

Steering Committee on Media and Information Society



Paris, 1st April 2015

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

Reply from Latvia

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

Attacks against journalists and other media actors are not dealt with separately. Under the Criminal Law they are treated like any other crimes against the person.

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 the case of journalist Ilze Nagla (ECtHR Application no. [73469/10](#) Ilze Nagla v. Latvia), the Ombudsman did review the case:

5. Review by the Ombudsman

16. On 13 May 2010 the Ombudsman opened an inquiry about the search of the applicant's home with a view to ascertaining whether the search had interfered with the freedom of expression and whether the domestic authorities had paid sufficient regard to the assessment of the limitations imposed on the freedom of the press.

17. On 28 September 2010 he delivered his opinion, which was not binding on the domestic authorities. He examined not only whether the alleged violation of the applicant's freedom of expression had taken place, but also whether there was an effective monitoring system in the country in that regard. He adopted the following final conclusions:

"The freedom of expression includes a right not to disclose journalistic sources. Only a court, observing the principle of proportionality, may order the disclosure of an information source to protect the essential interests of private individuals or society.

By performing the search in [the applicant's] home and by substantiating it, among other things, by the aim of finding information about obtaining and distributing the EDS database XML files, the competent investigating authority – by securing the evidence and disregarding the requirement to have a court order – discovered the identity of the applicant's source.

By authorising the search warrant issued by the investigator under the urgent procedure, the supervising prosecutor and the court failed to undertake a critical examination of the urgency and the necessity of such a measure and did not sufficiently evaluate the threat to the freedom of expression.

Accordingly, the freedom of expression and the right not to disclose journalistic sources ... have been violated.

Since the legally protected immunity of a journalist in criminal proceedings is not incorporated in [the relevant chapter of the Law of Criminal Procedure] and the domestic case-law shows that the competent investigating authorities do not pay sufficient attention to it, it would be advisable to initiate a discussion on [legislative] amendments [to the relevant provision of the Law of Criminal Procedure]. Probably, the law should specifically provide that it is prohibited to perform investigative activities involving journalists in premises belonging to them if there are reasonable grounds to consider that this might restrict the scope of the rights guaranteed to journalists."

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

The confidentiality of journalists' sources is protected by the Law on the Press and Other Mass Media. However, in practice this is not always observed as mentioned in the answer to the previous question. Another case is that of Ilze Jaunalksne, a journalist with commercial TV station TV3 whose telephone conversations were monitored from December 2005 to January 2006 by the State Revenue Service's Finance Police on the authorisation of a judge. The Latvian courts found four members of the Finance Police Board guilty of the criminal offences of abuse of authority and failure to act. The judge was subsequently admonished and the journalist awarded what were for Latvia considerable damages.

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

Yes. The Criminal Law states:

Article 157. Defamation

(1) For a person who knowingly commits intentional distribution of falsehoods, knowing them to be untrue and defamatory of another person, in printed or otherwise reproduced material, as well as orally, if this has been done publicly (defamation), the applicable punishment is community service or a fine.

(2) For defamation in the mass media, the applicable punishment is short term deprivation of liberty (up to three months) or community service, or a fine.

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 burden of proof lies with the respondent/accused.

The presumption of good faith is not explicitly mentioned in either the civil or criminal law. However, Art.47 of the Criminal Law that lists mitigating circumstances, has the following provision: 2) In determining the punishment, other circumstances which are not provided for in this Law and which are related to the criminal offence committed, may be considered as mitigating circumstances.

The statute of limitation in the Criminal Law for defamation cases is two years:

Article 56. Criminal Liability Limitation Period

(1) A person may not be held criminally liable if from the day when he or she committed the criminal offence, the following time period has elapsed:

2) two years after the day of commission of a criminal violation;

The default statute of limitation/period of prescription in the Civil Law is 10 years but is greatly reduced in specific laws. For example:

Law on the Press and other Mass Media

Article 21. Retraction of False Information

Persons, institutions, undertakings and organisations are entitled to require mass media to retract information published (broadcast) about them if such information is not true.

A submission for retraction of false information shall be submitted to an editor of a mass media within a six-month period from the date of publication (broadcast) of the false information.

The submission must precisely specify the information not conforming to fact, the place (broadcast) and date of its publication.

The editor of the mass medium is obliged to examine the submission within a seven-day period from the date of its receipt.

If the mass media has no evidence that the published (broadcast) information conforms to fact, it must retract such without delay. The retraction must be published in the same typeface, in the same section of the publication (broadcast) in which the false information was published. In the event of a dispute, the interested person or organisation may request the retraction of such information by court process.

If an obligation to retract false information has been imposed on a mass medium by a court adjudication, it shall be done in accordance with the provisions of this Section.

A mass medium may refuse to retract disseminated information if the facts are confirmed by a court judgment.

The Press law provides additional defences for journalists:

Article 29. Release from Liability

Mass media shall not be held liable for the dissemination of false information, if it contains:

1) official documents of the State authorities and administrative bodies, announcements by political and public organisations;

2) announcements by official information agencies; and

3) publications by officials.

The particular Law on Electronic Mass Media reduces the time for claims even more.

Article 51. The Right to Request a Retraction of False Information

(1) An application for the distribution of a retraction of false information shall be submitted to the electronic mass medium, in writing, within 14 days after the false information has been distributed, specifying the particular information given in a broadcast.

(2) The electronic mass medium shall examine the application within seven days following the date of receipt thereof.

(3) If the electronic mass medium lacks sufficient proof that the distributed information is true, it shall retract such information no later than on the fifth day after the examination of an application, in the same broadcast and at the same broadcast time, but, if this is not possible – at a similar time.

In 2003/2004 the Supreme Court of Latvia published a guide to the practice of the Latvian courts regarding civil defamation suits including also extensive references to the ECtHR case law up to that time.

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.

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, for example, Art.19 of the [Law on meetings, marches and pickets](#) explicitly states that during these events there shall be freedom of speech and language.

Art. 3.2 of the law quotes Art. 11.2 ECHR almost word for word in that the exercise of the right to peaceful assembly must not be subject to any restrictions other than those that are “prescribed by law and are necessary in a democratic society in the interests of national security and public safety, to prevent disorder or crime, to protect public health and morals as well as the rights and freedoms of others.” The same law defines these restrictions:

Art.10 prohibits “turning against the independence of the Latvian Republic, calling for the violent overthrow of the order of the Latvian state, calling for disobedience of the law, promote violence, national or racial hatred, blatant Nazi, fascist or communist ideology, engage in war propaganda as well as glorifying or calling for the commission of criminal acts and other breaches of the law.”

Art.11.5 also prohibits the use of the flags, coats of arms, hymns and symbols (in a stylised way too) of the former USSR, Latvian SSR and Nazi Germany.

The law concerning [states of emergency](#) requires any restrictions imposed to have a legitimate purpose, be commensurate, non-discriminating, justified and necessary in each particular case of a threat to national security. Measures must be taken only to such an extent as is necessary for normalising the situation. Emergency situations and states of exception may not be grounds for restricting the authority of State administrative and local government institutions, and people’s rights and freedoms in territories where such regimes have not been declared. Measures taken to secure an emergency situation and state of exception may not be in contradiction with the international norms of human rights that Latvia is bound by.

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?

Translated instruments are marked with a tick. All instruments translated or not, are disseminated among the relevant institutions, state and non-state.

- ✓ 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 No.3 Safety of Journalists