

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

THE NETHERLANDS
E-doc 856032

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?

At the moment, there are no specific mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors in The Netherlands. The existing (general) mechanisms apply to journalists and other media workers, but also to all other individuals in our society.

Since the attacks on journalists and other media workers (including cartoonists...) have increased in several European countries (Kurt Westergaard in Denmark, Charlie Hebdo in France, several cases in the Russian Federation and in Turkey), there is a debate in dutch politics and society that journalists and other media workers deserve perhaps special attention, in order to protect their very important role in the process of disseminating news and information to the dutch society.

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?

Not at this moment. See also our reply under 1.

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

There is a proposal in the dutch Parliament to protect the confidentiality of sources, not only for 'journalists' but also for 'publicists'. This 'broader definition' seeks to protect this confidentiality of sources not only for 'professional journalists' (who regularly work for media companies) but also for 'publicists' who play a role with their

publication(s) in the public debate about current affairs in dutch politics and/or society. We consider this broadening of the definition to journalists and publicists to be a very important signal of the legislator, acknowledging the factual development in our societies, where not only 'professional journalists' but also other people (publicists, other media workers) make valuable contributions to the public debate.

It is the independent Court that has to decide in any given case whether a person (journalist or publicist) makes a rightful claim to this confidentiality of sources. This right is certainly awarded to 'journalists' but it can also be given to publicists/other media workers. The dutch legislator is following with this the jurisprudence of the Court of Human Rights in Strasbourg.

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

Yes, it does. Insulting the King e.g. can be prosecuted, but it is very rarely been done. For several years, there is a debate taking place in dutch politics and in society to remove insult/defamation/libel out of the Criminal Law and deal with it under Private Law.

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 'normal procedural guarantees' apply also in relation to defamation:

- Presumption *innocentiae* (innocence is assumed), so the accusation of defamation has to be proven first;
- Right to defence: every person has the right to defend himself/herself against such an accusation (and get the assistance of a lawyer);
- An independent court/magistrate has to decide whether or not defamation has been proven and then decide on the proper 'punishment' (a fine, jail).

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?

Article 111 and 112 of the Dutch Penal Code protects the King/Queen against insult/defamation/libel. Other articles apply to insult of a public/civil servant, e.g. a policeman. A fine can be imposed. Same goes for insulting a Court/magistrate and for insulting a Head of State, also from other States outside The Netherlands.

All these criminal law articles are VERY seldomly used...

There is a recurrent debate to abolish them from the Criminal Code.

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 bottom line is that the journalistic function should not be the 'victim' of such (rather new) legislation, in order to protect the freedom of expression as good as possible.

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

Several of these documents have been disseminated to media-organisations and other persons/institutions that are concerned with the substance matter. There is no information available to tell if this dissemination is being done systematically.