



TAKING ACTION TO PROTECT JOURNALISTS AND OTHER MEDIA ACTORS



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Artificial Intelligence – Intelligent Politics
Challenges and opportunities for media and democracy
Background Paper, Ministerial Conference, Cyprus 2020



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EXECUTIVE SUMMARY

Violence against journalists is on the rise across all Council of Europe Member States. Attacks are getting more severe and include murders and car bombs as well as other forms of physical violence and threats. Journalists work in an increasingly hostile climate in which threats against journalists come from political leaders and denigration of their work is being normalized. Attacks are often not sufficiently investigated and a very high percentage of incidents goes unpunished. Impunity reigns and justice is not being done. Journalists have little confidence that attacks or threats against them will be investigated and often do not report them. This has a grave effect on them and many no longer report attacks but instead self-censor and shy away from potentially controversial issues. Those few brave journalists who do still report on controversial issues - corruption, the link between organized crime, business and politics, or even 'regular' critical political reporting - do so in fear for their and their family's safety.

This situation constitutes a terminal threat to democracy and defies international standards on freedom of expression and the safety of journalists adopted by Member States under the auspices of the Council of Europe. Member States have committed to creating an enabling environment for freedom of expression, yet, what journalists experience on the ground is increased violence, threats, denigration, arbitrary arrests and detention. A disconcertingly large number of journalists have experienced a wide array of these violations, and some have been murdered. This is unacceptable.

The time for effective action is now. The urgency of the situation needs to be matched by an urgency of engagement at the political level by Member States. Dedicated national plans of action on the safety of journalists and other media actors must be established and implemented, based on Council of Europe Recommendation CM/Rec2016(4). The process to draw up and implement such plans has already started in some countries, such as Sweden and the Netherlands, and lessons can be drawn from these as well as from experience elsewhere in the world where violence against journalists has been endemic.

It is essential, first of all, that political leaders and public officials explicitly recognize that violence against journalists constitutes a threat to democracy. They must unequivocally condemn violent attacks and stop denigrating the media. A positive message needs to come from the top that freedom of expression is vital to democracy.

To be effective, national plans of action should be grounded in an informed and well-researched analysis of the situation in the country, including a clear gender analysis. There must be strong political and operational leadership, as well as inter-agency coordination, and genuine civil society partnership from the planning stages onwards. Each plan must set a comprehensive and effective programme of activity that builds practice and evidence over time, and sufficient budget must be allocated. Action plans for the safety of journalists should be coordinated with action plans and activities in other areas, such as plans for the protection of human rights defenders or gender equality, which are already being implemented across Europe.

Inspiration on possible action points for a prospective national action plan can be drawn from Council of Europe Recommendation CM/Rec(2016)4, which provides detailed guidance on how to ensure the protection of journalism and the safety of journalists and other media actors through a four pronged approach encompassing prevention, protection, prosecution and promotion of awareness, as well as from best practices across CoE member States and other jurisdictions.

Under the 'prevention' pillar, States should review whether there is a comprehensive legislative framework protecting the right to life, freedom of expression and associated rights, and whether this is robust and effective in practice. If not, laws must be reformed and implementation ensured. One example of how this can be achieved is found in Iceland, which has engaged on a wholesale review of a range of laws that affect freedom of expression.

Under the 'protection' pillar, Member States must ensure effective law enforcement, provide police protection when needed and, if warranted, establish protection mechanisms. Early-warning and rapid-response mechanisms such as hotlines should also be set up and gender-specific mechanisms for voluntary evacuation to a safe place ensured. Political leaders must condemn all violence and threats whenever they occur and there must be genuine and effective partnership with civil society. Council of Europe Member States should learn from protective mechanisms that have been established in countries such as Mexico and Colombia, as well as from national plans and mechanisms that are being implemented in Europe, such as the National Plans and agreements that are being implemented in Sweden and the Netherlands and Italy's protection program for individuals under threat from organized crime. Action should be coordinated with plans on ending violence against women and for the protection of human rights defenders.

The 'prosecution' pillar requires an ending of impunity: all crimes against journalists must be properly and effectively investigated and perpetrators brought to justice. The establishment of special police and prosecutors units is very effective, with specialised protocols that provide guidance on the investigation and prosecution of crimes committed against journalists and other media actors and that recognize the links between such violence and their work. Online attacks must be prosecuted as thoroughly as those that occur in the physical, 'offline' world. Effective training of law enforcement, judicial and other public officials is key, and in countries where impunity is long-embedded, special commissions of inquiry can be highly effective as has been shown in Serbia.

The 'promotion' pillar recommends that Member States engage in information, education and awareness raising campaigns on the importance of the issue of safety of journalists, and that they develop civil society partnerships in order to promote the safety of journalists. Member States should ensure that Recommendation CM/Rec(2016)4 is translated in national and minority languages, and that educational materials on the safety of journalists, including gender-specific issues, are included in training programmes in journalism schools as well as in media and information literacy initiatives.

Progress must be monitored and regularly evaluated, and if necessary plans and budgets should be adjusted so that they remain realistic and fit for purpose.

DECLINE IN PROTECTION OF JOURNALISTS AND OTHER MEDIA ACTORS

The last decade has seen an extremely worrying decline in the safety of journalists and other media. Since 2015, 24 journalists have been killed, and 17 of these murders remain unresolved. In addition, hundreds of journalists throughout Council of Europe member states have suffered violent attacks - there is hardly a Council of Europe Member State where no threats or attacks occurred.¹

Attacks have ranged from car bombs to molotov cocktails, beatings and poisonings, taking place in a political climate in which harsh verbal attacks on the media have come from the highest levels of political leadership. Attacks are getting more numerous, more severe, and take place in more countries than before. Violence against journalists is endemic and enemies of media freedom are literally getting away with murder; the brutal killings of Daphne Caruana Galizia in Malta and Ján Kuciak in Slovakia are a grave testament to the very urgent need for action.

