

Norway – reply to questionnaire

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

There are no mechanisms specifically designed to ensure investigation and prosecution of attacks against media actors. Threats and other physical attacks on journalist are criminal offences, however. The Director of Public Prosecutions has in the guidelines on the objectives and priorities for the police and public prosecutors 2015 stressed the prosecuting authorities' responsibility in ensuring that the police adequately investigate threats and violence against media actors. The guidelines emphasise the importance in securing the media's independence and freedom and it also stresses that the prosecutor shall request sufficiently severe sentences in cases concerning threats and violence against media actors. The case law of the Norwegian Supreme Court shows that threats against journalists with the purpose of influencing the media's activity are punished more severely than ordinary threats.

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?

As a general rule journalists are *not* obliged to provide information about the identity of their sources. The protection of editorial confidentiality is guaranteed by section 125 of The Criminal Procedure Act and Section 22-11 of the Dispute Act. The editor of a printed publication may refuse to provide access to evidence in court concerning the identity of the author of an article or report in the publication or the source of any information contained in it. The same rule applies to evidence concerning the identity of the source of other information that has been confided to the editor for use in his work. Other persons who have acquired knowledge of the author or the source through their work for the publishers, editors, press agency or printing office in question have the same right as the editor.

If important public interests require that evidence is presented and it is of considerable importance to the clarification of the case, the court may nevertheless, based on an overall assessment, order the evidence to be presented or the source to be revealed. If the author or source has discovered circumstances that it is in the public interest to publicise, such an order may only be made if it is particularly necessary for the name to be publicised (see Section 125 para. 3 of The Criminal Procedure Act and Section 22-11 para. 2 of the Dispute Act).

The threshold for requiring evidence to be presented according to this rule is generally considered to be high. It may further be noted that evidence cannot be required to the detriment of the right to freedom of expression envisaged in the Norwegian constitution as well as international human rights instruments, see inter alia the decision by the Supreme Court included in Rt. 2010 p. 1381.

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

Defamation/libel is not subject to criminal law provisions. The General Penal Code 2005, which entered into force on October 1st 2015, does not include any provision criminalizing defamation.

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 may give rise to compensation under Section 3-6 a of the Act relating to compensation in certain circumstances. Section 3-6 a specifies that there is no right to compensation if the defamatory statement is considered justified in light of a fair balancing of the reasons underpinning the freedom of expression. It follows that one must particularly take into account inter alia whether the defamatory statement is factually well founded. It is also to be taken into account whether the person accused of defamation had a good faith belief that the defamatory statement was justified.

In most part the same civil procedural principles which are applicable in other claims for compensation will apply. The limitation period is three years from the day when the claimant gained or should have gained knowledge of the defamatory statement and the person responsible for it, pursuant to Section 9 of the Act relating to the limitation period for claims.

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?

State officials are generally not protected against criticism and insult at a higher level than ordinary people through penal laws. However, the threshold for establishing responsibility for insults against a public servant pursuant to Section 156 (2) of the General Penal Code 2005 is lower than the threshold for establishing liability for similar types of conduct committed against any other person pursuant to Section 266.

Section 156 (2) states that any person who annoys a public servant during, or because of, the performance of his duties by insults or other offensive behaviour shall be liable for fines. Section 266 which applies to conduct committed against any person, stipulates that any person who by frightening or annoying behaviour or other inconsiderate conduct violates another person's right to be left in peace shall be liable to fines or imprisonment for a term not exceeding two years of imprisonment.

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?

Laws on the protection of public order, national security and anti-terrorism are drafted with due regard to the right to freedom of expression and shall also be interpreted in accordance with the rules on the right to freedom of expression envisaged in the constitution and international human right conventions.

The right to freedom of expression is protected by the Norwegian Constitution which takes supremacy over any other acts of legislation in cases of conflict. Moreover, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, along with certain other conventions and protocols, also take supremacy over other legislative provisions in cases of conflict (see The Human Rights Act Section 3).

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?

No, they have not been translated and there are no general mechanisms which ensure that these instruments are disseminated widely. However, as these instruments are available on the internet in English versions, it has not been deemed necessary.