



Questionnaire on the implementation of Council of Europe standards related to safety of journalists and other media actors

Dato: 10.07.2015
Kontor: Strafferetskontoret
Sagsbeh: Kasper Kjær Mortensen
Sagsnr.: 2015-739-0154
Dok.: 1657714

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

While there are no mechanisms specifically designed to ensure investigation and prosecution of attacks against journalists and other media actors, attacks on journalists can, however, be considered as criminal offences.

Section 742 of the Administration of Justice Act states:

*“Section 742. Reports about criminal offences are filed with the police.
(2) The police initiate, upon report or by own virtue, investigation, when there is reasonable supposition that a criminal offence, which is prosecuted by the State, has been committed.”*

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?

There are no formal non-judicial mechanisms specifically dealing with threats and crimes targeting journalists and other media actors.

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

The confidentiality of journalists’ sources is guaranteed by section 172 of the Administration of Justice Act. The section states:

Slotsholmsgade 10
1216 København K.

Telefon 7226 8400
Telefax 3393 3510

www.justitsministeriet.dk
jm@jm.dk

“Section 172. Editors and editorial staff employed by a publication falling within the scope of section 1(i) of the Media Liability Act are not subject to a duty to give evidence about:

- i. the identity of the source of a piece of information or the author of an article or the identity of the person who has taken a photograph or otherwise produced a pictorial representation. If publication is made, it is a requirement for exemption from the duty to give evidence that the source, author, photographer or producer is not identified in the publication; and*
- ii. the identity of persons shown in a picture or being mentioned where anonymity has been promised to such persons. If publication is made, exemption from the duty to give evidence will apply, provided that the identity of the relevant persons is not disclosed in the text.*

(2) Editors and editorial staff employed by a radio or television broadcaster falling within the scope of section 1(ii) of the Media Liability Act are not subject to a duty to give evidence about:

- i. the identity of the source of a piece of information or the author of a work or the identity of the person who has taken a photograph or otherwise produced a pictorial representation. If the information, work, etc. is broadcast, it is a requirement for exemption from the duty to give evidence that the source, author, photographer or producer is not identified in the broadcast; and*
- ii. the identity of participants who have been promised that they could participate without the risk of being identified. If the programme is broadcast, it is a requirement for exemption from the duty to give evidence that the relevant persons are not identified by name and that reasonable precautions have been taken to conceal their identity.*

(3) Exemption from the duty to give evidence as provided for in subsections (1) and (2) is also available for others who have obtained knowledge of the identity of the source, the author or the participant by virtue of their relationship with the publication or its production or their relationship with the radio or television broadcaster or the production of the broadcast concerned.

(4) The provisions of subsections (1)-(3) apply correspondingly to the mass media falling within the scope of section 1(iii) of the Media Liability Act.

(5) If the proceedings concern an offence of a serious nature which is punishable under the law by imprisonment for no less than four years,

however, the court may order the persons mentioned in subsections (1)-(4) to give evidence as witnesses if such evidence is deemed to be essential to the proper examination of the case, and the interest in finding and presenting evidence obviously overrides the need of the mass media to protect their sources.

(6) Similarly, the court may order the persons mentioned in subsections (1)-(4) to give evidence as witnesses if the proceedings concern a contravention of sections 152-152c of the Criminal Code. However, this does not apply if it may be assumed that the author or the source intended to disclose matters of importance to society.”

According to sections 794, 795, 802 and 803 of the Administration of Justice Act the confidentiality of sources is also generally protected against search and seizure.

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

Defamation is a criminal offence according to sections 267 and 268 of the Criminal Code, which state:

“Section 267. Any person who defames the character of another person by offensive expressions or acts or by making or propagating allegations of acts suited to reduce the esteem in which such person is held by his fellow citizens is sentenced to a fine or imprisonment for a term not exceeding four months.

Section 268. If an allegation has been maliciously made or propagated, or if the offender had no reasonable grounds for believing it to be true, the offender is punished for calumny and the penalty set out in section 267 may increase to imprisonment for a term not exceeding two years.”

Section 275 of the Criminal Code governs the issue of private prosecution regarding defamation crimes. The section states:

“Section 275. The offences set out in this Part [sections 263-275] are subject to private prosecution. This does not apply to offences falling within sections 266, 266a and 266b.

(2) In cases falling within sections 263-264d, public prosecution may be instituted when so requested by the victim. The same applies if an allegation is made against a person who is currently, or who was at the

relevant time, performing a public function or office of an offence that may entail, or might have entailed, the forfeiture of such function or office, and if a written allegation is made anonymously or under an incorrect or invented name.”

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?

In criminal cases regarding defamation general procedural guarantees apply, including the provisions on the right to defence counsel, burden of proof and the principle of in dubio pro reo.

There is no special period of limitation for defamation crimes. The period of limitation is generally determined by section 93 of the Criminal Code, which states:

“Section 93. The limitation periods are

- i. two years where the maximum penalty prescribed for the offence is imprisonment for one year;*
- ii. five years where the maximum penalty prescribed is imprisonment for four years;*
- iii. ten years where the maximum penalty prescribed is imprisonment for ten years; and*
- iv. fifteen years where the maximum penalty prescribed is imprisonment for a determinate period.*

(2) The limitation period is in no case less than five years for -

- i. violation of sections 296(3), 297(2) and 302(2) of this Code; and*
- ii. violation of the legislation on taxes, customs, duties or subsidies, where an unlawful gain is or can be made.*

(3) The limitation period for violation of section 223(1) or section 225, cf. section 223(1), of this Code is in no case less than ten years.

(4) If a person has committed several offences by the same act and different limitation periods apply under subsections (1)-(3), the longest of those periods will apply to all offences.”

In addition, section 96 (1) of the Criminal Code governs the period of limitation where the offence is subject to private prosecution. The section states:

“Section 96. The right to bring a private prosecution and to request public prosecution lapses if the person so entitled has not instituted proceedings or made a request within six months of the date when he had obtained sufficient information to institute proceedings or request prosecution. [...]”

With regard to the “defence of truth”, section 269 of the Criminal Code states:

“Section 269. Any person making an allegation is exempt from punishment if such allegation is proved to be true or if the person making the allegation in good faith was obliged to make a statement or acted for the benefit of the general public or in the interests of himself or others.

(2) A penalty may be remitted if the facts submitted are sufficient to form a belief in the truth of the allegation.”

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?

State officials are generally not protected against criticism and insult at a higher level than ordinary people. However, section 121 of the Criminal Code states:

“Section 121. Any person using scorn, invectives or other insulting words to assault any person as referred to in section 119 [someone with a duty to act by virtue of a public function or office] while he is performing his function or office or on the occasion of the performance of his function or office is sentenced to a fine or imprisonment for a term not exceeding six months.”

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 laws on the protection of public order, national security and anti-terrorism do not include specific safeguards for the right to freedom of expression.

However, the right to freedom of expression is generally guaranteed by section 77 of the Constitutional Act of Denmark, which states:

“Section 77. Any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced.”

Moreover, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms are implemented in Danish law.

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

As far as the Danish Ministry of Justice is aware the instruments have not been translated into Danish.

However, since these instruments are accessible on the internet, they are available to representative organisations of lawyers and media professionals.