By the end of 2018, the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists, set up to record information on serious concerns about media freedom and safety of journalists in Council of Europe Member States, had registered a total of 509 alerts, with year-on-year rises of incidents in every year except 2017. Nearly half of all alerts are marked as 'category 1', covering the most severe and damaging violations of media freedom, such as murder, direct threats to life and physical assaults. The majority of threats came from the state, with physical attacks and detentions making up nearly half the alerts. Since 2015, only 11% of all alerts have been marked resolved, a figure that goes down to 1.82% for alerts entered in 2018.²

Interviews with journalists echo these statistics. In 2017, a study that interviewed 940 journalists from all Council of Europe Member States that a staggering 40% of them had suffered slander and smear campaigns, threats, intimidation, assault, robbery or destruction of property.³ Female journalists suffered sexual harass-

1. Statistics taken from the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists, accessible at <https://www.coe.int/en/web/media-freedom/the-platform>

2. Figures taken as of 31 December 2018.

3. 'Journalists under Pressure', M. Clark, A. Grech, Council of Europe, March 2017

ment or violence; male journalists were more likely to be threatened with force or intimidation by police.⁴ Despite this very high level of incidents, 35% of respondents did not feel that they could report them either because of fear or mistrust or because they did not know how to. Of those who did file police reports, 23% were not satisfied with the outcome. As a result, many journalists self-censored or even abandoned sensitive, critical stories altogether, to the obvious detriment of the public's right to be informed.⁵

Other intergovernmental organisations and NGOs that monitor press freedom report similarly downward trends. At the launch of the November 2018 report, 'Demonising the media: Threats to journalists in Europe', the director of the Office of the OSCE Representative on Freedom of the Media said that, "today journalism has become one of the most dangerous professions in the world."⁶ The report,⁷ for which Index on Censorship surveyed over 3,000 media freedom violations from 2014-2018, highlights a misuse of national security laws to target political reporting; direct as well as indirect political interference; online harassment; the targeting of media at protests and a threat to public broadcasting as key themes.

UNESCO's latest Global Report on Media Development and Freedom of Expression reports an increase in the number of countries where journalists' safety is significantly at risk over the period 2012-2017.⁸ It notes that in central and eastern Europe the overall number of killings has dropped only slightly compared to the previous period; that the level of impunity for violence has increased; that women journalists suffer serious online attacks; and that the number of imprisoned journalists (mostly on retaliatory charges) has remained consistently high.⁹ In western Europe, UNESCO notes a sharp decline in the safety of journalists and a far higher number of journalists killed: "[i]n countries which have traditionally embraced a free press, journalists were harassed, arrested, beaten, pressured, and interrogated by authorities ... Politicians verbally assaulted the press, in some cases encouraging attacks ... [J]ournalists, particularly women, were under heavy assault by trolls and other cyber attackers."¹⁰

Other media freedom organisations paint the same picture: ARTICLE 19 reports that "freedom of expression is at its lowest point in 10 years";¹¹ the International Press Institute has referred to 2018 as "A Dark Year for Press Freedom"¹²; and the Committee to Protect Journalists reports a doubling in the last ten years of the number of journalists in prison for their work.¹³

The Council of Europe Secretary General's 2018 Report on the State of Democracy, Human Rights and the Rule of Law¹⁴ notes that the situation as regards safety of journalists is 'deteriorating' in seventeen Member States and 'fully unsatisfactory' in three. The Report urges States to secure a more favourable environment for the safety of journalists and to follow up on the alerts received on the Council of Europe Platform to promote the protection of journalism and safety of journalists.

INTERNATIONAL STANDARD-SETTING

The international community has long recognized the important role that journalists and other media actors play in society, and that securing the safety of journalists is paramount to the maintenance of democracy. In Europe, respect for media freedom is anchored in Article 10 of the European Convention on Human Rights, ratified by all Council of Europe Member States.¹⁵

4. Reported by 69% and 53% of the sample respectively

5. At pages 13, 14

6. Mapping Media Freedom: «Journalism has become one of the most dangerous professions in the world», <https://www.indexoncensorship.org/2018/11/mapping-media-freedom-journalism-dangerous-profession/>

7. Demonising the media: Threats to journalists in Europe, Index on Censorship, Special Report November 2018: <https://mapping-mediafreedom.org/index.php/demonising-media-threats-journalists-europe/>

8. World trends in freedom of expression and media development: global report 2017/2018, UNESCO 2017, Doc. CI-2017/WS/10 REV: <https://en.unesco.org/world-media-trends-2017>

9. World trends in freedom of expression and media development: regional overview of Central and Eastern Europe 2017/2018, UNESCO 2018: <https://unesdoc.unesco.org/ark:/48223/pf0000265969>

10. World trends in freedom of expression and media development: regional overview of Western Europe and North America 2017/2018, UNESCO 2018: <https://unesdoc.unesco.org/ark:/48223/pf0000265967>

11. See <https://www.article19.org/xpa-18/>

12. See <https://ipi.media/2018-a-dark-year-for-press-freedom/>

13. See <https://cpj.org/data/>.

14. Report by the Secretary General of the Council of Europe, 2018

15. Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950

Over the course of many years, this cornerstone provision of human rights law has been interpreted, through judgments of the European Court of Human Rights as well as by the Committee of Ministers and the Parliamentary Assembly.

The Court has clarified that Article 10 not only requires States to refrain from unnecessary interferences with freedom of expression, but that States are also obliged to create a environment for the full participation in public debate by everyone, without fear.¹⁶ Furthermore, to protect the right to life, States must have in place effective criminal-law provisions to deter the commission of offences, backed up by effective law enforcement machinery, and take preventive operational measures to protect individuals whose lives are at risk.¹⁷ The Court has stressed that States must protect journalists and create a favourable environment for public debate even when the opinions that journalists express are contrary to those held by the authorities or by a significant section of public opinion, and even if they are annoying or shocking.¹⁸

Detailed guidance on how these principles enunciated by the Court should be implemented has come from the Council of Europe's political bodies. The Parliamentary Assembly and Committee of Ministers have issued a rich body of declarations, recommendations and resolutions covering issues such as the eradication of impunity for serious human rights violations; the protection of journalists in situations of conflict and tension; freedom of expression and information in the media in the fight against terrorism; the independence of public service broadcasting; the protection and promotion of investigative journalism; media pluralism and transparency of ownership; the protection of sources and whistleblowers; access to information; gender equality and media; and the media coverage of election campaigns, to name a few.¹⁹

