitoring of comprehensive anti-discrimination legislation as well as measures to increase awareness among Roma of such legislation and their access to legal remedies when their rights have been violated;

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15.3. adopt sustainable national action plans and strategies which follow an integrated approach in conformity with Committee of Ministers Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe;

15.4. ensure that each ministry and decentralised or local government institution has effectively functioning structures capable of implementing these plans and strategies and that they act in a concerted way;

15.5. put in place means of supervision of the way local authorities implement parts of national action plans and strategies that fall under their competence and sanction any failure to do so;

15.6. enhance political participation and representation of Roma both at national and local level, inter alia, by providing Roma with the necessary identity documents, removing institutional discrimination and legal barriers and/or by allocating reserved seats to Roma representatives in parliament as well as in local and regional elected bodies;

15.7. collect reliable statistical data – including ethnic and gender-disaggregated data – with the necessary strict safeguards to avoid any abuse, in line with ECRI's recommendations and the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, and to analyse these data carefully in order to assess the results and to enhance the effectiveness of the existing plans and programmes;

15.8. promote a positive image of diversity and address stereotypes and prejudices, including those linked to gender, using for instance the Dosta! campaign developed by the Council of Europe; strongly condemn and effectively prosecute acts of anti-Gypsyism; respond more effectively to, and invest greater resources in, combating racially motivated crime against Roma; react strongly to racist discourse by public officials; develop policies and training programmes to combat anti-Roma prejudices amongst law enforcement officials; and tackle hate speech vis-à-vis Roma, whether occurring in the media, politics or in civil society;

15.9. base all action intended to improve the situation of Roma, at every stage of the process, on prior and genuine consultation and co-operation with the Roma themselves;

15.10. consider taking positive action in order to combat discrimination and to improve the opportunities offered to Roma, in particular in the fields of education and employment;

15.11. promote the use and development of Roma culture, language and lifestyle by promoting, for instance, the Roma Cultural Route developed by the Council of Europe;

15.12. take special measures to protect Roma asylum seekers who have fled racist violence, to ensure that citizens of the European Union (EU) have the possibility to rebut the presumption of safety that applies in respect of EU member states, and to avoid returning Roma to Kosovo until the Office of the United Nations High Commissioner for Refugees (UNHCR) has confirmed that the situation there has sufficiently improved in terms of security and access to social rights.

16. As regards education, the Assembly urges member states to:

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16.1. fully implement Committee of Ministers Recommendations No. R (2000) 4 on the education of Roma/Gypsy children in Europe and CM/Rec(2009)4 on the education of Roma and Travellers in Europe;

16.2. dismantle segregated schooling by ensuring the effective and non-segregated access of Roma to mainstream education and develop their pre-school enrolment while expecting the Roma to accept that they should fulfil their obligations with regard to education;

16.3. train teachers adequately, increase the number of Roma teachers and enrol – as appropriate – Roma school mediators;

16.4. ensure that Roma girls are given equal opportunities in education, in particular secondary education, which too many Roma girls are obliged to drop out of because of parental and/or community pressure linked to early marriage, teenage pregnancies, and household and family responsibilities;

16.5. where appropriate – and where there is a demand within the Roma minority – assist them institutionally and legally to set up minority schools based on their own language and identity;

16.6. increase the number of Roma students in secondary schools and universities, where appropriate by allocating places for Roma, in particular Roma girls;

16.7. undertake, in conjunction with civil society organisations, gender-sensitive studies on the situation of children from minority groups in the school system, by compiling statistics on their attendance, completion and drop-out rates, results achieved and progress made, as recommended in ECRI General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.

