

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



Paris, 1<sup>st</sup> April 2015

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

### **Reply by Slovenia**

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

**There are no special legal provisions in the Republic of Slovenia on ensuring investigation and prosecution of attacks against journalists and other media actors. The same procedure applies for criminal offences against journalists as for other general categories of individuals (natural persons).**

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?

**In this respect there is The Human Rights Ombudsperson with a broad spectrum of monitoring responsibilities - concerning the monitoring of activities or non-activities of the public sector, including from the viewpoint of maladministration.**

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

**Confidentiality of journalists' sources is protected by the Media Act. The Article 21, paragraph 2 stipulates the following: "Editorial personnel, journalists or the authors of contributions shall not be obliged to reveal the sources of their information, except in cases where such is stipulated by criminal law." It is not known whether the systems of governmental power were able - at least in the period since 1994 (the then Public Media Act) - to officially acquire by virtue of their official authority the information from journalists' sources.**

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

**Yes, The Criminal Code includes the following: Insult, Defamation, Calumny, Reproach of a Criminal Offence with the Intention to Disparage, Disparagement to the Republic of Slovenia, Disparagement to the Foreign Country or International Organisation, Disparagement to the Slovene Nation or the National Communities. However, the criminal proceedings are not commenced (started) usually by the competent state prosecutor (*ex officio*), they usually have to be commenced by the natural person whose rights are violated. Although Defamation and other mentioned criminal offences therefore include criminalisation of certain activities that can be punished by punishment of imprisonment, the way that they are regulated<sup>1</sup>, including justification and exemptions (such as for media) and *de facto* prosecuted (by private action of aggrieved natural persons) bears resemblance to procedures that are typical for the civil law. Also, official persons and public functionnaires (like Ministers of the Government of the Republic of Slovenia) can sue the presumed perpetrators of these criminal offences only by private action (not via the state prosecutor and not in an *ex officio* manner).**

**And prescribed punishments for these criminal offences are usually lower than one year (three months, six months) and prescribed alternative is also fine. For the last several years nobody has been convicted for these criminal offences with a punishment of imprisonment.**

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?

**Defence of truth, i.e., in case of defamation especially, if the perpetrator proves either the truth of his assertions or that he had reasonable grounds to believe in the truthfulness of what has been asserted or circulated, does not give to that person a relief (*exceptio veritatis*). That person shall not be punished for defamation but may be punished either for insult or for falsely and scornfully accusing someone of a crime. Burden of proof is on the side of a person whose rights are presumed to be violated. Or this exemption on the criminal offence of insult: "Whoever expresses words offensive to another person in a scientific, literary or artistic work, in a serious piece of criticism or in the exercise of official duty, in a piece of journalism, in the course of political or other social activity, or in the defence of a right or protection of justified benefits shall not be punished, provided that the manner of expressing such words or that the other circumstances of the case indicate that his expression was not meant to be derogatory."**

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<sup>1</sup> See for example the old research of the Council of Europe of 2003 on a wide array of honour and reputation criminal offences in Council of Europe Member States at: [http://www.coe.int/t/dghl/standardsetting/media/doc/H-ATCM%282003%29001\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/H-ATCM%282003%29001_en.pdf). And for Slovenia see the assessment of compatibility of these criminal offences (in general) with the Constitution of the Republic of Slovenia and the European Convention on Human Rights in the Decision of the Constitutional Court, No. U-I-226/95, 8th July 1999 (published in: Official Gazette of the RS, No. 60/99 and OdlUS VIII, 174) and similarly also in 2015 - Decision of the Constitutional Court, No, Up-1128/12, 14th May 2015 (published in: Official Gazette of the RS, No. 37/15).

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 in fact protected on a similar level - and official persons and public fonctionnaires (like Ministers of the Government of the Republic of Slovenia, Members of the National Assembly - the Parliament) can sue the presumed perpetrators of these criminal offences only by private action (not via the state prosecutor and not in an *ex officio* manner).**

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?

**They do not have it directly in the aforementioned legislation, but legally this protection exists, firstly - taking into account the provisions on human rights and fundamental freedoms in the mentioned legislation. And more importantly - the Criminal Code (Article 260, paragraphs 3 and 4) provides a privilege on disclosure of state (official) secrets for journalists and others with respect to unlawful encroachments into human rights and fundamental freedoms etc., and whistleblowers are also protected in this respect.**

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?

**Available, but not translated yet due to the shortcomings of financial means.**

- 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 –**The text is in the phase of translation**
- 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. –**The text is in the phase of translation**

- 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