

## Information Documents

SG/Inf(2020)19

7 July 2020

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**The impact of the sanitary crisis on freedom of expression and media freedom**

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## Introduction

“A free and pluralist public debate is a precondition for democracy, and strong action is required to reverse the recent deterioration of freedom of expression in Europe”.

This statement in the Declaration of the Committee of Ministers at its 129th meeting in Helsinki on 17 May 2019 deserves a co-ordinated and coherent response from the Council of Europe and member states in various fields where freedom of expression is at stake including, amongst others, safety of journalists, hate speech and digital governance.

To enable the Committee of Ministers to follow and direct developments in this area, regular reports will be presented by the Secretary General, based on Council of Europe work in this field, including the activity of the Platform for the protection of journalism and safety of journalists.

Concrete standard setting actions in the field of freedom of expression, as well as monitoring operations and targeted co-operation activities are currently carried out by the Council of Europe. At the end of June, for instance, a new updated online course on Freedom of Expression was made available.<sup>1</sup>

At the same time, the sanitary crisis has had an important impact on freedom of expression, creating additional challenges. It rapidly became obvious that the success of any efforts to contain the spread of the virus depends to a large extent on access to accurate, reliable, diverse and timely information, as the need for such information was – and remains – crucial for the understanding of the situation and the ability to make informed decisions, limit rumours, reduce the effect of disinformation and foster solidarity and trust in measures taken to address the crisis. By contrast, restrictions on free access to information, instead of allaying public concerns, are more likely to erode trust and undermine the efficiency of crisis-response measures.

The present report aims at identifying areas where freedom of expression may be put under stress in the present circumstances, and at recalling the applicable standards and the means at the disposal of member states and the Council of Europe to address the challenges with which they are faced.

### 1. The scope of restrictions to freedom of expression and information

Drawing on the principles of freedom of expression and information enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”), as interpreted by the European Court of Human Rights (“the Court”; “ECtHR”) and other standards, the member states of the Council of Europe are, in principle, fully capable of ensuring that their efforts to resolve the crisis also honour their obligation to protect freedom of expression and its corollary, media freedom.

It is therefore not surprising that when, given the severity and the scale of the outbreak, member states chose to derogate from their obligations under the Convention<sup>2</sup>, these derogations did not specifically refer to freedom of expression and information.

It is important to recall, in this respect, that even in emergency situations, restrictions on freedom of expression must be narrowly construed, so as not to unduly impede the free flow of information,<sup>3</sup> must have a clear legal basis to protect against arbitrariness and be strictly necessary to bringing the public emergency to a close<sup>4</sup>.

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<sup>1</sup> <https://www.coe.int/en/web/freedom-expression/-/updated-course-on-freedom-of-expression-available-on-the-help-platform>.

<sup>2</sup> Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic.

<sup>3</sup> Venice Commission Report - *Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections*: restricting freedom of expression in emergency contexts would deprive the public of an essential check on the increased executive powers.

<sup>4</sup> For further details, please see the chapter on “Respect for the rule of law and democratic principles in times of emergency” in the [SG/Inf\(2020\)11: Respecting Democracy, Rule of law and Human Rights in the framework of the COVID-19 sanitary crisis – a toolkit for member states](#).

## 2. Challenges to the role of media

In recent months the media have faced enormous demand for information on the pandemic, which comes with an increased responsibility to provide verified and timely information. While striving to meet this demand, the media have been faced with difficulties, including a limited ability to generate revenue during the pandemic. Other public watchdogs, in particular whistleblowers, have a similarly important role to play in investigating both health and corruption risks in the current situation, when many decisions need to be made quickly, yet in compliance with the standards of transparency and accountability.

### a. Obstacles to reporting

Reporting on and during the pandemic is not an easy endeavour. There were reports, for instance, of restricted access to press conferences, travel restrictions, press credentials not being recognised, or prolonged deadlines for responding to freedom of information requests.<sup>5</sup> However, the media's news gathering activity is a necessary component of its "public watchdog" function and must be protected as such.<sup>6</sup> Given that in a pandemic there is demand for information to be delivered quickly, it is essential that media are allowed to continue to work despite restrictions, including for instance during curfew or from places that may not be accessible to the public. It is important for journalists to move around freely<sup>7</sup> and without fear of sanctions in order to collect newsworthy information. Bearing in mind the crucial role of the media in covering public demonstrations,<sup>8</sup> including in times of crisis and in a state of emergency, it is also essential to prevent any hindrance to such coverage by raising the awareness of the law enforcement authorities.