17. As regards housing, the Assembly urges member states to:

17.1. fully implement Committee of Ministers Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe and seriously take into consideration the opinion of the Committee of Experts on Roma and Travellers (MG-S-ROM), adopted in October 2009, on the housing situation of Roma and Travellers in Europe;

17.2. implement fully the Council of Europe's Commissioner for Human Rights 2009 recommendation on the implementation of the right to housing and ensure that Roma's living conditions meet the criteria of adequate housing;

17.3. unequivocally condemn all attacks on Roma living areas, settlements and camps, and prosecute those responsible for them;

17.4. as a priority, address the problem of domestic violence within the Roma community, in particular violence against women and girls, as well as the human rights violation constituted by forced and child marriages in accordance with Assembly [Resolution 1468](#) (2005) on the subject;

17.5. take urgent measures to prevent further forced evictions of Roma camps and settlements and – in cases of unavoidable evictions – ensure that such evictions are carried out only when

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all procedural protections required under international human rights law are in place, including the provision of adequate alternative housing, adequate compensation for expropriation and losses of moveable possessions damaged in the process of eviction; in the absence of such procedural protections, member states should introduce legislation on evictions, providing safeguards and remedies in accordance with international standards.

18. As regards employment, the Assembly urges member states to:

18.1. fully implement Committee of Ministers Recommendation Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe;

18.2. develop employment policies for the Roma population by adopting comprehensive national employment programmes and monitoring their implementation at local level;

18.3. while so doing, readjust employment policies to the needs of the local Roma communities and the local markets;

18.4. build upon existing good practices such as the creation of Roma employment mediators, or the development of special internship programmes for Roma in the civil service in order to increase Roma representation within the state and local administration.

19. As regards health care, the Assembly urges member states to:

19.1. fully implement Committee of Ministers Recommendation Rec(2006)10 on better access to health care for Roma and Travellers in Europe;

19.2. enhance Roma access to health services, inter alia by building upon existing good practices such as campaigns to ensure immunisation for Roma children, the training of Roma health mediators and the setting-up of mobile clinics;

19.3. in particular, provide on a regular basis outreach services for Roma women and girls who otherwise have little access to medical services, pay special attention to gynaecological and maternal health, and ensure the availability of continuing health education (in particular sexual and reproductive health education) taking into account social and cultural factors influencing the health of Roma women;

19.4. ban and punish forced sterilisation and provide for compensation for all victims.

20. The Assembly also urges in particular the relevant authorities to take immediate action and to relocate as a matter of urgency the inhabitants of the lead-contaminated camp of Mitrovicë/Mitrovica (Kosovo¹⁰²).

21. In addition, the Assembly supports the strengthening and development of the European Roma and Travellers Forum (ERTF) – a unique Europe-wide body – in order to enhance both the representation and the co-ordination of Roma at European level.

22. Furthermore, the Assembly strongly encourages the national delegations to the Assembly to include members of the Roma minority if they are represented in their parliament.

¹⁰²² This reference should be understood in full compliance with United Nations Security Council [Resolution 1244](#) (1999).

23. Roma are currently not represented at all in the Assembly. It therefore resolves to propose a co-operation agreement between the Assembly and the ERTF on the basis of which representatives of the ERTF would have regular contact with the relevant committees of the Assembly and could attend their meetings.

24. The Assembly calls on the Roma community and its representatives to fight discrimination and violence against Roma women and girls in their own community. In particular, the problems of domestic violence and of forced and child marriages, which constitute a violation of human rights, need to be addressed also by the Roma community itself. Custom and tradition cannot be used as an excuse for human rights violations, but should instead be changed. The Assembly calls on member states to support Romani women activists who engage in debates within their community about the tensions between the preservation of a Romani identity and the violation of women's rights including through early and forced marriages.

25. Finally, given the urgency of improving the situation of Roma in a wide range of areas, the Assembly decides to come back to this question in more depth in due course.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1924 (2010)¹⁰³

