

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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RESPONSE FROM IRELAND

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

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

The same mechanisms apply for journalists as are available to any other person in relation to the investigation and prosecution of an assault on that person as provided for under the Non-Fatal Offences Against the Person Act 1997.

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

No.

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

In Ireland the print media are regulated by an independent Press Council which was provided for by the Defamation Act 2009.

Principle 6 of the Press Council Code of Conduct provides that journalists shall protect confidential sources of information.

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

Section 35 of the Defamation Act 2009 abolished the common law offences of defamatory libel, seditious libel and obscene libel.

Article 40.6.1 of Ireland's Constitution provides: "The publication or utterance of blasphemous, seditious or indecent material is an offence which shall be punishable in accordance with law."

Publication of seditious or obscene material is not a criminal offence under defamation/libel legislation, although it may be an offence under the provisions of the Offences against the State Acts or under censorship legislation.

Section 36 of the Defamation Act 2009 defines a criminal offence of blasphemy, reflecting the requirement for such an offence at Article 40.6.1 of the Constitution. It is necessary to prove that the defendant has published or uttered material that is 'grossly abusive or insulting' in relation to matters held sacred by any religion, that publication caused outrage among a substantial number of adherents of that religion, and that the defendant intended to cause such outrage. It is a defence to prove that a reasonable person would find genuine literary, artistic, political, scientific or academic value in the material.

There has been no prosecution for blasphemy for many years, and the Government made a commitment in the Programme for Government to establish a Constitutional Convention to consider comprehensive constitutional reform, with a brief to consider a range of issues, including the removal of the offence of blasphemy from the Constitution. Such a change, which would also permit the abolition of the statutory offence of blasphemy in the Defamation Act, requires the holding of a constitutional referendum.

The Convention on the Constitution was established in 2012 and its Sixth Report, submitted to the Oireachtas in January 2014, recommended holding a referendum on removing the offence of blasphemy from the Constitution. In September 2014, the Government decided, in response, to hold a referendum on removing the offence of blasphemy contained in Article 40.6.1.1 of the Constitution, subject to preparation of the necessary legislation.

Work on preparing the necessary legislation (a Referendum Bill and a Bill to remove the offence of blasphemy from the Defamation Act) is under way. An appropriate date for the Referendum will be decided by Government when that legislation has been prepared.

5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* (defence

of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

The Defamation Act 2009 provides for a number of procedural guarantees in a civil claim of defamation.

The limitation period is one year (or a maximum of 2 years if a Court so directs) rather than the usual six years.

It is a defence to defamation, under the Act, to show that the statement was materially true, was covered by absolute privilege or qualified privilege, was an honestly held opinion on a matter of public interest, or was a fair and reasonable publication on a matter of public interest.

The latter defence was designed to facilitate public discussion where there is both a benefit and an interest in such discussion taking place. If the defendant is a member of the Press Council, the Court shall, if it considers relevant, take into account the extent to which the publication complied with the Press Council's Code of Standards.

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

No.

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

Yes, the Irish Constitution provides for the freedom of expression subject to public order and morality.

Article 40.6.1 states that:

6 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality: –

- i The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.

The Criminal Justice (Terrorist Offences) Act 2005 provides (in section 6) that the fact that a person engages in any protest, advocacy or dissent is not of itself a sufficient basis for inferring that the person is carrying out an act with the intention of committing a "terrorist activity" as defined by the act.

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

- **Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.**
- **Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)**
- **Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity**
- **Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007**
- **Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment**
- **Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.**
- **Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns**
- **Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content**
- **Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings**
- **Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists**

Arrangements are now being put in place to ensure the dissemination of the various instruments to relevant parties.