Access to official information, while not limited to journalists and media, is another important aspect of freedom of information because it ensures transparency and accountability of public actors, opening their policies and actions to public scrutiny. In line with the Court's case law<sup>9</sup> and the Convention on Access to Official Documents ("the Tromsø Convention"), any interference with the right to access must be set down in law, necessary and proportionate. Requests for access to official documents are to be dealt with promptly and refusals should be subject to a court or other independent review procedure. There should also be an effective remedy available, both in theory and in practice, to secure the enforcement of court orders granting access to information.<sup>10</sup> The Tromsø Convention, requiring ten ratifications, is expected to enter into force shortly, as Ukraine recently became the tenth country to adopt a ratification law. Furthermore, Armenia has signed the Convention and it is hoped that more states will follow and accede to this instrument, reinforcing their commitment to transparent governance and decision making.

Beyond providing access to information on request, in times of crisis it is important for governments to engage in regular dialogue with media professionals and the wider public and provide information through press conferences, briefings, etc.<sup>11</sup> Even when physical press conferences are not possible, that should not hamper journalists' ability to ask questions, for example through the use of

<sup>5</sup> Some alerts regarding these and other COVID-19 related issues can be found at the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists. For a global overview, please see the International Press Institute (IPI) [Tracker on Press Freedom Violations Linked to COVID-19 Coverage](#)

<sup>6</sup> ECtHR, *Szurovecz v. Hungary*, no. 15428/16, §§ 54 and 74, 8 October 2019.

<sup>7</sup> Paras. 8-10 of the Council of Europe [Guidelines on protecting freedom of expression and information in times of crisis](#).

<sup>8</sup> ECtHR, *Pentikäinen v. Finland* (GC), no. 11882/10, §§ 89 and 91, 20 October 2015. See also Venice Commission and OSCE/ODIHR [Guidelines On Freedom Of Peaceful Assembly](#) (3rd Edition), chapter on the "Duty to protect and facilitate the work of journalists and media personnel". This document does not address emergency situations, but in general media coverage of assemblies and how journalists should be protected.

<sup>9</sup> ECtHR, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 8 November 2016, ECHR 2016.

<sup>10</sup> ECtHR, *Kenedi v. Hungary*, no. 31475/05, § 48, 26 May 2009.

<sup>11</sup> Para. 11 of the [Guidelines on protecting freedom of expression and information in times of crisis](#). In many member states data about the spread of COVID-19, as well as measures taken in response, are regularly updated and easily accessible via dedicated official websites.

videoconferencing systems. Good practices have been adopted in some states on how to hold press conferences in full respect of the social distancing rules.<sup>12</sup>

## **b. Control of information**

Global health emergencies such as the COVID-19 outbreak present a challenge in terms of ensuring wide availability of trustworthy information that can help preserve public health and lives. There will be, and are, rumours, mis- and disinformation to contend with, which can lead to hasty reactions and excessive restrictions on content and dissemination of information, on the part of governments or private actors, such as operators of online platforms.

In this regard any obligation to publish only official information amounts to an excessive restriction of freedom of expression even in a situation of emergency, as democracy thrives on freedom of expression. Public emergencies must not serve as a pretext for limiting freedom of political debate.<sup>13</sup>

It appears that many member states were aware of the potential dangers to freedom of expression posed by rapid moves to exert greater control over the flow of information and consequently refrained from such measures. Some others initially adopted restrictions, but progressively reviewed them in light of the evolving situation, an approach which is to be welcomed for its consistency with the principles of necessity and proportionality of emergency measures.<sup>14</sup>

It is important that governments address misleading and false information by themselves, particularly by their public health authorities, providing comprehensive and reliable public health information<sup>15</sup> and, where possible, opportunities to facilitate open and inclusive public debate.<sup>16</sup> Such transparency not only contributes to preserving public health, but also to the improvement of public trust and confidence in the public health measures and in the public authorities concerned.

## **c. Responsibilities of the media and support for the sector**

The pandemic has underscored the need for the media to practice responsible journalism<sup>17</sup> supported by transparent and independent self-regulatory mechanisms. This includes promoting verified and trusted sources of information to enable the public to adapt its conduct so as to protect their health, while at the same time scrutinising governmental responses to the crisis and highlighting possible concerns. Ethical and responsible journalism is also an efficient antidote to mis- and disinformation and growing polarisation of public debate.<sup>18</sup> It is crucial for media outlets to give priority to information provided by international and national public health authorities, health workers and other frontline responders, and to avoid sensationalist narratives or unverified stories. The Council of Europe, for its part, supports, through grant agreements, co-operation partners such as press councils, associations of journalists or judicial academies in their activities for the promotion of standards of ethical journalism. It will continue to promote such professional attitudes through specific standards and co-operation projects.<sup>19</sup>

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<sup>12</sup> “Good practices for press conferences during COVID-19 pandemic”

<https://europeanjournalists.org/blog/2020/04/15/good-practices-for-press-conferences-during-pandemic/>.