Particularly detailed guidance on the protection of journalism and safety of journalists and other media actors is found in Recommendation CM/Rec(2016)4.²⁰ This protects any person or entity that contributes to public debate, including journalists as well as NGOs, whistle-blowers, academics, campaign groups and others, and requires that States create a 'favourable environment' for the exercise of the right to freedom of expression and provide conditions in which vigorous public debate can thrive.²¹ The Recommendation is based on four pillars which can be summarised as follows:

- ▶ A 'prevention' pillar requiring Member States to have in place a comprehensive legislative framework protecting the right to life, freedom of expression and associated rights. This should be regularly reviewed to ensure that the safeguards and enforcement machinery it provides are robust and effective in practice.
- ▶ A 'protection' pillar requiring that there is effective law enforcement and that there are redress and protection mechanisms for victims. This includes police protection, evacuation mechanisms, rapid response mechanisms such as hotlines and injunctive and precautionary forms of interim protection. Protective measures should be designed with specific consideration for the dangers faced by female journalists. Politicians and public officials must not denigrate journalists and instead unequivocally condemn all attacks against the media. Journalists who are detained should be afforded their procedural rights, and laws should not be enforced in an arbitrary or discriminatory fashion against journalists. Multi-stakeholder dialogue is encouraged, and the rights of journalists who cover protests should be fully respected.
- ▶ A 'prosecution' pillar requiring that investigations into killings, attacks and ill-treatment must be prompt, effective and impartial, and subject to public scrutiny. The prevention of impunity should be a guiding beacon. There should be aggravated penalties for public officials who obstruct investigations. Cross-border cooperation should be enhanced, and States should pursue the safety of journalists in relevant international forums.
- ▶ The 'promotion' pillar recommends that States engage in information and awareness-raising strategies, and to develop real partnerships with civil society and the media. The principles of open government and open justice should be put into practice.

16. See, in particular, the Court's judgment in *Dink v. Turkey*, 14 September 2010, 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09; *Özgür Gündem v. Turkey*, 16 March 2000, 23144/93, paras 42-46.

17. *Gongadze v. Ukraine*, 8 November 2005, 34056/02, par. 164

18. *Dink v. Turkey*, 14 September 2010, 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, para. 137.

19. Respectively, Guidelines on eradicating impunity for serious human rights violations (30 March 2011); Rec(1996)4; Declaration on freedom of expression and information in the media in the context of the fight against terrorism; Rec(1996)10; Declaration on the protection and promotion of investigative journalism; Rec(2018)1; Rec(2000)7; Rec(2014)7; Rec(2002)2; Rec(2013)1 and Rec(2007)15.

20. Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, 13 April 2016

21. Rec(2016)4, Appendix, Principles, under 13.

OTHER INTERNATIONAL GUIDANCE AND RECOMMENDATIONS

A similar call for action on the protection of safety of journalists has been issued under the auspices of the UN. The 2012 UN Plan of Action on the Safety of Journalists and the Issue of Impunity sets principles for cooperation and practical actions for the safety of journalists, and calls on States to set up mechanisms for the prevention and punishment of attacks on journalists.²² It has been implemented through pilot programs (none in Europe). Building civil society partnerships has been central, through national coalitions and mechanisms with local ownership, capacity, and sustainability. This provides important learning opportunities for the implementation of action plans for the safety of journalists elsewhere, including in Europe.

The UN Plan of Action spurred further standard-setting. In particular, UN Human Rights Council Resolution 39/6 calls on States to conduct impartial and effective investigations into all threats and attacks against journalists; urges political leaders and public officials to refrain from denigrating, intimidating or threatening the media; and calls for measures to be put in place to prevent violence, intimidation, threats and attacks against journalists and media workers.²³

URGENT NEED FOR IMPLEMENTATION

The disconnect between the action required under the international standards outlined above, and the reality on the ground is alarming. Council of Europe Member States have committed to creating an enabling environment for journalists, yet, what journalists experience on the ground is increased violence, threats, denigration, arbitrary arrests and detention. A disconcertingly large number of journalists have experienced a wide array of these violations, and, increasingly, some are being murdered. This must stop.

The situation is simply unacceptable. The stakes of inaction are of the gravest nature both in human terms - a matter of life and death, even - and in democratic terms, due to the silencing of the very voices that permit citizens to form their opinions and that ensure that those in power are held to account. The urgency of the situation needs to be matched by an urgency of engagement at the political level by Member States and warrants a dedicated response in the form of a national plan of action on the safety of journalists and other media actors, based on Council of Europe Recommendation CM/Rec2016(4). A national action plan will, on the one hand, send a strong message signifying the political urgency of securing the protection of journalism and the safety of journalists and other media actors, and, on the other hand, provide a solid platform from which to tackle in a coordinated and comprehensive manner the necessary action to be undertaken. Continued inaction on the part of Member States would render the countless international judgments and recommendations on freedom of expression and safety of journalists outlined above a dead letter and is no longer an option.

ESSENTIAL CHARACTERISTICS OF A NATIONAL ACTION PLAN

In order to be effective, any National Action Plan needs to address the following points:²⁴

- ▶ 1. the plan needs to be based on an informed and well-researched analysis of the situation in the country as regards safety of journalists, including a clear gender analysis;
- ▶ 2. there should be strong political and operational leadership, and inter-agency coordination;
- ▶ 3. there must be strong civil society partnership;
- ▶ 4. there should be a comprehensive and effective programme of activity that builds practice and evidence over time;
- ▶ 5. there must be sufficient budget allocated;
- ▶ 6. there should be coordination with action plans and activities in other areas, such as plans for the protection of human rights defenders or gender equality

22. UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 2012: <https://en.unesco.org/un-plan-action-safety-journalists>

23. The safety of journalists, 27 September 2018. Past Resolutions on this issue include UN Human Rights Council Resolution 33/2 and UNGA Resolution on 'The safety of journalists and the issue of impunity'

24. See generally the Council of Europe Project Management Methodology website and Handbook, a human rights approach to project management: <https://www.coe.int/en/web/project-management-methodology>. For similar guidance on a human rights approach to action plans, Member States should also consult the UN Handbook for National Action Plans on Violence against Women, 2012: <http://tiny.cc/vaw>

A crucial overarching consideration is that political leaders and public officials should explicitly recognize that violence against journalists constitutes a threat to democracy, unequivocally condemn violent attacks whenever they occur, and stop denigrating the media. A positive message needs to come from the top that freedom of expression is crucial in democratic society - even if they disagree with what is being said or criticism of them that is voiced.

