

Steering Committee on Media and Information Society



CDMSI(2015)Misc1rev2

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?

Slovak criminal law ensures protection against all illegal actions to every legal and natural person, including journalists. Code of Criminal Procedure regulates the exact procedures of the law enforcement authorities investigating the crimes and enforcing the decisions of courts, as well as the rights and obligations of persons participating in the criminal proceedings, including journalists and other media actors. In this area there is no specific regime applied in connection with journalists and other media actors.

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

The most important non-judicial mechanism of protection of rights applicable also in relation to journalists is the Public Defender of Rights. The Public Defender of Rights is an independent body of the Slovak Republic which, within the scope and as laid down by law, protects basic rights and freedoms of natural and legal persons in proceedings before public administration bodies and other bodies of public authority, if their conduct, decision-making, or inaction, is in conflict with the legal order. All bodies of public authority shall give the Public Defender of Rights necessary assistance.

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

The confidentiality of the journalists' sources of information is governed by the Press law (Act No. 167/2008 Coll. on periodical and agency news service). According to Section 4

Subsection 1

The publishers of periodicals and press agencies must not disclose the source of information acquired for publication in a periodical or an agency news service or any part of the content of such information which would enable the identification of the source if requested not to do so by the natural person who provided the information, and must ensure that the disclosure of the content of the information does not breach the rights of third parties; they are obliged to take the necessary precautions in the handling of documents, printed matter and other media, in particular visual recordings, audio recordings and audio-visual recordings that could be used to identify the natural person who provided the information to ensure that the identity of the information source is not revealed.

Subsection 2

A publisher of a periodical or a press agency may be released from the obligation given by subsection 1 only by the consent of the natural person that provided the information. After the death of this person, the right to grant consent belongs to close persons; the consent is not valid if at least one close person expressed disagreement in written form. If there are no such close persons the right to protection of the confidentiality under subsection 1 expires.

Subsection 3

The obligation pursuant to subsection 1 shall also apply to any employee of a publisher of a periodical and any employee of a press agency; the obligation pursuant to subsection 1 shall cease to apply to such persons if it also ceases to apply to the employer. The obligation pursuant to subsection 1 applies with the same conditions to the person who provides information as defined above to the publisher of a periodical or a press agency under a commercial or civil contractual relationship with the publisher of the periodical in which the person undertakes to provide information to the publisher professionally.

Subsection 4

The obligation of non-disclosure shall not apply in cases where the law requires the prevention of the commission of a crime.

The confidentiality of the journalists' source in connection with the broadcasters is similarly governed by the Act no. 308/2000 Coll. on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 on Telecommunications as amended.

Regarding the practical experience with the protection of the journalists' source, according to information from the Ministry of Interior of the Slovak Republic, there is no such case in the last decade, where journalist or his source would be in real danger or where the protection of the ministry or the police would be requested.

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

The offence of defamation is set in the Criminal Code in section 373, which states: "*Whoever communicates false information about another person, which is capable of considerably damaging the respect of fellow citizens for such a person, their career and business, their family relations, or that causes them other grievous harm, shall be punished by a prison sentence of up to two years.*".

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?

General procedural guarantees which refer also to defamation are governed in section 2 of the Code of Criminal Procedure:

Subsection 4

A person against whom a criminal proceeding is carried out shall be deemed innocent until the court pronounces their guilt by a final convicting judgment. (presumption of innocence)

Subsection 7

Every person has the right for their criminal case to be heard by an independent and impartial court, fairly and in a reasonable period in their presence, so that they can comment on all the performed evidence, unless this Act stipulates otherwise.

Subsection 9

Any person against whom there is a criminal prosecution has the right to a defense counsel.

Subsection 10

The law enforcement authorities shall proceed to ascertain the merits of the case, about which there is no reasonable doubt to the extent necessary for their decision. They shall procure evidence ex officio. The parties to the proceeding also have the right to procure evidence. The law enforcement authorities shall equally approach the clarification of the circumstances testifying against the accused as well as the circumstances testifying in their favour, and they shall execute the evidence in both directions in order to enable the court to reach a fair decision.

Subsection 11

The court may also perform evidence that the parties to the proceedings failed to propose. The parties to the proceedings have the right to provide their proposed evidence.

Subsection 12

The law enforcement authorities and the court shall assess the evidence obtained in a lawful manner according to their inner conviction, based on a careful consideration of all the circumstances of each case individually and as a whole, regardless of whether it was procured by the court, the law enforcement authorities, or by the parties to the proceeding.

Subsection 14

The parties to the proceeding are all equal in proceedings before the court.

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?

There is no such enactment in the Slovak legislation.

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

The right to freedom of expression is guaranteed by article 26 of the Constitution of the Slovak Republic, which is a fundamental legal act, superior to all other legal acts. All other legal acts must be in conformity with the Constitution of the Slovak Republic.

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

Ministry of Foreign and European affairs of the Slovak Republic informed Slovak journalists in April 2015 about the initiation of an internet platform of the Council of Europe for protection of the safety of journalists (<https://www.coe.int/en/web/media-freedom>), where among others a majority of the documents stated above is available. The documents are available in English and their translation to Slovak language has not been performed yet.