

# ***Steering Committee on Media and Information Society***



## **Croatia**

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?

While criminal proceedings, according to the Criminal Act (2011), for bodily injury (article 117) are instituted upon a private charge, aggravated bodily injuries are investigated and prosecuted ex officio. The same applies for the criminal offence of threat (article 139) against journalist. Criminal Act's chapter (11) on offences against human rights and fundamental freedoms, under the title on offences against freedom of thought and expression (article 127) protects freedom and free establishment of the press and other media as well as bans censorship and "restriction of journalists' freedom of reporting".

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?

Except for the astute advocacy of the Croatian Association of Journalist, Trade Union of Croatian Journalist and several other civil society organisations, there are no other complementary procedures.

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

Journalists' right to withhold sources of information is protected by the provisions of Media Act (2004). However, in concerns of national security, state attorney is qualified to request the court to subpoena the journalist to disclose her source, under certain protective condition (article 30). In judiciary practise, though, that possibility is hardly ever used.

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

It still does. Criminal Act's (2011) chapter (15) on "offences against honor and reputation" stipulates pecuniary penalties against insult, libel/defamation and –

from 2011 – contentiously introduced criminal offence of “shaming” (or gossip, similar to üble Nachrede). So, for insulting another person through media (article 147), journalist cannot be sentenced for imprisonment, but is likely to be fined with up to 180 her’s daily rates. Likewise, stipulated fines for “shaming” (“presentation or dissemination of facts about a person before a third party that may harm that person’s honour or reputation”, article 148) can mount up to 360 daily rates (thus journalist’s annual income) and for libel/defamation (“knowingly presenting or disseminating untrue information”, article 149) even 500 daily rates.

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?

While the right to defence is provided by the Constitution (article 29), the period of limitation laid down for offences against honor and reputation is six years (Criminal Act 2011: article 81). Been dropped out in 2011’s Criminal Act, exceptio veritatis applies again since amendments of 2015, but not in the cases of “aggravated shaming” on account of “personal or family matters” (Criminal Act 2015 amendment, article 148). Important procedural safeguard for the work of journalists (as well as writers, artists, scientists...) is – reintroduced in 2015, too – the defence of responsible communication on matters of “public interest or other justified reason”, which provides journalists with qualified immunity if they act professionally, even if they report incorrect information that might otherwise be considered insulting or shameful (article 148a). Nevertheless, journalists’ immunity does not qualify in cases of “knowingly presenting or disseminating untrue information”.

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, they are not.

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?

For the criminal offence of “public incitement to terrorism” Criminal Act stipulates imprisonment from one to ten years (article 99).

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?

Some documents are available in local language(s), the others are in process of translation, while their promotion deserves greater effort.

- 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