Informed analysis, including gender analysis

National Action Plans need to be grounded in a specific analysis of the situation and needs of journalists in a given country. In some countries, the overarching concern may be imprisonment of journalists, in others violence may be a bigger concern, or the treatment of journalists who cover demonstrations. The analysis should include an assessment of the professional situation of journalists; the existing legal framework as it affects the safety of journalists;²⁵ and the effectiveness of safety measures already in place. A university or other institution of learning may be designated to lead on this. In Sweden, for example, Linnæus University has been commissioned to conduct this work and to build up a knowledge centre underpinning Sweden's national action plan, *Defending Free Speech - measures to protect journalists, elected representatives and artists from exposure to threats and hatred*.²⁶

The analysis must address gender aspects. Female journalists face specific gender-related dangers, such as threats, sexual aggression and violence, or sexual abuse in detention. These dangers are often compounded by social barriers and constraints, and a lack of recognition of the seriousness of the problem. A gender-specific perspective should therefore be a central feature of all measures and programmes dealing with the protection of journalists.²⁷ This should be coordinated with any existing national action plans for gender equality, as well as with the Council of Europe Gender Equality Strategy 2018-2023.²⁸ One example of how this can be achieved is Sweden's 2018 Action Plan for Free Speech, which is integrated with the national gender strategy, "Power, goals and agency – a feminist policy for a gender-equal future".²⁹

Leadership and inter-agency coordination

Political leadership is required to give the National Action Plan gravitas and importance - to ensure it is taken seriously - as well as to ensure that the plan is grounded in and coordinated with other national policies, plans and legislation. The political leadership needs to emphasize the importance of freedom of expression in democracy, and unequivocally condemn any attacks on or threats to journalists and other media workers when they occur.³⁰

Operational leadership is required to ensure that the National Action Plan is implemented. It should be clear who has the overall operational lead, and which agencies or entities are responsible for leading specific action points. In the process of allocating responsibilities, it will become clear if there are any gaps in capacity or budget allocations (on which more below). Consideration could be given to establishing new operational teams or designating specific entities responsible for issues such as investigating crimes against journalists.

Civil society partnership

A National Action Plan will only be effective when there is clear participation by and partnership with civil society. This is all the more important where trust between government and journalists has been eroded or is under pressure, and requires that principles of open government and open justice are put into practice.³¹ Stakeholders including professional associations of journalists as well as other media actors should be involved from the planning stages onwards, to ensure strong buy-in and trust in the National Action Plan, as well as in subsequent efforts to publicise and educate about relevant issues and standards. Consideration should be given to funding civil society organizations to carry out or be involved in parts of the action plan where trust is crucial, particularly on points such as the creation of a 24 hour helpline.

25. Recommendation, Appendix I - Guidelines, par. 3

26. See <https://www.government.se/information-material/2018/05/action-plan-defending-free-speech/>.

27. Recommendation, Appendix II – Principles, par. 17; also par. 2 of the main body of the Recommendation

28. See <https://www.coe.int/en/web/genderequality>

29. *Defending Free Speech*, Swedish National Action Plan, p. 10 with gender-specific action points throughout

30. Recommendation, Appendix I - Guidelines, par. 15

31. Recommendation, Appendix I - Guidelines, par. 30

Comprehensive and effective program of activity

A comprehensive program of activity should be put together that addresses the national situation, includes specific action points and prioritizes according to areas of most urgent need. Some action points may be phased in later than others, in line with national priorities or because logically some need to be addressed before others can be put in place. There should be a clear description of how the National Action Plan will be implemented, including the articulation of concrete goals, actions, and timelines. The goals and actions should be tailored to the specific legal framework/culture of the given country.

It is important that individual action points are Specific, Measurable, Attainable, Relevant, and Time-bound (S.M.A.R.T.). An example of a SMART Action Point would be to set up a 24 hour helpline: this is Specific as well as Measurable; Attainable if sufficient resources are allocated; Relevant if it responds to a need indicated by journalists; and Time-bound if a deadline has been set by which the helpline should be operational. An example of an action point that is not SMART would be “to end violence against journalists”: while this goal is ‘Relevant’ (if violence is an issue), it is too broad to be ‘Specific’; without an analysis of how it is to be achieved it is probably not ‘Attainable’; and without a deadline it is not ‘Time-bound’.

The use of specific indicators is crucial to the development of S.M.A.R.T. action points. Every action point can have multiple indicators, indicating progress on implementation along various stages. For example, for the establishment of a 24 hour hotline the indicators at different stages could be: (1) agreement on which agency or civil society organisation operates the hotline; (2) agreement on budgets; (3) agreeing the parameters of the hotline; (4) commissioning the operation of the hotline; (5) hotline is operational. Each indicator should have a deadline associated with it so as to keep an action point on track. Progress must be monitored and regularly evaluated, and if necessary plans and budgets should be adjusted so that they remain realistic and fit for purpose. One example of what this approach looks like in practice is found in Montenegro’s National Action Plan on Women, Peace and Security, which sets clear action points and deadlines, and indicates responsible agencies and budget implications.³² The UN Handbook for National Action Plans on Violence against Women recommends the same approach.³³

Sufficient budget allocations

The implementation of an effective National Plan of Action has budget implications. Budget expenditure is justified because of the crucial importance of the issue to protecting democracy. Without a dedicated budget allocation, a National Plan of Action is doomed to fail. As part of the planning process, budget indications therefore need to be developed and approved for each of the relevant agencies. To the extent that certain action points are carried out by non-State actors, for example through the involvement of academic institutions for training, this will need to be funded. While some funding may be obtained from the international community, this should not be seen as a long-term sustainable source of funding.