<sup>13</sup> ECtHR, *Şahin Alpay v. Turkey*, no. 16538/17, *ibid*.

<sup>14</sup> For more on the principles applicable to states of emergency, please see the [European Commission for Democracy Through Law \(Venice Commission\) Compilation of opinions and reports on states of emergency](#). See also the Venice Commission 2020 related report ([Report - Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections](#))

<sup>15</sup> According to Article 10 of the Tromsø Convention, public authorities should, at their own initiative, make public official documents, in the interest of promoting the transparency and efficiency of public administration and to encourage informed participation by the public in matters of general interest.

<sup>16</sup> See Council of Europe Committee on Bioethics (DH-BIO) [Guide to public debate on human rights and biomedicine](#).

<sup>17</sup> ECtHR, *Bédat v. Switzerland* [GC], no. 56925/08, § 58, ECHR 2016, and *Magyar Jeti Zrt v. Hungary*, no. 11257/16, § 64, 4 December 2018.

<sup>18</sup> PACE [Resolution 2212 \(2018\)](#) on “The protection of editorial integrity”.

<sup>19</sup> For professional practices promoted by Council of Europe, see [Recommendation No. R \(97\) 21 on the media and the promotion of a culture of tolerance](#) and the upcoming [Recommendation on promoting a](#)

Also, public service media need to remain an independent source of trusted information<sup>20</sup>, including important statements, educational programmes, community support and entertainment, and as such a factor for social integration and understanding between various societal groups, particularly during times of crisis.<sup>21</sup>

One of the preconditions for media and journalists to be able to fulfil their role is financial sustainability of the media sector. The long-term weak financial situation of the sector has been exacerbated by the pandemic, resulting in a paradox of growing (digital) news consumption and further decline in revenue. Support funds are being implemented in some states<sup>22</sup>, and more strategic after-crisis solutions such as introducing beneficial tax regimes and media development support must be considered.<sup>23</sup>

With the hopefully imminent adoption of the Draft Recommendation on promoting a favourable environment for quality journalism in the digital age, member states and media stakeholders will benefit from comprehensive guidance toward more transparent and equitable funding, along with guidance on professional practices and media education, helping them to foster a productive and healthy media environment.

#### **d. Protection of journalistic sources and whistleblowers**

The right to the protection of journalistic sources is not to be regarded as a privilege, but as an important aspect of the right to freedom of expression.<sup>24</sup> As stated by the Court, “[w]ithout such protection, sources may be deterred from assisting the press in informing the public on matters of public interest.”<sup>25</sup> The right of journalists not to disclose their sources should also be protected in crisis situations, as recalled in Recommendation No. R (2000) 7 on the same subject. Media professionals should not in principle be required to hand over information or material gathered during the coverage of crisis situations, nor should such material be liable to seizure for use in legal proceedings. Any exception to this principle should be in conformity with Article 10 of the Convention and the relevant case law of the Court. In particular, any requests for disclosure should be subject to a careful balancing between the interest to protect source confidentiality and any countervailing public interest in obtaining the information in question.

Likewise, in the interest of transparency and scrutiny of government measures related to the pandemic, for example as regards the management of public health systems or public procurement of health equipment<sup>26</sup>, it is important to foster an environment in which individuals feel safe to raise public interest concerns and whistleblowers are protected against retaliation in any form.<sup>27</sup> Principles on the protection of whistleblowers can be found in the case law of the Court<sup>28</sup>, the evaluations of

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[favourable environment for quality journalism in the digital age](#). The Council of Europe is, furthermore, supporting the implementation of its standards through assistance and co-operation projects, many of which have been adapted to the current sanitary crisis, for example by making available the Organisation’s standards and documents on freedom of expression in times of crisis in local languages or by assisting partners with the development of tools on how to report during COVID-19.

<sup>20</sup> PACE [Resolution 2255 \(2019\)](#) “Public service media in the context of disinformation and propaganda”.

<sup>21</sup> The Council of Europe supports public service media notably through co-operation projects. For instance in the context of the Joint project of the EU and CoE to support media freedom in Ukraine, continuous support is provided to the Ukrainian public broadcaster, including by promoting alternative funding models.

