

# **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**

### **Switzerland**

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

*Regular procedures provided by Swiss criminal law are usually applicable – just as in the case of any other attacks against 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?

*No, because, to our knowledge, threats and crimes targeting journalists and other media actors have not been a problem so far.*

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

*According to the Swiss Federal Constitution and the Swiss Federal Criminal Code, confidentiality of journalists' sources of information is protected. As in other countries, the protection of confidentiality is not absolute. There are exceptions for the covering up of certain serious crimes, as in the case of drug dealing. One case concerning a Swiss newspaper journalist (who has been obliged to break the confidentiality of her sources by the Swiss Federal Court) is pending at the European Court of Human Rights.*

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

*Yes: Articles 173-177 of the Swiss Federal Criminal Code is applicable (<https://www.admin.ch/opc/en/classified-compilation/19370083/index.html#a173>).*

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?

*All guarantees mentioned above (the right to defence, a 3 months' period of limitation applicable to defamation suits, defences of truth and of good faith) are provided by in the criminal and – in many constellations – also in the civil legislation of Switzerland.*

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, Swiss state officials are not better protected than ordinary citizens.*

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 applicable Swiss law provisions do not mention such safeguards as such. But these law provisions have to be applied in the light of the freedom of the media as guaranteed in article 17 of the Swiss Federal Constitution and article 10 ECHR.*

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

*All documents have been translated in national language and are accessible for the mentioned authorities.*