Coordination with existing action plans and activities

A National Action Plan for Safety of Journalists cannot operate in isolation. The threats to safety of journalists often overlap with other issues, for which separate action plans may already be in place. For example, many countries have action plans on issues such as the protection of human rights defenders, to combat racism or promote gender equality, and elements of these may be relevant to the implementation of a National Action Plan for safety of journalists. This is particularly so when, as will be the case with human rights defenders for example, the beneficiaries of these action plans may be considered to fall under the umbrella of ‘other media actors’ whom the Recommendation seeks to protect.

IDENTIFICATION OF ACTION POINTS

The following pages offer examples of potential action points, or issues around which action points may be developed, based on each of the four pillars of Council of Europe Recommendation CM/Rec2016(4): (1) prevention; (2) protection; (3) prosecution; and (4) promotion³⁴ and in light of the best practices and suggestions for implementation outlined in the “Council of Europe Implementation Guide to Selected topics under the

32. [http://peacewomen.org/sites/default/files/Action%20plan%20\(1\).pdf](http://peacewomen.org/sites/default/files/Action%20plan%20(1).pdf)

33. 2012: <https://tiny.cc/vaw>

34. This section does not list all possible action points and should not be seen as a one-size-fits-all template: national Action Plans must be grounded in the national reality and prioritize urgent action points.

Protection and Prosecution Pillars of the Guidelines of Recommendation CM/Rec(2016)4 on the Protection of journalism and safety of journalists and other media actors”.

Echoing the concern identified above about the general climate as regards the media, an overarching action point should be the firm commitment from political leaders and public officials to condemn any violence against journalists and to stop denigrating the media. Unequivocal political commitment must be expressed by governments to ensure that journalists can carry out their work safely. In this regard, a clear public position should be taken at the highest levels of government regarding the important role of journalists in society and the need to ensure their full protection from violations of their rights.³⁵ Positive steps on this have been made in some Council of Europe Member States - for example, in 2017, Bosnia’s Council of Ministers formally condemned all kind of threats and attacks on journalists. Other good practices in this area include the Swedish and Dutch action plans on the safety of journalists, which represent an example of the taking of a clear public position regarding the important role of journalists in society and the need to ensure their full protection.

Existing national action plans: lessons from Sweden and the Netherlands

Before delving into detail on each of the pillars, it is worth drawing attention to the existing Swedish National Action Plan for the defence of free speech, and the agreement on the Dutch program on the safety of journalists.

The Swedish Action Plan, “Defending Free Speech - measures to protect journalists, elected representatives and artists from exposure to threats and hatred” was adopted in May 2018.³⁶ It covers the protection and defence of freedom of expression of anyone who participates in democratic discourse. Building on a series of studies conducted from 2012-2017, it commits to further mapping the exposure of elected representatives, journalists and artists to threats, violence and harassment. Based on this, the Plan commits specific support for each of the beneficiary groups - for example, the Police Authority offers personal protection to journalists who are threatened. Under the Plan, specialist democracy and hate crime units investigate offences that threaten fundamental rights and freedoms and the free formation of opinion, such as attacks against journalists, and provide support local police units. When there is suspicion that a crime has been committed with the intent to influence the free formation of opinion, police must pay special attention to whether such violence can have a chilling effect on free speech. Investment in training is also foreseen for frontline officers who receive reports as well as for specialist units. Furthermore, Sweden has committed to being a strong voice on this issue in the world, through cooperation in intergovernmental organisations and by funding for cities of refuge for persecuted journalists and artists.

In the Netherlands, a multi-stakeholder committee was set up following attacks on journalists and threats to media houses. In July 2018, the committee, which includes the Union of Journalists, the Association of Editors in Chief, the Police and the Office of the Public Prosecutor, committed to action on the following points:³⁷

- ▶ 1. Raising awareness and, in partnership with media companies, developing a safety plan for journalists³⁸ focused on prevention, training and developing procedures to respond to incidents. This will be implemented through the annual collective bargaining agreement.
- ▶ 2. Developing a joint understanding on what kinds of aggressive and intimidating behaviour against journalists are unacceptable.
- ▶ 3. Developing an app for journalists covering issues including an explanation of what is criminal behaviour; how to file a complaint; and how to respond to a serious threat.
- ▶ 4. Safety training for journalists

Furthermore, the Police and Public Prosecutor agreed to coordinated registration of complaints of violence or threats lodged by journalists and on the need to ensure the quality of police reports and related investigations. High priority will be given to the investigation and prosecution of violence or threats against journalists. As a matter of course, more severe penalties will be sought and damages will be claimed from

35. See also the UN High Commissioner for Human Rights, A/HRC/24/23, pg. 50.

36. See <https://www.government.se/information-material/2018/05/action-plan-defending-free-speech/>

37. Akkoord Stuurgroep, 19 July 2018: <https://zoek.officielebekendmakingen.nl/blg-851351.pdf>

38. The agreement considers as journalists: journalists, photographers, camera personnel, publicists, cartoonists, writers, programme makers, bloggers and vloggers: in short, all media professionals.

perpetrators. Victims of violence and media companies will be kept informed throughout proceedings and any opportunity to be involved in the proceedings will be explained to them.

Cooperation between Member States to learn from the Dutch and Swedish initiatives as they are being implemented is highly recommended.

1. Prevention

The first pillar of Recommendation CM/Rec2016(4) states that to ensure the safety of journalists there must be a comprehensive legislative framework protecting the right to life, freedom of expression and associated rights, and these laws should be robust and effective in practice. Various measures and action points are suggested to avert threats to the safety of journalists. The following pages summarise the most urgent of these, along with examples of current implementation in some Council of Europe Member States.

