

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



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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 "Former Yugoslav Republic of Macedonia"

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

The matter that conduct investigation and prosecution act is arranged by the Law on Criminal Procedure. The subject of investigation and prosecution is regulated by The Law on Criminal Procedure. All the international standards from this sphere are contained the new Law on Criminal Procedure adopted in 2010 .Precisely, with the new Law more novelties have been introduced to increase efficiency in criminal proceeding. The most significant was the part on exclusion of investigation from court jurisdiction and transferring it to the competence of the Public prosecution.

In accordance with the New Law on Criminal Procedure, The Public Prosecutor and the Judicial Police find out of committing a crime through direct observation, after receiving an oral or written crime report. All state bodies, public enterprises and institutions are obligated to report crimes that are prosecuted ex officio of that have been reported or have learned otherwise. Submitting the application, the applicants shall specify any evidence known to them and will take steps to preserve any traces of the crime, objects that are being used in its execution or have emerged from the execution of other evidence. Anyone may report a criminal act who is prosecuted ex officio.

Criminal charge is submitted to the authorized public prosecutor in writing or verbal, by telephone, either electronically or using other technical means and ways. The investigative procedure is instituted against a person prosecuted ex officio or upon the proposal, when there is reasonable suspicion of a criminal offense, The investigative procedure shall be conducted by the competent prosecutor features a Judicial Police. During the investigation procedure:

- Proofs and data necessary for the public prosecutor are collecting in order to decide whether an indictment will be submit or the criminal prosecution will be abandon and
-- Presenting evidence when there is a risk that some proofs may not be presented at the main hearing or that their performance may be connected with difficulties.

After completion of the investigation if the Public Prosecutor finds that there is enough evidence to expect a conviction, prepares and submits indictment to the competent court.

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?

The Law on the Ombudsman does not distinguish specific categories of citizens- all citizens are equal. Accordingly, the Law on the Ombudsman doesn't involve any specific legislation that would refer only to the protection of the rights of journalists.

According to Article 2 of the Ombudsman "the Ombudsman protects the legal and constitutional rights of citizens and all other persons when their rights are violated, by actions and activities or by omissions of actions by the state administration bodies and other bodies and organizations with public authorization."

The Ombudsman also takes actions and measures for the protection of the principle of non-discrimination and appropriate equitable representation of members of communities in the state government bodies, local government and public institutions and services.

This denotes that, within its powers, the Ombudsman protects the constitutional and legal rights of the journalists, as well as of the constitutional and legal rights of all other citizens and individuals in Republic of Macedonia.

In practice, several journalists who sought protection of their rights, have submitted complains to the Ombudsman so far, and the Ombudsman has initiated procedures to protect their rights.

According to the Rules of Procedure (Article 118), Macedonian Assembly sets up permanent and temporary working bodies and commissions on matters of social interest. The current Standing Committee on wiretapping has been established on this basis.

The Committee contemplates issues related to general questions, suggestions and opinions regarding the realization Constitution's provisions, laws and other regulations relevant for the employment and protection of citizens's rights and freedoms. The Committee cooperates with relevant international bodies in the fields of protection of freedoms and rights of citizens. The Committee can not perform investigative or other judicial functions.

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

The Constitution of the Republic of Macedonia (Article 16) defines and guaranties the right to protect the source of information in mass media.

Article 12 of the Law on Civil Liability of Defamation and Insult in detail arranges the matter of protection of sources of information. It stipulates that "In the process of civil responsibility for insult or defamation under this law, the defendant journalist or any other person professionally engaged in informing the public, can not be required to reveal his secret source of information for the facts which he is obliged to prove. "

The Law also stipulates that "the Court may request from the defendant to disclose relevant information in order to determine the veracity of the published information without identifying the source of the information." Paragraph 3 of Article 12 stipulates that "The refusal of the defendant to reveal the secret source of information can not be taken as guilty plea or as a basis for conclusion that it did not prove the authenticity of the facts or belief merits for their veracity."

According to the Media Law (Article 12) the journalist has the right not to reveal the source of information or revealing data for that source, according to the international law and the Constitution of the Republic of Macedonia.

Besides the journalists, this right is also applicable for other persons who, due to their professional connection with the journalist, are familiar with the data that may reveal the source, through collecting, editorial shaping or spreading the information.

Hence, before publishing information that does not reveal the source, the journalist is obliged to inform the editor. Law on preventing corruption Article 62-No one can request from the journalist who published information on acts of corruption to reveal the source of the information except in the Court procedure. Contempting of this protection of journalists is an offense followed by paying fine. Further, European Convention on Human Rights is applied as a part of the national legislation.