The situation of Roma in Europe and relevant activities of the Council of Europe

1. The Parliamentary Assembly, referring to its [Resolution 1740](#) (2010) on the situation of Roma in Europe and relevant activities of the Council of Europe, underlines that the situation of Roma is a general problem that affects every Council of Europe member state. It considers the issue to be crucial enough for the Council of Europe to increase its involvement in this field by reinforcing the visibility of its existing activities and so avoiding its acquis being diluted or misinterpreted.
2. The Council of Europe, which has been a pioneer in promoting the protection of Roma, should renew its impetus in its long-standing commitment to ensure greater protection and social integration of Roma.
3. While welcoming the fact that a thematic debate was held during the Spanish Chair (November 2008-May 2009), the Assembly invites the Committee of Ministers to:
 - 3.1. keep the issue of the situation of Roma in Europe high on its agenda;
 - 3.2. when dealing with Roma issues, pay special attention to the situation of Roma women and girls, who face double, if not triple discrimination: as Roma, discrimination by the wider community, and as women and girls, discrimination by both the wider and their own community;
 - 3.3. allocate a structural post and an office for the Council of Europe Co-ordinator for activities concerning Roma and Travellers, to enable her/him to play her/his role as an adviser to the Secretary General, as well as to efficiently co-ordinate the Organisation's activities;
 - 3.4. set up a thematic co-ordinator within the Committee of Ministers, following the successful experience of the Thematic Co-ordinator on Children;
 - 3.5. enhance its co-operation in this respect with other international organisations, in particular in the framework of the Informal Contact Group of International Organisations and Institutions dealing with issues concerning Roma, Sinti and Travellers;
 - 3.6. enhance efforts aimed at the speedy ratification, by member states which have not yet done so, of the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter for Regional or Minority Languages (ETS No. 148) and Protocol No. 12 to the European Convention on Human Rights (ETS No. 177).

¹⁰³ *Assembly debate* on 22 June 2010 (22nd Sitting) (see [Doc. 12174](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Berényi; [Doc. 12207](#), opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Memecan; and [Doc. 12236](#), opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Kovács). *Text adopted by the Assembly* on 22 June 2010 (22nd Sitting).

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Resolution 1751 (2010)¹⁰⁴

Combating sexist stereotypes in the media

1. The Parliamentary Assembly notes and deplors the fact that women are the victims of sexist stereotypes in the media. On the one hand, they are under-represented, if not invisible, in the media. On the other hand, the persistence of sexist stereotypes in the media – confining women and men to the roles traditionally assigned by society, that is, women at home, men in the professional and political world, women as victims or as sexual objects, men as competent and powerful leaders or as sexually driven – is a barrier to gender equality.
2. The sexist stereotypes conveyed vary from humour and clichés in the traditional media to incitement to gender-based hatred and violence on the Internet. Sexist stereotypes are too frequently trivialised and tolerated under the banner of freedom of expression. Furthermore, these stereotypes are often subtly conveyed by the media which reproduce the attitudes and opinions seen as the norm in societies where gender equality is far from reality. Accordingly, all too often, court action cannot be taken against sexist stereotypes nor can they be penalised by regulatory or self-regulatory authorities, except in cases of the most serious violations of human dignity.
3. Nonetheless, the impact of sexist stereotypes in the media on the formation of public opinion, especially among young people, is disastrous: these stereotypes perpetuate a simplistic, immutable and caricatured image of women and men, legitimising everyday sexism and discriminatory practices, and they may facilitate or legitimise the use of gender-based violence. As such, sexist stereotypes are a means of discrimination.
4. The media, a vital constituent of democracy, have a particular responsibility in this field to promote respect for human dignity, the fight against all forms of discrimination, and equality between women and men. Sexism, like racism and other forms of discrimination, has no place in the media. The Assembly reasserts its commitment to upholding the principles of human dignity and non-discrimination guaranteed in the European Convention on Human Rights (ETS No. 5). It further highlights the positive role that the media can play in promoting gender equality, referring in this connection to Recommendation No. R (84) 17 of the Committee of Ministers to member states on equality between women and men in the media.
5. Moreover, education and training are absolutely essential in order to learn how to recognise, be aware of and overcome stereotypes. It is therefore crucial to inform children, from an early age, about combating discrimination and promoting gender equality.
6. The Assembly calls on member states to strengthen training and education activities and to:
 - 6.1. promote and launch awareness-raising campaigns;

¹⁰⁴ *Assembly debate* on 25 June 2010 (27th Sitting) (see [Doc. 12267](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Stump). *Text adopted by the Assembly* on 25 June 2010 (27th Sitting).