Threats to safety of journalists	Action points
<p>Absence or non-implementation of:</p> <ul style="list-style-type: none"> ▶ criminal and civil law provisions for the protection of physical and moral integrity of a person; ▶ enabling legal framework for access to information, privacy and data protection, confidentiality and security of communications and protection of journalistic sources and whistle-blowers; ▶ Legal framework protecting female journalists from gender-related risks; ▶ Adequate labour and employment laws providing protection from arbitrary dismissal, reprisals, and undue pressure 	<ul style="list-style-type: none"> ▶ Review of legislative framework by independent body/bodies, to ensure that safeguards for the exercise of the right to freedom of expression are in place, with commitment to follow up on identified further action ▶ Bodies responsible for implementation of legal safeguards to be identified and trained on implementation
<ul style="list-style-type: none"> ▶ National security laws are overly protective of state interests and allow disproportionate interference with freedom of expression ▶ Journalists are kept under surveillance and their online activity is tracked 	<ul style="list-style-type: none"> ▶ Review of legislative framework by independent body, to ensure that: safeguards are included in national security and surveillance laws to prevent misuse and abuse and protect freedom of expression; the elimination of overbroad definitions; and that key terms and concepts are defined with sufficient precision to avoid abuse. ▶ Provide for oversight mechanisms to ensure national security powers are not abused, and provide transparency and accountability. ▶ Bodies responsible for implementation of national security agencies to be trained on implementation
<ul style="list-style-type: none"> ▶ Defamation laws are overly protective of reputational interests and have disproportionate impact on the right to freedom of expression 	<ul style="list-style-type: none"> ▶ Defamation laws to be brought in line with Council of Europe standards to ensure: ▶ Sanctions are proportionate (including abolition of prison sentences save for defamatory hate speech); ▶ There is no enhanced protection for public figures, including heads of State and monarchs; ▶ Effective defences are introduced, including to plead truth, public interest or fair comment; ▶ Alternative remedies such as a right of reply or correction are available, as well as fast-track or low-cost procedures; ▶ The use of non-judicial bodies such as press councils is promoted

These action points fall into two categories: (1) the review and, where necessary, reform of legal frameworks, ensuring that protective laws are in place and that laws that interfere with freedom of expression do not do so disproportionately; and (2) ensuring the robust and effective implementation of the protective legal framework, including through training law enforcement and other agencies responsible for implementation.

These issues have been the subject of various other Council of Europe recommendations and declarations³⁹ and a rich body of work exists which should be built on.

There are several examples of States where this type of law reform has been or is being conducted. One is the overarching review of Icelandic law that affects freedom of expression. Following sustained campaigning under the banner of the Icelandic Modern Media Initiative, an initiative started in 2011,⁴⁰ a parliamentary committee has recently been appointed to make proposals for law reform on areas ranging from defamation to intellectual property and the protection of whistleblowers. The Committee will report in two stages, by March and October 2019. Examples in other countries include the reform of English defamation law in 2013⁴¹ and the announced overhaul of defamation laws in Ireland.⁴² The UK's Independent Reviewer of Terrorism Legislation, an independent person who is appointed to reports annually to the UK Parliament on the operation of terrorism laws, including whether they encroach on human rights, is an interesting example of a mechanism to provide for the ongoing review of national security laws.⁴³

Threats to safety of journalists	Action points
▶ Media is under the influence of the State or business	▶ Review legal framework to ensure independence of the media and an independent supervisory body
▶ Public service media is under the influence of the State or insufficiently funded	▶ Review legal framework to ensure independence and institutional autonomy of public service media and its supervisory bodies ▶ Review funding of public service media to ensure it is transparent and sufficient to allow the public service media to fulfil their mission
▶ Excessive media concentration	▶ Review legislation to counteract excessive concentrations ▶ Ensure independent supervisory body has necessary powers to act against mergers or actions that threaten media pluralism

Like the previous threats and corresponding action points, these concern the establishment and effective enforcement of legislative frameworks that have been the subject of extensive previous recommendations and declarations from various Council of Europe bodies.⁴⁴ Action needs to start with the review of existing laws and the implementation and enforcement of appropriate new safeguards. An example of good current practice can be found in Norway, where the constitution requires the state “to create conditions that facilitate open and enlightened public discourse”.⁴⁵ Norway’s Media Ownership Act strictly limits media ownership and the Media Authority supervises market conditions.⁴⁶ Austria provides another good example, with the regulatory body also enforcing transparency of ownership.⁴⁷

2. Protection

To protect journalists there must be effective law enforcement; effective protection mechanisms with specific regard to the dangers faced by female journalists; condemnation of all violence and threats by political leaders, whenever they occur; and real partnership with civil society. Paragraphs 8-16 of the Guidelines appended to the Recommendation suggest various measures. The following pages summarize the most urgent of these And the related best practices/suggestions for implementation.

39. For example, CoM Declaration on the desirability of international standards dealing with forum shopping in respect of defamation; PACE Resolution 1577 Towards decriminalisation of defamation (2007); Resolution on Developments in Anti-terrorism Legislation in Council of Europe Member States and their Impact on Freedom of Expression and Information, 29 May 2009. See also the European Court of Human Rights judgments in cases including *Tolstoy Miloslavsky v. the United Kingdom*, no. 18139/91, 13 July 1995 (disproportionate defamation awards); *Mahmudov and Agazade v Azerbaijan*, no. 35877/04, 18 December 2008 (chilling effect of imprisonment); and *Gözel and Özer v. Turkey*, nos. 43453/04 and 31098/05, 6 July 2010 (overly restrictive anti-terror laws).

40. As described on <https://immi.is/>

41. Culminating in the Defamation Act 2013.

42. As reported in the Irish Law Society Gazette, 21 December 2018: <https://www.lawsociety.ie/gazette/Top-Stories/ministers-pledge-on-defamation-law-reform/>

43. See <https://terrorismlegislationreviewer.independent.gov.uk/>

44. For example, Rec(2018)1 on media pluralism and transparency of media ownership

45. Constitution of Norway, Article 100

46. Latest consolidated version online at <https://www.wipo.int/edocs/lexdocs/laws/no/no/no088no.pdf>

47. As reported by Access Info Europe, as part of its media transparency campaign: <https://www.access-info.org/tmo/13223>.

