

The list of questions to be sent to the CDMSI on implementation of Council of Europe standards related to safety of journalists and other media actors

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

The Criminal Code of Ukraine provides for responsibility for the purposeful obstruction of legal journalistic activities, harassment of journalist for the performance of his/her professional duties, for criticism, carried out by an official person or a group of persons by prior agreement (Article 171), for launching threat or exercising violence against journalist related to his/her legal professional activities (article 3451), for intentional destruction or damage to his/her property (Article 3471), for infringement on life of a journalist (article 3481), for taking journalist as a hostage (Article 3491).

During 2013-2014 a number of criminal proceedings for murders of or physical abuse against journalists were initiated. According to the information of the Ministry of Internal Affairs of Ukraine in 2013 – 198 persons and in 2014 – 233 persons, who were media employees, 1 and 8 of which respectively died, were recognized as the victims of the criminal offenses. Most of these media employees suffered during the Revolution of Dignity and in the Area of the Antiterrorist Operation in Donetsk and Luhansk Regions.

According to the data of the Unified Register of the State Proceedings during 2013-2014 the internal affairs bodies registered 314 criminal proceedings on criminal offenses under Article 171. The investigations are being carried out.

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 is an institute of the Ukrainian Parliament Commissioner for Human Rights, which is committed to protection of the rights and freedoms of a human and citizen, to observance and respect of the rights and freedoms of a human and citizen, to prevention of violation of rights and freedoms of a human and citizen or to promotion of their renewal, to prevention of any forms of discrimination related to enjoyment of their human rights and freedoms. The above covers journalists and other media actors.

At the non-governmental level, the protection of journalists is addressed by the National Union of Journalists of Ukraine, the Independent Media Labour Union of Ukraine, the NGO “Institute for Mass Information”, the Ukrainian Helsinki Union on Human Rights, the Media Law Institute.

In September 2015 in order to coordinate the activities on prevention of obstruction of legal professional journalistic activities and to facilitate the investigations of criminal proceedings on attacks against journalists, the relevant work group started its work within the Administration of the President of Ukraine. This group has been joined by the representatives of the police, the public prosecution office, security services, the national media regulator, and non-governmental media organizations.

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

In Ukraine journalists and media actors exercise their activities according to a number of legislative acts in the area (the Law of Ukraine “On Information”, the Law of Ukraine “On Access to Publicly Available Information” No.2939 of 13 January 2011, the Law of Ukraine “On Printed Media (Press) in Ukraine” No.2782 of 16 November 1992, the Law of Ukraine “On Television and Radio Broadcasting” No. 3759 of 21 December 1993, the Law of Ukraine “On Information Agencies” No. 74/95 of 28 February 1995, the Law of Ukraine “On State Support of Mass Media and Social Protection of Journalists” No. 540/97 of 23 September 1997).

The journalist has the right to protect confidentiality of authorship and sources of information, except when those secrets are to be made publicly available upon the request of the court. A similar provision is also contained in Article 59 of the Law of Ukraine “On Television and Radio Broadcasting” which provides for the following: “The TV and radio company must keep, on the basis of documentary evidence, confidentiality of information about the person who provided the information or other materials subject to non-disclosure of his/her name”.

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

The Criminal Code of Ukraine does not provide for responsibility for defamation, while a person may apply to the court under the Civil Code of Ukraine (Article 201) for the protection of honour, dignity and business reputation, if he/she considers that he/she has been defamed. Thus, the person is ensured with sufficient protection in case of spreading false information concerning him/her.

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?

Article 277 of the Civil Code of Ukraine stipulates refutation of false information, in particular, part 1 of this article states that an individual, whose private moral rights have been infringed by spreading false information about him/her and (or) members of his/her family, has the right of reply, as well as of refutation of this false information. Furthermore, part 6 of this Article provides for that an individual, whose private moral rights have been infringed in print or other media, has a right of reply, as well as of refutation of this false information in this very mass media in the manner prescribed by law.

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?