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6.2. include, in gender equality legislation, provisions aimed at combating sexist stereotypes;

6.3. promote the introduction and/or effective functioning of regulatory or self-regulatory media authorities to guarantee respect for human dignity, to contribute to the fight against discrimination, including gender-based discrimination, and to promote not only diversity but also equality between women and men;

6.4. define, in dialogue and consultation with public and private partners in the profession, codes of good practice which proscribe sexist practices and images, promote the balanced presence of women and men in the media and include the gender perspective;

6.5. introduce quotas or other positive measures in the public media, together with objectives to improve the participation and representation of women;

6.6. put in place structures to monitor and/or strengthen self-regulatory mechanisms for reporting on stereotyped portrayals, drawing, where they prove effective, on the mechanisms for denouncing sexist advertising;

6.7. promote the introduction of a European system of monitoring and exchange of best practices;

6.8. place an emphasis on programmes aimed at young people to combat the stereotyped images of women and men and the sexist attitudes found in society;

6.9. promote, in schools, teaching that enables students to interpret the media and decode sexist stereotypes, and education concerning gender equality, in line with Recommendation CM/Rec(2007)13 of the Committee of Ministers to member states on gender mainstreaming in education and the Assembly's [Resolutions 1557](#) (2007) on the image of women in advertising and 1669 (2009) on the rights of today's girls: the rights of tomorrow's women.

7. The Assembly furthermore calls on national parliaments to:

7.1. combat sexist stereotypes in the media by adopting legal measures to penalise sexist remarks or insults, incitement to gender-based hatred or violence and defamation of an individual or group of individuals on the grounds of their sex;

7.2. enable individual victims of gender-based discrimination, and also non-governmental organisations active in the field of gender-based violence and discrimination, to seize the courts or competent regulatory and self-regulatory authorities in order to challenge incitement to gender-based hatred or violence and defamation of an individual or group of individuals on the grounds of their sex;

7.3. enable the public prosecution service to take action, ex officio, against incitement to gender-based hatred or violence and defamation of an individual or group of individuals on the grounds of their sex;

7.4. encourage members of parliament to adopt non-sexist language and not to resort to sexist stereotypes in the course of their parliamentary activities;

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7.5. urge members of parliament to demand that female candidates and elected representatives have the same access to the media as their male counterparts.

8. The Assembly calls on member states to encourage measures to promote the visibility and importance of women in the media, including:

8.1. the systematic analysis, both quantitative and qualitative, of the status and role of women in the media;

8.2. the establishment of lists of female experts and consultants who could be called on by the media;

8.3. the creation of competitions and prizes to reward those media which promote the balanced representation and participation of women and men;

8.4. the setting up of think-tanks focusing on the promotion of equality between women and men, whose activities may be taken into account by media regulation bodies.

9. The Assembly calls on the media to:

9.1. raise journalists' awareness and train them to include the gender equality dimension in journalism and in the media;

9.2. promote the gender equality dimension in regulatory and self-regulatory authorities and, where appropriate, implement the recommendations contained in codes of good practice;

9.3. favour a more balanced representation of women in the media and a non-stereotyped representation of women and men, thereby helping to overcome obstacles to gender equality.

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1931 (2010)¹⁰⁵

Combating sexist stereotypes in the media

1. Referring to its [Resolution 1751](#) (2010) on combating sexist stereotypes in the media, the Parliamentary Assembly deplors the persistence of sexist stereotypes in the media, which impedes the achievement of de facto gender equality.
2. The Assembly welcomes the fact that the question of “Combating stereotypes: the role of education and the media” was discussed at the 7th Council of Europe Conference of Ministers responsible for Equality between Women and Men in Baku (Azerbaijan) on 24 and 25 May 2010. The Assembly believes that education and the media have a key role in combating sexist stereotypes. At the same time, the Assembly stresses that the promotion of equality between women and men is not limited to upholding the principle of non-discrimination, but must involve positive obligations for states to guarantee the right to gender equality.
3. Accordingly, the Assembly invites the Committee of Ministers to:
 - 3.1. draw up, in conjunction with the relevant steering committees:
 - 3.1.1. a European code of good practice for member states to combat sexist stereotypes in the media;
 - 3.1.2. a handbook for the media on strategies to combat gender stereotypes in the media, drawing on existing best practices;
 - 3.2. incorporate, in the future Council of Europe convention on preventing and combating violence against women and domestic violence, the fight against gender stereotypes as a means of preventing gender-based violence and promoting the effective achievement of equality between women and men;
 - 3.3. alert its subordinate bodies to the need to use non-sexist language, in accordance with Recommendation No. R (90) 4 of the Committee of Ministers to member states on the elimination of sexism from language.
4. Referring to its [Recommendation 1798](#) (2007) on respect for the principle of gender equality in civil law, the Assembly reiterates its invitation to the Committee of Ministers to draft a new protocol to the European Convention on Human Rights (ETS No. 5), establishing gender equality as a fundamental human right.