Threats to safety of journalists	Action points
▶ Imminent threats to life and safety	<ul style="list-style-type: none"> ▶ Establish effective and gender-specific mechanisms for voluntary evacuation to a safe place and police protection ▶ Establish early-warning and rapid-response mechanisms such as hot-lines or online platforms ▶ Establish effective safety protocols within media organizations
▶ Threats of violence	<ul style="list-style-type: none"> ▶ Establish and ensure implementation of injunctive and precautionary forms of interim protection

States should ensure the existence of early-warning and rapid-response mechanisms such as hotlines and on-line platforms and evaluate the effectiveness of any existing efforts. At a very minimum, Member States should promote awareness of existing mechanisms such as the Council of Europe’s platform, the Press SOS hotline of Reporters Without Borders and the Alarm Centre for Female Journalists Under Threat. Examples of existing national hotlines, from which States can draw inspiration, include the Free Media Helpline run by the BH Journalists Association. In the Netherlands, an app is under development to inform journalists of their rights and report violations.

Injunctive and precautionary forms of interim protection, notably, restraining/barring orders, should offer immediate relief and be available without lengthy court proceedings or undue financial or administrative burdens on the victim.⁴⁸ Appropriate preventive operational measures can also encompass voluntary evacuation to a safe house or other safe place. International civil society has some experience in the running of safe houses which States should support as well as learn and draw on. For example, the International Cities of Refuge Network is an independent organisation of cities and regions offering shelter to writers and artists at risk.

Journalists and other media actors whose lives or physical integrity are at a real and immediate risk, should have timely access to law enforcement authorities which, in turn, should carry out an individual risk assessment to identify specific protection needs, including police protection. In countries where the risk of physical violence is significant, a protection mechanism should be set-up with the participation of both law enforcement and members of civil society and the media. Member States could identify existing structures or programmes within government institutions that protect other at-risk sectors of society and extend their mandate to covering the safety of journalists.⁴⁹ This mechanism should serve journalists working on high risk matters such as corruption and organised crime. It should be autonomous, function in a transparent manner, and have a dedicated budget and sufficient funding to function effectively. The severity of risks should be systematically assessed, including whether the risk is to life and whether there is a risk of repeated violence. A security plan should be devised and protection to journalists and other media actors be provided accordingly. An exit strategy elaborating when support to journalist should cease should also be provided. The mechanism should be enshrined in law so that it is resilient to changes in the political agenda.⁵⁰

It is recommended that Member States learn from the long experience of protection mechanisms that has been gained in Colombia and Mexico. Both programs are established by law and have dedicated staff and offices (2,000 staff and fourteen offices, in the case of the Colombian program).⁵¹ Protective measures under the Colombian and Mexican systems can include a bodyguard, driver and vehicle; secure phones; bulletproof vests; emergency evacuation and relocation (including, if necessary, for the family); home security systems and medical and psychological support. Risk assessments are regularly reviewed and acted on. Assessments of Mexico’s and Colombia’s national systems have identified the need for timely coordinated action between the agencies involved and civil society support as crucial for success. Decisive political commitment, obtained through sustained civil society lobbying, was key to their establishment, and the establishment by law has given the mechanisms a firm mandate and makes them hard to dismantle. At the same time, in both Mexico and in Colombia, there have been problems with implementation. Budget has been a difficult issue,

48. See Article 53 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention)

49. How National Mechanisms Can Protect Journalists and Address the Issue of Impunity, A comparative analysis of practices in seven countries, International Media Support, 2017, pg 52.

50. As suggested in the UN High Commissioner for Human Rights’ Report, The Safety of Journalists, UN Doc. A/HRC/24/23, 1 July 2013, under D. Protection

51. Law 199 of 1995 and Law 418 of 1997. See generally <https://www.unp.gov.co/>. For the Mexican mechanism, see <https://www.gob.mx/defensorasyperiodistas>.

with mechanisms reported to be running out of funds part through the year, and the mechanisms have been criticised for being slow, giving incomplete protection, and being reactive instead of preventive.⁵² Council of Europe Member States should learn from these criticisms.

There is also experience of operating protective mechanisms within Europe. Italy, for example, has long provided protection to individuals under threat of organised crime, and this can include journalists. This should also be studied and learned from.⁵³

In all protective measures, a systematic, gender-sensitive approach is required to combat the specific dangers faced by female journalists. For example, victims should be provided with information on the different types of support services and legal measures available in cases of violence against women. This needs to be coordinated with, and learn from, programs to end violence against women that are currently underway across Council of Europe Member States.

Threats to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Legislation and administrative measures are applied in a discriminatory or arbitrary fashion against journalists and other media actors 	<ul style="list-style-type: none"> ▶ Review of defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws to ensure: that safeguards are in place for the exercise of freedom of expression; the elimination of overbroad definitions; and that key terms and concepts are defined with sufficient precision to avoid abuse (see section on prevention) ▶ Apply adequate procedural safeguards ▶ Training of judges in order to avoid the arbitrary application of restrictive legislation.
<ul style="list-style-type: none"> ▶ Frivolous, malicious or vexatious use of law to intimidate and silence journalists and other media actors 	<ul style="list-style-type: none"> ▶ Introduce legislation preventing use of lawsuits to prevent public participation ▶ Put rules and standards in place regarding criminal and civil liability in order to prevent libel tourism.

Review of defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws to ensure that safeguards are in place for the exercise of freedom of expression; the elimination of overbroad definitions; and that key terms and concepts are defined with sufficient precision to avoid abuse is of essence. Legislation, including administrative laws and codes of procedure, should include safeguards to prevent that they are used in a discriminatory manner⁵⁴ and make it clear that there should be restraint in resorting to criminal proceedings.⁵⁵ Furthermore adequate procedural safeguards and effective remedies against abuse must be provided. This should include limiting phenomena such as ‘forum shopping’, whereby a complainant files a complaint in a country or locality where it is easy to sue or where the mere cost of defending the case would stop a journalist from doing so;⁵⁶ and the introduction of so-called Anti-SLAPP (Strategic Lawsuit Against Public Participation) laws. This could build on the existing call for action at the EU level.⁵⁷

Threat to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Deprivation of liberty 	<ul style="list-style-type: none"> ▶ Introduce adequate procedural safeguards

Procedural guarantees for journalists who are detained include the right to inform someone, access a lawyer and doctor, to challenge the lawfulness of the detention, to be brought before a judge and be tried within

52. See, for example, Amnesty International’s assessment of human rights defender mechanisms in the Americas: May 2017, <https://www.amnesty.org/download/Documents/AMR0162112017ENGLISH.pdf>

53. The Italian scheme functions as part of the overall national scheme of protection measures for individuals targeted because of their work, established under Art.1 (n) of Act No.133/2002.

