

Steering Committee on Media and Information Society

Answers of Republic of Turkey to the draft list of questions for CDMSI members on the 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?

Investigation and prosecution of attacks against all citizens including journalists and other media actors are carried out according to Article 160 of Turkish Code of Criminal Procedure (Law No 5271; approved 17 December 2004) "The public prosecutor has the duty of making the necessary investigation in order to decide whether it is necessary to file a public prosecution, and if there are "factual findings which indicate that a crime has been committed".

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.

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

The confidentiality of journalists' sources of information is ensured by Turkish Press Law (Law No 5187; approved 9 June 2004). Article 12 of Press Law is as below mentioned:

News Source

Article 12 – The owner of the periodical, responsible editor, and owner of the publication cannot be forced to either disclose their news sources or to legally testify on this issue.

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

Articles 125, 299 and 301 of Turkish Penal Code (Law No 5237; entered into force 1 June 2005) have provisions regarding defamation/libel.

Defamation

Article 125- (1) Any person who acts with the intention to harm the honour, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine. In order to punish the offense committed in absentia of the victim, the act should be committed in presence of at least three persons.

(2) The offender is subject to abovementioned stipulated punishment in case of commission of offense in writing or by use of audio or visual means directed to the aggrieved party.

(3) In case of commission of offense with defamatory intent;

a) Against a public officer,

b) Due to disclosure, change or attempt to spread religious, social, philosophical belief, opinion and convictions and to obey the orders and restriction of the one's religion,

c) By mentioning sacred values in view of the religion with which a person is connected,

the minimum limit of punishment may not be less than one year.

(4) The punishment is increased by one sixth in case of performance of defamation act openly;

(5) In case of defamation of public officers working as a committee to perform a duty, the offense is considered to have committed against the members forming the committee. In such a case, the provisions related to concatenated offences shall be applied.

Insulting the President of the Republic

Article 299- (1) Anyone who insults the President of the Republic shall be imprisoned for a term of from one to four years. (2) –

Where the offence is committed in public, the sentence shall be increased by one sixth. (3) Initiation of a prosecution for this offence shall be subject to authorization by the Minister of Justice.

Insulting Turkishness, the Republic, the organs and institutions of the State

Article 301- (1) Anyone who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey shall be punished with imprisonment of from six months to three years.

(2) Anyone who publicly insults the Government of the Republic of Turkey, the judicial bodies of the state, the military or police shall be punished with imprisonment of from six months to two years.

(3) Where a Turkish citizen denigrates Turkishness in a foreign country, the penalty shall be increased by one third.

(4) Expressions of opinion with the intention of criticism shall not incur punishment.

5. What are the procedural guarantees (the right to defense, the periods of limitation applicable to defamation suits, exceptio veritatis (defense of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?

Article 127 of Turkish Penal Code covers proof of accusation and article 128 covers inviolability of allegation and defense.

Proof of Accusation

Article 127 - (1) The act shall not be punishable if the allegation is proven. The allegation is deemed to have been proven if the insulted person was convicted by a final judgment. In other circumstances, the acceptance of the demand for proof of the allegation shall depend on whether there is a public benefit from the clarification of the truth or falsehood of the allegation, or on whether the complainant consents to proof thereof.

(2) A punishment shall be imposed on any person who insults an individual by reference to that individual's proven act.

Inviolability of allegation and defense

Article 128 - (1) No penalty shall be imposed on account of any concrete accusations or negative remarks made against persons in the course of written or verbal applications, accusations and defenses made to judicial or administrative authorities. However, in such cases, the accusations and assessments must be based on real and concrete facts and be relevant to the dispute in question.

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 protected against defamation/libel at a higher level than ordinary people under article 125 para 3 of Turkish Penal Code.

Defamation

Article 125-

(3) In case of commission of offense with defamatory intent;

- a) Against a public officer,
 - b) Due to disclosure, change or attempt to spread religious, social, philosophical belief, opinion and convictions and to obey the orders and restriction of the one's religion,
 - c) By mentioning sacred values in view of the religion with which a person is connected,
- the minimum limit of punishment may not be less than one year.

In addition to that insult the President of the Republic is imprisoned for a term of from one to four years according to article 299 of Turkish Penal Code.

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?

Turkish legislation has sufficient safeguards to protect exercising of freedom of expression in a balanced manner between freedoms and security. The provisions of legislation including Constitution, anti-terror law and other related laws are fully harmonized with ECHR standards and case laws. Articles 6 and 7 of Law to Fight Terrorism (Law No 3713; entered into force 12 April 1991) criminalize the offence of terrorist propaganda, according to which, persons making propaganda, making publications including propaganda, covering their faces during public demonstrations that have been turned into propaganda of terrorist organization, or shouting slogans as to imply membership to such organizations, shall be punished with imprisonment.

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 organizations of lawyers and media professionals?

Most of the below-mentioned instruments were translated and disseminated to related public institutions and NGO's.