

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



Paris, 1<sup>st</sup> 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**

### **Lithuanian answers**

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

Lithuanian Criminal Law does not foresee any special mechanisms to investigate and prosecute attacks and crimes against journalists and other media actors. They are dealt with in the same way as the crimes against any other individuals.

#### **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 Lithuania, priority is given to the judicial mechanisms to deal with threats and crimes targeting journalists and other media actors. According to the part 1 of the Article 11 of the Law on the Provision of Information to the Public "Every person shall have the right to appeal in court against the decisions and actions of state and municipal institutions, agencies and officials should they violate or illegally restrict a person's right to receive, collect or disseminate information."

There are no special non-judicial institutional mechanisms directly dealing with threats and crimes against journalists and other media actors.

However, in Lithuania an independent Lithuanian Journalists' Association is established that aims to protect and strengthen journalists' rights, freedoms, economic and social rights.<sup>1</sup>

Moreover, citizens can contact Seimas Ombudsmen's Office goal of which is to protect person's right to good public administration, secure human rights and freedoms and to supervise fulfilment by state authorities of their duty to properly serve the people. Although the legality and validity of procedural decisions of the prosecutors and pre-trial investigation officers are outside Ombudsmen's powers of investigation, they can,

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<sup>1</sup> [http://www.lzs.lt/lt/teises\\_aktai/lietuvos\\_zurnalistu\\_sajungos\\_istatai.html](http://www.lzs.lt/lt/teises_aktai/lietuvos_zurnalistu_sajungos_istatai.html)

however, investigate complaints about the actions of the prosecutors and pre-trial officials that violate human rights and freedoms.

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

According to the part 1 of the Article 8, of the Law on the Provision of Information to the Public "The producer, disseminator of public information, their participants, and the journalist shall have the right to maintain the confidentiality of the source of information and not to disclose it."

In 2002, Lithuanian Constitutional Court stated that "by establishing the right of the journalist, by the Law, to preserve the secret of the source of information and not to disclose the source of information, the legislature may not establish such legal regulation, whereby pre-conditions would be created not to disclose the source of information even in the cases when in a democratic state it is necessary to disclose the source of information due to vitally important or other interests of society, which are of utmost importance, also, in an attempt to ensure that the constitutional rights and freedoms of a person be protected, and that justice be administered, since the non-disclosure of the source of information might cause much graver effects than its disclosure. Thus, the balance of the values protected by the Constitution, the constitutional imperative of an open harmonious civil society, the constitutional principle of a state under the rule of law would be violated."<sup>2</sup>

In 2014, Article 8 of the Law on the Provision of Information to the Public was amended tightening the conditions under which journalists are obliged to disclose the source of their information: "Obligation for the producers, disseminators of public information and the journalists to disclose the source of information <...> may only be mandated by a reasoned court decision, when the following conditions are met: revelation of the source of information is necessary for vital or other significant public interests, when persons' constitutional rights and freedoms have to be defended and that the administration of justice is to be ensured, and when all other means to reveal the source of information are exhausted or are not available."

Moreover, in 2014, the Article 150<sup>1</sup> Code of Criminal Procedure was amended to tighten the conditions under which the searches in the premises and the vehicles of the producers, disseminators of public information and the journalists in order to reveal the source of information can be carried out: "By carrying out searches in the producers', disseminators' of public information and the journalists' work and living places, vehicles, it is necessary to ensure guarantees placed in by this Code and other legal acts to protect an information source of these persons, moreover, in all cases, a representative of the Lithuanian journalists' and publishers' organizations or any other invitee by the owner of the premises or the vehicle must be present during the searches."

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

Yes. Article 154 of the Criminal Law states that:

1. A person who spreads false information about another person that could arouse contempt for this person or humiliate him or undermine trust in him shall be punished

<sup>2</sup> Case 36/2000, "Ruling on the Compliance of Article 8 and Paragraph 3 of Article 14 of the Republic of Lithuania's Law on the Provision of Information to the Public with the Constitution of the Republic of Lithuania", <http://www.lrkt.lt/en/court-acts/search/170/ta1212/content>

by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to one year.

