

QUESTIONNAIRE ON IMPLEMENTATION OF COUNCIL OF EUROPE STANDARDS
RELATED TO SAFETY OF JOURNALISTS

REPLIES BY ICELAND

With reference to your letter of 1st April 2015 concerning the implementation of Council of Europe standards related to safety of journalists and other media actors please find below our response to your questionnaire.

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

There are no existing mechanisms that specifically ensure the investigation and prosecution of attacks against journalists and other media actors. Bodily assaults are criminal offenses punishable with fines or imprisonment according to The General Penal Code No. 19/1940. Also, anyone threatening to commit a punishable act, the threat being apt to arousing fear with another for his/her life, health or welfare or that of others, is subject to fines or imprisonment, according to The General Penal Code.

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?

No, there are no such mechanisms.

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

Yes, it is protected in Article 25 of the Media Act No. 38/2011. According to Article 25 of the Media Act employees of media service providers which have been issued with a license or have been registered with the Media Commission may not reveal the identity of the source on which an article, publication, report, announcement or other content is based, irrespective of whether it has been published or not, if the source our author has requested anonymity. Nor may employees of the media service provider release content containing information about a source or author in such instances. The prohibition set forth in Article 25 of the Media Act also applies to those who, through their connections with the media service provider or the production of content have become aware of the identity of the source or author, or who are in possession of content relating thereto.

The protection of journalistic sources as stated in the Media Act applies regardless of whether the information has been obtained legally or not. There are also other laws regarding the duty of witnesses that apply to the protection of journalists' sources of information: Article 53 of the Act on Civil Procedure No. 91/1991 states that journalists may not reveal their sources in court trials of civil cases without their sources' permission. The Law on Criminal Procedure No. 88/2008 contains a similar rule but also an exemption from the rule: According to the Article 119 (3) of the Law on Criminal Procedure, the protection of journalists' sources of information can be lifted in court, during the trial of a criminal case if the judge considers the

testimony of the journalist to be crucial to the final verdict. The last paragraph of Article 25 of the Media Act refers to this exemption: *Protection of sources may only be lifted with the consent of the source or author concerned, or under Article 119 of the Code of Criminal Procedure No. 88/2008.*

Due to this exemption in Article 25 of the Media Act and Article 119 of the Code of Criminal Procedure, the protection of journalistic sources is not absolute and can be lifted in court during trials of criminal cases. The abolition of the protection is however subject to strict conditions. The protection may only be lifted if the judge considers the testimony of the journalist to be crucial with regard to the final verdict and only in trials of extremely serious criminal offenses (murder, rape, child abuse or similar criminal offenses).

In practice the confidentiality of journalists' sources of information has as a general rule been protected. In a recent case; the judgment No. 403/2014 from June 16th 2014, the Supreme Court of Iceland came to the conclusion that the protection of journalists' sources weighed more than public interest. The case involved the leaking of sensitive personal information, related to a female asylum seeker, from the Ministry of the Interior to an Icelandic news website, mbl.is. The Police Department of Reykjavík was investigating the leaking to the news website and requested that the protection of a journalist's source of information be lifted. The exemption in Article 199 of the Code of Criminal Procedure was not considered to apply in the case.

The Supreme Court also denied a similar request in its judgment No. 419/1995 where the court came to the conclusion that a journalist at the newspaper Morgunblaðið was not obliged to reveal her sources of information in a case regarding a leak of confidential information considered to come from the state owned bank, Landsbankinn.

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

The General Penal Code No. 19/1940 includes a provision which criminalizes defamation and libel (Articles 234, 235 and 236).

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?

Defamation cases are as a general rule civil proceedings, even though offenses in such cases are punishable with fines or imprisonment as well as/or non-pecuniary damage. Hence the procedural rules are the general rules of the Act on Civil Procedure No. 91/1991.

The defendant hires a defence counsel of his choice. The court may deem his court costs repayable by the claimant.

As for defamation (*ærumeiðingar*) and fractions against the right to privacy under Icelandic law (Chapter XXV of The General Penal Code No. 19/1940) the claimant has the burden of proof. The wording of the General Penal Code does not directly suggest that the defendant has the option of demonstrating that the actuality he referred to is in fact true. However, after the transposition of the European Convention for the Protection of Human Rights and Fundamental Freedoms into Icelandic domestic law 1994, the right to the freedom of speech has been strengthened and the Icelandic courts have looked more to the interpretation of the

European Court of Human Rights in this respect, although there have also been cases where the Icelandic courts have not applied the same approach as the ECtHR. But as a result, proving adverse public character statements to be true is now a valid defense in a defamation case, with two exceptions (Article 237 of the General Penal Code, regarding accusations without any due cause – and Article 238 which excludes the proving of an offense if the defendant has been acquitted of the same offense in court before.)

At the same time Icelandic courts have several times in the recent years made the same distinction between facts and value judgments/opinions as the ECtHR, meaning that the truth of value judgments is not susceptible of proof (f.e. in the judgment of the Supreme Court of Iceland in the case of Heiðar Már Guðjónsson vs. Ingi Freyr Vilhjálmsson and others from October 18th 2012). Opinions and value judgments must all the same be set forth in good faith and contain some base of fact in order to lead to an acquittal of defamation charges.

5. 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 no longer protected against general criticism and insult at a higher level than ordinary people through penal laws, since a change of the The General Penal Code No. 19/1940 was implemented in 1995. However there remains the possibility in Article 242 (2b) that a defamation or insult concerning the work performance of a state official can be subject to criminal prosecution on the request of the state official himself. On the other hand, state officials bear more criminal liability than ordinary people, due to Chapter XIV of the General Penal Code No. 19/1940.

6. 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 right to freedom of expression is protected by the Icelandic Constitution which takes supremacy over any other acts of legislation in cases of conflict. The provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms also have the status of domestic law in Iceland and are even considered equivalent to the Constitution.

Laws on the protection of public order, national security and anti-terrorism shall be interpreted in accordance with the rules of the Icelandic Constitution and the European Convention for the Protection of Human Rights, including the right to freedom of expression.

7. 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?

No, to our knowledge they have neither been translated nor disseminated widely.