European Convention of Human Rights by Article 10 carried a broad protection of freedom of expression, including the protection of sources of information through the freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers. Nevertheless, the Convention does not provide an absolute right to non-disclosure of the source. Precisely with the condition when the this right may be restrtded.

(Recommendation no. R (2000) 7 on the right of journalists not to disclose their sources of information, the Committee of Ministers)

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

Decriminalization of defamation was done in 2012 when the issue of defamation and insult became part of civil procedure in a Law on civil liability for defamation. This Law has introduced a new concept of responsibility for defamation, aligned to European Union and Council of Europe recommendations, and the latest tendencies in European legislation.

The Law expressly provides supremacy not only of the European Convention on Human Rights, but the case law of the European Court of Human Rights, as in the case of conflict of national legislation and in case of any legal gap. Which allows direct application of the relevant case law of the European Court of Human Rights by domestic courts in proceedings for defamation.

The law provides pecuniary and non-pecuniary liability caused by an insult or defamation, physical and legal entity. Very important are the provisions which provide protection of the resource, according to the Case law of the European Court of Human Rights.

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?

According to Article 10 of the European Convention on Human Rights “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

“This article does not prevent States to request a work permit to the radio, film and TV enterprises. “ Restriction of freedom and information are arranged through prescription of strict conditions for civil liability for defamation and insult, in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10) and the European Court of Human Rights. In this direction in 2012, the decriminalization of defamation and insult has been established by passing the Law on

Civil Liability for Defamation and insult. This Article 1 of the Law regulates the "civil liability for damage done to the reputation of the person or a legal entity by insult and defamation. Deadline for submission of complaint is regulated in Article 20 of the Law " Deadline for submission of complaint "

The deadline for submitting a claim under the provisions of this Law is three months from the date the claimer had noticed or should have noticed the offensive or defamatory statement and the identity of the person who caused the damage, but no later than one year from the date when the statement is given to a third party.

If the claimant dies after the initiation, but before completion of the procedure with a final verdict, his successor can continue the procedure on behalf of the departed if he/she requests a continuation of the proceeding within three months after the death of the claimant.

The burden of proof (onus probandi) in proceedings at the competent court falls on the defendant in accordance with Article 9 paragraph 1 of the Law: "The defendant is obliged to prove the veracity of the facts contained in the claim."

By exception, the defendant who will prove the veracity of his claim or will prove that he had grounds to believe in his veracity shall not be responsible for defamation.

The person who "will present humiliating opinion on a public figure/ official of a public interest, or if he/she proves that had a ground to believe in the veracity of those facts, or if his/hers statement contains valid criticism or encourages discussion of public interest or is given in accordance with professional standards and ethics of the journalistic profession, is excluded from responsibility. "(Article 7, paragraph 3).

The person who will express humiliating opinion for another person in a scientific, literary or art work, in a serious critique, during the practice of an official duty, journalist, political or other social activity, in the defense of the freedom of public expression of thought or other justified rights, is excluded from responsibility for an insult, if:

- out of his/hers expression manner or his other circumstances stams that the statement doesn't mean an insult;
- the statement did not cause any significant damage to the reputation of the personality
- the statement is not expressed solely for the purpose to humiliate the person or to belittle his honor or his reputation.

If a person who will express a humiliating opinion of a public official in public interest proves that the statement is based on true facts, or if he/ she proves that had grounds to believe in the veracity of those facts, or if the statement contains valid criticism or encourages discussion of public interest or is given in accordance with professional standards and ethics of the journalistic profession, is not responsible for the insult.

- The person who express negative opinion for other person with sincere intention or belief in the good intentions of his/ hers opinion, is not responsible for the insult.

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?

Macedonian state officials do not enjoy a greater degree of protection from defamation and insult than ordinary citizens. Article 7 (3) of the Law on Civil Liability for Defamation stipulates that "The person who will express a humiliating opinion for a public official in the public interest, is not responsible for the insult, if he proves that the statement is based on true facts, or if he proves that he had grounds to believe in the veracity of those facts or the statement contains valid criticism or encourages discussion of public interest or it was given in accordance with professional standards and ethics of the journalistic profession. "

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?

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?

Documents of the Council of Europe can be found on various web pages of Ministries and other institutions. Some of them are attached on the web pages of non-governmental organisations, professional journalists associations and sites which treat legal and media issues. Much frequently institutions have posts to the link to the Council of Europe as an organization in general. None of the sites does offer a collection of documents as specified in the questionnaire.

- 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