<sup>22</sup> [COVID-19 Audiovisual sector support measures](#) are being tracked by the European Audiovisual Observatory.

<sup>23</sup> For an overview of possible support measures, see the [Council of Europe Declaration on the financial sustainability of quality journalism in the digital age](#).

<sup>24</sup> ECtHR, *Nagla v. Latvia*, no. 73469/10, § 97, 16 July 2013.

<sup>25</sup> ECtHR, *Goodwin v. the United Kingdom*, 27 March 1996, § 39, Reports of Judgments and Decisions 1996-II.

<sup>26</sup> GRECO’s [Guidelines on Corruption Risks and Useful Legal References in the context of COVID-19](#).

<sup>27</sup> Council of Europe [Recommendation CM/Rec\(2014\)7 on the protection of whistleblowers](#) (chapter VII).

<sup>28</sup> ECtHR, *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008, and *Bucur and Toma v. Romania*, no. 40238/04, 8 January 2013.



the Group of States against Corruption (GRECO)<sup>29</sup>, in the Council of Europe Recommendation CM/Rec(2014)7 on the protection of whistleblowers, which translates the Court's principles into policy advice, and in the Parliamentary Assembly Recommendation 2162 (2019).<sup>30</sup>

Whistleblowing can be key not only in the fight against corruption but also in tackling gross mismanagement in the public and private sectors, including the health sector. Member states should therefore implement GRECO's recommendations on whistleblowers' protection as a matter of urgency.

### e. Safety of journalists

Attacks on and violence against journalists are long-standing issues in Europe and beyond, linked to the deterioration of freedom of expression evoked in the afore-mentioned Committee of Ministers' Helsinki Declaration of 17 May 2019. The tendency toward decline for the safety of journalists has persisted over the past decade, with impunity remaining a serious concern.<sup>31</sup>

This has also been recognised and brought into focus by the Court, taking into account Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors. The Court firmly upholds that, when faced with threats and violence against journalists and other media actors, the authorities and in particular all law enforcement agencies, are required to establish whether or not the threat or violence are connected to the exercise of journalistic activities or other activities contributing in similar ways to public debate.<sup>32</sup> Failure to fulfil this requirement can lead to impunity and continued violence against those exercising journalistic work. To address these challenges, in reply to the Court's judgments, several states have strengthened institutional and legislative frameworks to prosecute violence against media actors.<sup>33</sup>

However, the trend of impunity still needs to be reversed. This situation continues during the pandemic and media professionals are put in a situation of double vulnerability. Working on the frontline of the pandemic and exposing themselves to potential health risks, journalists have also at various instances faced threats, harassment, verbal and physical attacks, including by members of the public and politicians. They are exposed to force applied by police at demonstrations and possible arrests due to their work.<sup>34</sup>

Effective remedies, including preventive measures to protect individuals whose lives are at risk, should be available to support journalists' work and prevent possible violations of their rights.<sup>35</sup> In addition to this obligation, states should encourage early-warning and rapid-response mechanisms (hotlines, emergency contact points, etc.) developed by media organisations and civil society. Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other

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<sup>29</sup> GRECO is systematically including in all of its 5th Evaluation Round reports (corruption prevention in respect of central governments, including the top executive functions, and law enforcement) a section on the protection of whistleblowers. This matter was also extensively covered by GRECO during previous evaluation rounds.

<sup>30</sup> See also the [Statement](#) of the Assembly's Rapporteur on whistle-blower protection, Sylvain Waserman (France/ALDE) dated 8 April 2020.

<sup>31</sup> Council of Europe [Recommendation CM/Rec \(2016\)4 on the protection of journalism and safety of journalists and other media actors](#). See also PACE [Recommendation 2168 \(2020\)](#) and [Resolution 2317 \(2020\)](#) "Threats to media freedom and journalists' security in Europe" and [Resolution 2293 \(2019\)](#).

<sup>32</sup> ECtHR, *Mazepa and Others v. the Russian Federation*, no. 15086/07, §73, 17 July 2018; *Huseynova v. Azerbaijan*, no. 10653/10, § 115, 13 April 2017.

<sup>33</sup> See for example the measures taken to execute the judgment *Gongadze v. Ukraine* (see the [decisions of the CMDH adopted at its 1324th meeting](#) (18 – 20 September 2018)).

<sup>34</sup> "Hands off press freedom: attacks on media in Europe must not become a new normal", the 2020 Annual Report by the Partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists: see also relevant Platform alerts; see also the "[Guide on the case-law of the European Convention on Human Rights on Mass protests](#)", published by the ECtHR Registry.