2. A person who libels a person accusing him of commission of a serious or grave crime or in the media or in a publication shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years.

**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?**

General procedural guarantees are applied to crimes related to defamation. This provision is derived from Article 31 of the Constitution of the Republic of Lithuania: "A person suspected of the commission of a crime and the accused shall be guaranteed, from the moment of their detention or first interrogation, the right to defence as well as the right to an advocate." This provision is also established in Article 10 of Code of Criminal Procedure.

As regards to the Civil Code, its Article 2.24 has established provisions on the Protection of Honour and Dignity:

1. A person shall have the right to demand refutation in judicial proceedings of the publicised data, which abase his honour and dignity and which are erroneous as well as redress of the property and non-pecuniary damage incurred by the public announcement of the said data. <...>. The data, which was made public, shall be presumed to be erroneous as long as the person who publicised them proves the opposite.

2. Where erroneous data were publicised by a mass medium (press, television, radio etc.) the person about whom the data was publicised shall have the right to file a refutation and demand the given mass medium to publish the said refutation free of charge or make it public in some other way. The mass medium shall have to publish the refutation or make it public in some other way in the course of two weeks from its receipt. Mass medium shall have the right to refuse to publish the refutation or make it public only in such cases where the content of the refutation contradicts good morals.

3. <...>

4. Where a mass medium refuses to publish the refutation or make it public in some other way or fails to do it in the term provided in paragraph 2 of the given Article, the person gains the right to apply to court in accordance with the procedure established in paragraph 1 of the given Article. The court shall establish the procedure and the term for the refutation of the data, which were erroneous or abased other person's reputation.

5. The mass medium, which publicised erroneous data abasing person's reputation shall have to redress property and non-pecuniary damage incurred on the person only in those cases, when it knew or had to know that the data were erroneous as well as in those cases when the data were made public by its employees or the data was made public anonymously and the mass medium refuses to name the person who supplied the said data.

6. The person who made a public announcement of erroneous data shall be exempted from civil liability in cases when the publicised data is related to a public person and his state or public activities and the person who made them public proves that his actions were in good faith and meant to introduce the person and his activities to the public.

**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?**

As regards to the criticism, Article 33, of the Constitution of the Republic of Lithuania, maintains that "Citizens shall be guaranteed the right to criticise the work of State institutions or their officials and to appeal against their decisions. Persecution for criticism shall be prohibited." The same is established in Article 9 of the Law on the Provision of Information to the Public: "Every person shall have the right to publicly criticise the activities of state and municipal institutions and agencies as well as officials. Persecution for criticism shall be prohibited in the Republic of Lithuania."

As regards to insults, Article 25, of the Constitution of the Republic of Lithuania states that "Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation." Article 290 of the Criminal Law maintains that "A person who insults a civil servant or a person performing the functions of public administration in exercising his duties shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years." However, in 2016 this provision will be transferred to the Code of the Administrative Offenses. Moreover, currently, Article 214(6) of the Administrative Code foresees notice or fine of up to 280EUR for insulting the President of the Republic of Lithuania on the mass media.

**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 freedom of expression is guaranteed by the Article 25 of the Constitution of the Republic of Lithuania, maintaining that "The human being shall have the right to have his own convictions and freely express them. The human being must not be hindered from seeking, receiving and imparting information and ideas." The Constitution being the supreme legal act in Lithuania, all other legal acts must conform to the Constitution of the Republic of Lithuania.

**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.

The document is not translated.

- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011).

The document is not translated.

- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity.

The document is not translated.

- 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 document is not translated.

- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment.

The document is not translated.

- 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 document is not translated.

- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns.

The document is not translated.

- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content.

The document is not translated.

- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings.

The document is not translated.

- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists.

The document is not translated.