The national legislation of Ukraine provides for equality of all citizens before the law, privileges provided to high officials compared to other citizens are prohibited. In particular, Article 24 of the Constitution of Ukraine prohibits privileges or restrictions

based on race, skin colour, political, religious and other beliefs, sex, ethnic or social origin, property, residence, language or other characteristics.

7. Do laws on the protection of public order, national security or antiterrorism have safeguards for the right to freedom of expression? What are these safeguards?

In accordance with the Constitution of Ukraine everyone is guaranteed the right for freedom of thought and speech, free expression of opinions and convictions (Article 34).

Everyone has the right to freely collect, store, use and disseminate information verbally, in writing or otherwise - upon his/her own choice. Article 47-1 of the Law of Ukraine "On Information" No. 2657 of 2 October 1992 provides for that no one may be prosecuted for expressing assessment judgments that do not contain actual data, in particular, criticism, assessment of actions and statements that cannot be interpreted as those to include actual data, given the nature of the use of language, including the use of hyperbole, allegory, satire. Assessment opinions are not subject to refutation and proving their verity.

A person is exempt from liability for disclosure of classified information, if the court determines that the information is socially significant.

However, part 3 of Article 34 of the Constitution of Ukraine provides for that these rights may be restricted by law in the interests of national security, territorial integrity or public safety for the prevention of disorder or crime, for the protection of public health, protection of the reputation or rights of others, for preventing disclosure of information received in confidence, or for maintaining the authority and impartiality of the system of justice.

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) 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, 30 March 2011.
- Recommendation 1876 (2009) - 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, 26 September 2007.
- Recommendation Rec(2004)16 of the Committee of Ministers to member states on the right of 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 Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings.
- Belgrade Resolution on Safety of Journalists of the Council of Europe Conference of Ministers responsible for Media and Information Society.

The translations of the following recommendations are placed on the website of the Verkhovna Rada of Ukraine:

- Resolution 1675 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity (http://w1.c1.rada.gov.ua/pls/mpz/docs/1013_rec_1876.htm).

- Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings (http://zakon4.rada.gov.ua/laws/show/994_870).

The following recommendations are placed on the webpage of the Media Law Institute:

- Recommendation Rec(2004)16 of the Committee of Ministers to member states on the right of reply in the new media environment (<http://medialaw.org.ua/library/rekomendatsiya-rec-2004-16-komitetu-ministriv-krayinam-chlenam-shhodo-prava-na-vidpovid-u-novomu-media-otochenni/>).

- 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 (<http://medialaw.org.ua/library/rekomendatsiya-r-2000-7-pro-pravo-zhurnalistiv-ne-rozkryvaty-svoyi-dzherela-informatsiyi/>).

- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (<http://medialaw.org.ua/library/rekomendatsiya-cm-rec-2007-15-komitetu-ministriv-krayinam-chlenam-rady-yevropy-shhodo-vysvitlennya-vyboriv-zasobamy-masovoyi-informatsiyi/>).

The following recommendation is placed on the webpage of the All-Ukrainian Association "Information Safety and Information Technologies":

Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality (<http://www.vaibit.org/portals/0/Files/recomendation.docx>)

The above documents are available to the public at large in Ukraine.

Furthermore, since 2006 on a quarterly basis the Legislation Institute of the Verkhovna Rada of Ukraine has been translating and publishing the abstract reviews of acts newly adopted by the Parliamentary Assembly of the Council of Europe (resolutions and recommendations of the PACE, documents of the Committee of Ministers, decisions and

regulations of the European Commission, best practices the European Court of Human Rights.

http://instzak.rada.gov.ua/instzak/control/uk/publish/article?art_id=60386&cat_id=60385

In particular, the review for July-September 2015 contains the abstracts of the newly adopted regulations of the PACE on responsibility and ethics of media in the media environment, strengthening cooperation in the combat against cyberterrorism and other large-scale cyberattacks on the Internet, recognizing and preventing neoracism.

<http://instzak.rada.gov.ua/instzak/doccatalog/document;jsessionid=91DFFF36F4AD1DF0E458893557ED5B11?id=76756>