<sup>35</sup> ECtHR, *Özgür Gündem v. Turkey*, no. 23144/93, § 42-46, 16 March 2000; *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 106, 14 September 2010; *Huseynova v. Azerbaijan*, no. 10653/10, § 115, 13 April 2017, and *Gongadze v. Ukraine*, no. 34056/02, § 164, ECHR 2005-XI.

media actors should be implemented, making full use of its recently published Implementation Guide.<sup>36</sup>

In the first place, however, it is important that political leaders explicitly recognise that violence against journalists constitutes a threat to democracy and unequivocally condemn it. The urgency of political engagement to improve the situation of journalists will also be one of the focuses of next year's Conference of Ministers responsible for Media and Information Society (June 2021).

Putting an end to impunity is of primary importance, also in view of the positive obligation to carry out effective investigations, under both Articles 2 and 3 of the Convention, and to take protective measures under Article 10 of the Convention. The measures regarding journalists' safety identified by the Committee of Ministers in relation to the execution of Court's judgments should be fully implemented without delay. The Secretariat of the Council of Europe and in particular the Department for the Execution of Judgments of the European Court of Human Rights are ready to assist the authorities concerned in order to speed up the implementation of both general and individual measures required.

### **3. Challenges to public discourse and democratic participation**

#### **a. Mis- and disinformation**

The unprecedented situation created by the pandemic, its dynamic nature and rapidly growing impact, gave rise to much uncertainty, and uncertainty and fear breed disinformation. Mis- and disinformation about science, technology, and health is neither new nor unique to COVID-19. Yet in February 2020, the World Health Organization announced that the new coronavirus pandemic was accompanied by an "infodemic" of mis- and disinformation, which in itself was presenting a serious risk to public health and public action.<sup>37</sup>

Misinformation on the pandemic is often technologically simple and contains misleading statements based on half-truths.<sup>38</sup> It is produced and spread by some politicians, some media, and some members of the broader public. It often results in high levels of engagement on social media platforms, where nuanced views are crowded out in favour of polarised perceptions of "true" and "false", which can also have divisive effects in the real world.

In this regard, close co-operation with internet intermediaries and media stakeholders can help to prevent the use of online platforms as conduits for manipulation of public opinion.<sup>39</sup> Blatantly false information with potentially harmful effects for human health should be flagged as such and appear less prominently on online platforms and their news feeds; however, the sheer volume of false content requires diversified strategies.

First and foremost, all members of the public should have adequate access to trusted sources of information, including those with special (language and other) needs or living in remote areas. At the start of the outbreak in various member states including in Italy, Georgia, Germany and Norway, COVID-19 information was translated into and disseminated in all the main minority and migrant languages. The Council of Europe has supported similar initiatives in some other member states through its co-operation projects.

While respecting the principle of editorial independence, states should encourage and support the media in diverse content on the pandemic, notably scientific studies and points of view, capable of promoting informed debates and broader democratic participation.

<sup>36</sup> ["How to protect journalists and other media actors?"](#) Implementation Guide to selected topics under the Protection and Prosecution pillars of the Guidelines of Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors (DGI(2020)11).

<sup>37</sup> [WHO Situation Report No. 13](#) of 2 February 2020.

<sup>38</sup> ["Types, sources and claims of COVID-10 misinformation"](#), a report of the Reuters Institute for the Study of Journalism.

<sup>39</sup> [Council of Europe Recommendation CM/Rec\(2018\)2 on the roles and responsibilities of internet intermediaries](#), in particular guidelines 1.1.4, 1.3.8, 1.3.9 and 1.3.10.

Building societal resilience against mis- and disinformation related to COVID-19 involves better understanding of its sources and of the intentions, tools and objectives behind it. This can be achieved through education and awareness-raising activities aimed at empowering all sectors of society and, in particular, improving citizens' media literacy to understand how to spot and fend off information disorder.<sup>40</sup> A comprehensive response to the problem requires the active participation of all: governments, online platforms, media, educators and civil society.<sup>41</sup> The Council of Europe Conference of Ministers responsible for Media and Information Society to be held in 2021 shall, *inter alia* provide a suitable forum to achieve this.

## **b. Hate speech**

The pandemic has also given rise to a new wave of hate speech contributing to further polarisation of public discourse. COVID-19 related hate speech encompasses a broad range of contemptuous expressions against certain individuals and groups due to their link or presumed link with the virus, sometimes as a result of breaches of data protection laws. Scapegoating, stereotyping, stigmatisation and the use of derogatory and sometimes violent expressions have been observed particularly against already marginalised populations, including older persons<sup>42</sup>, Roma<sup>43</sup>, LGBTI people<sup>44</sup>, minorities, migrants and foreigners.<sup>45</sup> In some instances, journalists, whistle-blowers, human rights defenders and even medical and health care professionals have been targeted due to their work on the pandemic. Though hate speech is often spread by members of the public, its consequences are exacerbated by inflammatory rhetoric of politicians and others in position of influence, sometimes with the intent of inciting hate or violence.