¹⁰⁵ *Assembly debate* on 25 June 2010 (27th Sitting) (see [Doc. 12267](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Stump). *Text adopted by the Assembly* on 25 June 2010 (27th Sitting).

PARLIAMENTARY ASSEMBLY
OF THE
COUNCIL OF EUROPE

Recommendation 1950 (2011)¹⁰⁶

The protection of journalists' sources

1. The Parliamentary Assembly recalls that the free exercise of journalism is enshrined in the right to freedom of expression and information, which is guaranteed by Article 10 of the European Convention on Human Rights ("the Convention", ETS No. 5). This right constitutes the foundation of a democratic society and an indispensable requirement for its progress and the development of every individual. Free, independent and pluralist media are a necessary condition of any true democratic society. Democracy and good governance require accountability and transparency and, in this respect, media play an essential role in the public's scrutiny of public and private sectors in society.
2. Recalling Committee of Ministers [Recommendation No. R \(2000\) 7](#) on the right of journalists not to disclose their sources of information, the Assembly reaffirms that the protection of journalists' sources of information is a basic condition for both the full exercise of journalistic work and the right of the public to be informed on matters of public concern, as expressed by the European Court of Human Rights in its case law under Article 10 of the Convention.
3. The Assembly notes with concern the large number of cases in which public authorities in Europe have forced, or attempted to force, journalists to disclose their sources, despite the clear standards set by the European Court of Human Rights and the Committee of Ministers. These violations are more frequent in member states without clear legislation. In cases of investigative journalism, the protection of sources is of even greater importance, as stated in the Committee of Ministers' Declaration of 26 September 2007 on the protection and promotion of investigative journalism.
4. Referring to the new Press and Media Law of Hungary (Law CIV of 2010 on the freedom of the press and the fundamental rules on media content), the Assembly expresses its concern that limits to the exercise of media freedom fixed by Article 4.3 and the exceptions to the right of journalists not to disclose their sources stipulated in Article 6 of this law seem to be overly broad and thus may have a severe chilling effect on media freedom. This law sets forth neither the procedural conditions concerning disclosures nor guarantees for journalists requested to disclose their sources. The Assembly calls on the Government and Parliament of Hungary to amend this law, ensuring that its implementation cannot hinder the right recognised by Article 10 of the Convention.
5. Public authorities must not demand the disclosure of information identifying a source unless the requirements of Article 10, paragraph 2, of the Convention are met and unless it can be convincingly established that reasonable alternative measures to disclosure do not exist or have been exhausted, the legitimate interest in the disclosure clearly outweighs the public

¹⁰⁶ *Assembly debate* on 25 January 2011 (4th Sitting) (see [Doc. 12443](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Johansson). *Text adopted by the Assembly* on 25 January 2011 (4th Sitting).

interest in the non-disclosure, and an overriding requirement of the need for disclosure is proved.

6. The disclosure of information identifying a source should therefore be limited to exceptional circumstances where vital public or individual interests are at stake and can be convincingly established. The competent authorities, requesting exceptionally the disclosure of a source, must specify the reasons why such vital interest outweighs the interest in the non-disclosure and whether alternative measures have been exhausted, such as other evidence. If sources are protected against any disclosure under national law, their disclosure must not be requested.

7. Recalling Recommendation Rec(2003)13 of the Committee of Ministers on the provision of information through the media in relation to criminal proceedings, the Assembly reaffirms that the public must be able to receive information through the media about the activities of police services and judicial authorities, including court proceedings of public interest, as far as this does not prejudice the presumption of innocence of the suspect or accused under Article 6 of the Convention, the right to privacy under Article 8 of the Convention or the secrecy of investigations and police inquiries.