The ensuing polarisation of public communication spaces has serious implications, both in the short and long term. It makes those targeted more vulnerable to violence and exclusion and hinders their access to rights and participation in public life. In so doing, it heightens the disproportionate effects of the disease on certain groups of populations and exacerbates underlying social and economic inequalities.<sup>46</sup>

As in the case of disinformation, positive policy measures are needed to combat hate speech, ranging from identifying and addressing societal tensions, encouraging dialogue within and between communities, promoting media pluralism and diversity and enacting strong anti-discrimination legislation. The Council of Europe's No Hate Speech Movement youth campaign, which has mobilised youth and other national stakeholders in over 43 countries to promote human rights online demonstrates the great potential of human rights education.<sup>47</sup>

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<sup>40</sup> For good practices and recommendations on how to give Media and Information Literacy full effect to empower informed citizens capable of recognising and valuing quality journalism and accurate, reliable information, please see the Council of Europe [Study on Supporting Quality Journalism through Media and Information Literacy](#) (DGI(2020)1).

<sup>41</sup> [Guide to good and promising practices on the way of reconciling freedom of expression with other rights and freedoms in particular in culturally diverse societies](#), adopted by the Steering Committee for Human Rights (CDDH) at its 91st meeting (18-21 June 2019). Specifically, on co-ordinated responses to disinformation, please see also the [EU Action Plan on disinformation](#).

<sup>42</sup> See "[Older persons need more support than ever in the age of the COVID-19 pandemic](#)", Commissioner for Human Rights, 20 March 2020.

<sup>43</sup> [Joint Statement by Marija Pejčinović Burić, Council of Europe Secretary General, and Helena Dalli, European Commissioner for Equality, 7 April 2020; Governments must ensure equal protection and care for Roma and Travellers during the COVID-19 crisis](#), Commissioner for Human Rights, 7 April 2020.

<sup>44</sup> [Statement by Secretary General Marija Pejčinović Burić ahead of the International Day against Homophobia, Transphobia and Biphobia \(IDAHOT\), 14 May 2020; Hate mongering against LGBTI people has no place in today's Europe](#), Commissioner for Human Rights, 15 May 2020.

<sup>45</sup> [United Nations Guidance Note on Addressing and Countering COVID-related Hate Speech](#), 11 May 2020.

<sup>46</sup> [Introductory Note on the anti-discrimination, diversity and inclusion dimensions of the response to COVID-19](#) prepared by the secretariat of the Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI).

<sup>47</sup> [Declaration of the Committee of Ministers on the legacy of the No Hate Speech Movement Youth Campaign](#); see also the compendium of resources and examples and other resources developed during the campaign: <https://www.coe.int/en/web/no-hate-campaign/compendium-of-resources>.



In terms of promoting social dialogue, it is also important for representatives of public authorities and media themselves to refrain from statements that may be misleading or could be understood as hate speech or as speech likely to produce the effect of legitimising, spreading or promoting violence, hatred, intolerance or discrimination. Public figures' speedy reaction in condemning hate speech and warning of the dangers it poses to democratic societies will foster dialogue and strengthen understanding and societal trust in measures taken to address the crisis.<sup>48</sup>

Lastly, regarding sanctions – whether they concern restrictions of access to illegal content online or prosecution of hate speech – in the context of COVID-19 it is as important as ever to clearly define prohibited conduct<sup>49</sup> and ensure that national standards are applied in conformity with the principles embodied in Article 10 of the Convention and the case law of the Court. The Committee of Ministers undertook an important commitment to provide further guidance to member states by setting up the Committee of Experts on Combatting Hate Speech within a Human Rights Framework (ADI/MSI-DIS)<sup>50</sup> and tasking it with the development of a multi-disciplinary, comprehensive instrument on hate speech, building on the Court's case law and recommendations of the Organisation's monitoring bodies.

### c. Electoral campaigning

A number of elections scheduled to take place during the COVID-19 outbreak were postponed.<sup>51</sup> In the current situation, limited delays seem reasonable until votes can again be cast in fair conditions. Apart from risks related to voter turnout and the integrity of elections, the principles of fairness and transparency could also be undermined due to a lack of accurate and reliable information about political parties and candidates, their programmes and voting processes.<sup>52</sup> In this regard, it should be reiterated that it is particularly important in the periods preceding elections that opinions and information of all kinds are permitted to circulate freely.<sup>53</sup>

While electoral campaigning has largely moved online, it does not necessarily reach all groups, and more importantly, online campaigns sometimes lack transparency and may give rise to human rights violations.<sup>54</sup> Therefore, it is important that traditional campaigning activities such as debates, rallies and other public events and demonstrations can be resumed in order to allow direct communication between the political parties and candidates and the voters, thereby encouraging voter engagement and public participation in the political process.

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<sup>48</sup> ECRI General Policy Recommendation No. 15 on combating hate speech, adopted on 8 December 2015. Also, see findings and recommendations from several texts adopted by the Parliamentary Assembly in the area of preventing and combating racism, intolerance and hate speech, notably [Resolution 2144 \(2017\)](#) and [Recommendation 2098 \(2017\)](#) on *Ending cyberdiscrimination and online hate*, as well as [Resolution 1967 \(2014\)](#) and [Recommendation 2032 \(2014\)](#) on *A strategy to prevent racism and intolerance in Europe*. The work and activities of the No Hate Parliamentary Alliance tackle issues related to both hate speech and trust in information.

<sup>49</sup> For guidance on the criminalisation of certain acts of online hate speech, please see the [Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems](#).

<sup>50</sup> This committee is sub-ordinated to the Steering Committee on Anti-Discrimination and Inclusion (CDADI) and the Steering Committee on Media and Information Society (CDMSI); website of the [Committee of Experts on Combatting Hate Speech](#).

<sup>51</sup> [Global overview of COVID-19: Impact on elections](#) published by the International Institute for Democracy and Electoral Assistance (International IDEA).

<sup>52</sup> [Venice Commission Compilation of opinions and reports on states of emergency](#). See also Venice Commission, [Report - Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections](#) (Chapter K. Elections under states of emergency), and the Directorate of Human Dignity, Equality and Governance report [“Elections and COVID-19”](#).

<sup>53</sup> ECtHR, [Bowman v. the United Kingdom](#), 19 February 1998, § 42, Reports of Judgments and Decisions 1998-I.

<sup>54</sup> [Council of Europe Study on the use of internet in electoral campaigns](#) (DGI(2017)11).

#### 4. Criminal and administrative measures with potentially chilling effects on freedom of expression

Interference with the right to freedom of expression can arise not only from sanctions actually imposed, but also from the fear of sanction. Freedom of expression is greatly influenced by the legal climate for journalists and the media and the long-existing risk of a chilling effect<sup>55</sup> saw further growth as a result of COVID-19 related regulatory and law enforcement measures.

Newly emerging law-enforcement practices and hastily introduced legislative initiatives seeking to prevent disinformation, panic and disorder have become part of the changing legal landscape during the crisis. Whether requiring reporting along pre-defined lines or prohibiting criticism of government responses to the pandemic, such measures directly interfere with the public watchdog role of the media and create a potential for abuse by labelling any critical accounts as “false information” or “information that is likely to create panic”.

Online sources of information have experienced censorship on COVID-19 related information. The measures applied, ranging from non-judicial takedown requests to blocking of whole websites, sometimes without any possibility of judicial review, constitute serious interference with freedom of expression and carry a considerable chilling effect. The same applies to closures of media outlets, broadcasting suspensions and / or bans and revocation of broadcasting licences.

There have also been cases of journalists finding themselves under arrest<sup>56</sup> because of their work on the pandemic frontline, including covering protests and demonstrations. Even where release soon follows and no proceedings are initiated, such practices may result in self-censorship and withdrawal not only for those personally concerned, but also for other media actors. It is of the utmost importance to recognise the democratic value of journalism in times of crisis or at public demonstrations and for law enforcement authorities to respect the role of journalists and other media actors covering such situations or events.

Criminal sanctions have the gravest effect on freedom of expression.<sup>57</sup> However, it is not only the nature and severity of sanctions / measures or the practice of law enforcement, but also the quality of law that affect free expression. Restraint is required in resorting to criminal proceedings in freedom of expression cases, even when the protection of national security or the prevention of crime or disorder are invoked,<sup>58</sup> including during a state of emergency.<sup>59</sup> Vague and generic formulations, such as “fake news” or “causing panic”, lower the quality of law, opening the door to potential abuse and disproportionate interference. To avoid this, any offences should be clearly defined in law and should not be overly broad.<sup>60</sup>