8. The right of journalists not to disclose their sources applies also to sources from within the police or judicial authorities. Where such provision of information to journalists was illegal, police and judicial authorities must pursue internal investigations instead of asking journalists to disclose their sources.

9. In so far as Article 10 of the Convention protects the right of the public to be informed on matters of public concern, anyone who has knowledge or information about such matters should be able to either post it confidentially on third-party media, including Internet networks, or submit it confidentially to journalists.

10. With regard to the right of every person to disclose confidentially to the media, or by other means, information about unlawful acts and other wrongdoings of public concern, the Assembly recalls its [Resolution 1729](#) (2010) and [Recommendation 1916](#) (2010) on the protection of “whistle-blowers” and reaffirms that member states should review legislation in this respect to ensure consistency of domestic rules with the European standards enshrined in these texts.

11. In the same manner as the media landscape has changed through technological convergence, the professional profile of journalists has changed over the last decade. Modern media rely increasingly on mobile and Internet-based communication services. They use information and images originating from non-journalists to a larger extent. Non-journalists also publish their own or third-party information and images on their own or third-party Internet media, accessible to a wide and often undefined audience. Under these circumstances, it is necessary to clarify the application of the right of journalists not to disclose their sources of information.

12. The Assembly reaffirms that the confidentiality of journalists’ sources must not be compromised by the increasing technological possibilities for public authorities to control the use by journalists of mobile telecommunication and Internet media. The interception of correspondence, surveillance of journalists or search and seizure of information must not circumvent the protection of journalists’ sources. Internet service providers and

telecommunication companies should not be obliged to disclose information which may lead to the identification of journalists' sources in violation of Article 10 of the Convention.

13. Referring to the European Union's Directive 2006/24/EC of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks, the Assembly insists on the need to ensure that legal provisions enacted by member states when transposing this directive are consistent with the right of journalists not to disclose their sources under Article 10 of the Convention and with the right to privacy under Article 8 of the Convention. The Assembly also stresses the importance of ensuring coherence of domestic legislation with Articles 16 and 17 of the Convention on Cybercrime ("the Budapest Convention", ETS No. 185).

14. The Assembly welcomes the fact that journalists have expressed in professional codes of conduct their obligation not to disclose their sources of information when they receive information confidentially. This professional ethical standard ensures that sources may rely on confidentiality and decide to provide journalists with information which may be of public concern. The Assembly invites journalists and their organisations to ensure, through self-regulation, that sources are not disclosed.

15. The right of journalists not to disclose their sources of information is a professional privilege, intended to encourage sources to provide journalists with important information which they would not give without a commitment to confidentiality. The same relationship of trust does not exist with regard to non-journalists, such as individuals with their own website or web blog. Therefore, non-journalists cannot benefit from the right of journalists not to reveal their sources.

16. The Assembly welcomes the work on media freedom of the Council of Europe Commissioner for Human Rights and asks the Commissioner to pay particular attention, when visiting member states and meeting media ombudspersons, to the protection of the confidentiality of journalists' sources.

17. The Assembly recommends that the Committee of Ministers:

17.1. call on those member states which do not have legislation specifying the right of journalists not to disclose their sources of information, to pass such legislation in accordance with the case law of the European Court of Human Rights and Committee of Ministers Recommendation No. R (2000) 7;

17.2. assist member states in analysing and improving their legislation on the protection of the confidentiality of journalists' sources, in particular by supporting the review of their national laws on surveillance, anti-terrorism, data retention and access to telecommunications records;

17.3. ask its competent steering committee to draw up, in co-operation with journalists' and media freedom organisations, guidelines for prosecutors and the police, as well as training material for judges, on the right of journalists not to disclose their sources of information, in accordance with Committee of Ministers Recommendations Nos. R (2000) 7 and Rec(2003)13 and the case law of the European Court of Human Rights;

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17.4. ask its competent steering committee to draw up guidelines for public authorities and private service providers concerning the protection of the confidentiality of journalists' sources in the context of the interception or disclosure of computer data and traffic data of computer networks in accordance with Articles 16 and 17 of the Convention on Cybercrime and Articles 8 and 10 of the European Convention on Human Rights.