In times of crisis, governments need to exercise particular prudence to introduce only measures which constitute an appropriate and proportionate response. It is of utmost importance that any restriction of the public’s access to information remains within the limitations allowed by Article 10 of the Convention as interpreted in the case law of the Court. Restrictions on freedom of expression

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<sup>55</sup> ECtHR, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 78, ECHR 2004-XI; *Yaşar Kaplan v. Turkey*, no. 56566/00, § 35, 24 January 2006, and *Pentikäinen v. Finland*, cited above, § 113. In the context of the execution of the Court’s judgments, the Committee of Ministers has called for measures to ensure sufficient legal safeguards against potential overuse of detention as an administrative sanction, in particular in the context of freedom of expression (see *Shvydka v. Ukraine, decisions adopted at the 1362nd CMDH meeting, 3-5 December 2019*); and to reconcile freedom of expression with judicial independence (see *Kudeshkina v. the Russian Federation, decisions adopted at the 1369th CMDH meeting, 03-05 March 2020*).

<sup>56</sup> See relevant alerts on the Council of Europe’s Platform to Promote the Protection of Journalism and Safety of Journalists.

<sup>57</sup> The Committee of Ministers has expressed concern about a number of situations where penalties (detention) imposed for exercising freedom of expression were disproportionate (see, for instance, *Mikhaylova v. Ukraine, no. 10644/08, 6 March 2018*).

<sup>58</sup> ECtHR, *Incal v. Turkey* (GC), no. 22678/93, 9 June 1998.

<sup>59</sup> ECtHR, *Sahin Alpay v. Turkey*, no. 16538/17, §§ 172-184, 27 February 2001.

<sup>60</sup> ECtHR, *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, 6 July 2010; see also Council of Europe *Guidelines on protecting freedom of expression and information in times of crisis* (para. 19).

and information must be clear and predictable, containing clearly defined terms in order to avoid the misuse of national security or other legitimate aims as a pretext to prosecute media professionals or to silence critical voices. Any normative measures to combat disinformation should be controlled by parliaments and monitored by national human rights institutions,<sup>61</sup> subject to review by constitutional or other competent courts. Furthermore, any individual decisions interfering with individuals' rights should be controlled by the judiciary, which should remain fully functional and able to promptly address complaints related to freedom of expression.<sup>62</sup>

## 5. Toward a favourable post-pandemic environment for free expression and media

The digital transformation has resulted in undeniable benefits. Yet it has also contributed to a decline of trust in information and media as one of the unintended consequences of the social media revolution. Faced with a flood of trivia, disinformation and polarised viewpoints, many have started to doubt the very concepts of integrity and truth in public debate.<sup>63</sup> This has had adverse effects not only for the media but for democratic institutions in general.

The COVID-19 outbreak has underscored the value of facts, expert knowledge and openness to a diversity of points of view, proving that democracies cannot thrive, or even exist, without access to trustworthy sources of news and information. The crisis has provided an opportunity for independent professional media to increase their impact, as people have primarily turned to established news sources, and especially public broadcasters, for information and advice.<sup>64</sup> Measures are required to support this development, both in law and in practice.

Moreover, governments should join efforts with the relevant media stakeholders, internet intermediaries, academia and civil society to develop and apply strategies for helping the public identify disinformation and manipulation and foster a culture of solidarity, tolerance and understanding between different groups.<sup>65</sup>

The above issues, together with other aspects of the pandemic and its impact on freedom of expression will be addressed, in a multi-stakeholder dialogue, at next year's Conference of Ministers responsible for Media and Information Society. These key elements will contribute to creating a favourable post-pandemic environment for freedom of expression, with ample access to pluralist information and opinions and full participation in public debate.

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<sup>61</sup> [Press freedom must not be undermined by measures to counter disinformation about COVID-19](#), Commissioner for Human Rights, 3 April 2020.

<sup>62</sup> Venice Commission, [Report - Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections](#), paragraphs 80 to 90 on parliamentary oversight, judicial control and oversight by the Ombudsman or National Human Rights Institutions.

<sup>63</sup> D. Tambini: [Media freedom, regulation and trust – a systemic approach to information disorder](#) (2020), the Council of Europe background paper for the Conference of ministers responsible for media and information.

<sup>64</sup> See, for instance, the European Broadcasting Union's [reports on the COVID-19 crisis PSM audience performance](#).

<sup>65</sup> [Declaration \(Decl/29/05/2019\) by the Committee of Ministers on the legacy of the No Hate Speech Movement youth campaign](#), the ECRI General Policy Recommendation No 15, on combating hate speech, and the Charter on Education for Democratic Citizenship and Human Rights Education.