54. For example, in *Telegraaf Media Media and others v. the Netherlands*, no. 39315/06, 22 November 2012, the Court held that Dutch surveillance laws failed to protect journalistic sources.

55. Cf. *Süreç and Özdemir v Turkey*, Nos. 23927/94 and 24277/94, 8 July 1999, para. 63; *Altan v. Turkey*, No. 13237/17; *Alpay v. Turkey*, No. 16538/17.

56. For example, it is well-known that in London defamation threats are often not defended because a trial can easily cost tens or hundreds of thousands of pounds.

57. As called for by the EPP: <https://www.eppgroup.eu/how-we-make-it-happen/with-eu-countries/malta/news/meps-continue-to-pile-on-pressure-for-anti-slapp-legislation>

a reasonable time. The Council of Europe has published detailed guidance on these standards, discussion of which falls outside the scope of this paper.⁵⁸

Threat to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Law enforcement agencies hinder the work of journalists and other media actors, in particular, during public demonstrations and other events. 	<ul style="list-style-type: none"> ▶ Effective channels of communication should be established, including through regular meetings, between journalists, media actors, representatives of police forces and prosecutors particularly on the coverage of street protests and public events. ▶ Guidelines should be developed between police and media reporters, especially concerning media coverage of demonstrations, crime scenes and major events, setting out the rights of journalists in situations of potential friction and steps to promote practical cooperation and providing for a safe communication perimeter so the media can report from an advantageous location. ▶ They should clarify that press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials and that if it is not possible to produce professional documentation, every possible effort is made by State authorities to ascertain their status.

It is imperative that the police do not interfere with media coverage. Unless they pose an active danger to public security, journalists are entitled to photograph and film demonstrations, including police handling of disorder, and their equipment must not be seized. Law enforcement authorities must be attentive to journalistic insignia and credentials, asserting the status of journalists by various means - not just whether or not they carry a press card. Through training and constant dialogue, a good working relationship between media and the police should be ensured and respect for their respective responsibilities and constraints developed. Guidelines should also be developed between police and media reporters, especially concerning media coverage of demonstrations, crime scenes and major events, setting out the rights of journalists in situations of potential friction and steps to promote practical cooperation. Rules should be agreed for the police to respect press cards and provide for a safe communication perimeter so the media can report from an advantageous location. Ahead of major events such as demonstrations, election nights or sports matches there should be meetings between the media and police, and focal points should be designated to ensure smooth communication.

Valuable current state practices include an agreement between several journalist unions in the UK and the country's police forces providing guidelines that allow and assist the media in its reporting from the scene of incidents;⁵⁹ and the Dutch 'Pocketbook order and safety' which contain advice for mayors and their staff on the rights of journalists.⁶⁰

Threat to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Journalists are not sufficiently supported, informed or provided equitable work conditions by the media organisations they work for. 	<ul style="list-style-type: none"> ▶ Media houses must undertake to provide adequate support, to be decided in coordination with journalists unions and reviewed regularly. This should be driven by self-regulatory bodies and include, at a minimum: ▶ guidelines and procedures for the deployment of journalists on difficult or dangerous assignments; ▶ adequate safety training; ▶ comprehensive insurance; ▶ legal support and representation; and ▶ trauma counselling.

58. See Guide on Article 5 of the European Convention on Human Rights, updated December 2018: https://www.echr.coe.int/Documents/Guide_Art_5_ENG.pdf

59. Guidelines for MPS staff on dealing with media reporters, press photographers and television crews: <https://www.nuj.org.uk/documents/guidelines-for-metroplitan-police-service-staff/metropolitan-police-service-guide.pdf>

60. See 'Securing a favourable environment for journalists in the Netherlands', G. Lokhorst and L. Trapman, T McGonagle (ed), 13 April 2018, pg 61: <https://www.ivir.nl/projects/auditoffreedomofexpression/>

Media companies should take their responsibilities towards journalists very seriously. Media houses should have set policies and procedures for the deployment of journalists on difficult or dangerous assignments, and provide journalists on such assignments with comprehensive insurance including life, health and travel. This should extend to freelancers who are sent on assignment as well as staff journalists. When there are incidents a rapid response mechanism should be in place to ensure whatever support and protection is necessary, ranging from legal to medical. Journalists as well as managers should also receive thorough safety training. Examples of good current practice include the BBC's various safety guides and the ACOS ("a Culture of Safety") alliance of media outlets and journalists organisations established in 2015.⁶¹

3. Prosecution

The prevention of impunity should be a guiding beacon; there must be prompt, effective and impartial investigations and prosecutions of all killings, attacks and ill-treatment. Paragraphs 17-27 of the Guidelines appended to the Recommendation suggest various measures and actions points. The following pages summarize the most urgent of these and the related best practices/suggestions for implementation.

Threat to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Persons involved in killings, attacks and ill-treatment of journalists and other media actors are not brought to justice, leading to a culture of impunity. 	<ul style="list-style-type: none"> ▶ Judges, prosecutors, and law enforcement authorities to be trained on: <ul style="list-style-type: none"> - their obligations under international human rights and humanitarian law; - the role of journalists in democratic society; and - gender-specific issues related to the safety of journalists ▶ Establishing specialised police investigation units ▶ Establishing specialised prosecutor's department, or designating the chief prosecutor as responsible for prosecutions ▶ Adopting specific protocols in relation to the investigation and prosecution of crimes committed against journalists ▶ Establishing an independent and effective investigative body for complaints against the police ▶ Establishing a national database recording incidents of violence and threats ▶ Creation of a formal Commission of Inquiry into impunity ▶ Only allow amnesty or pardon in exceptional circumstances ▶ Abolish time limits for the prosecution of crimes committed against journalists by State agents ▶ Provide aggravated penalties for public officials who prevent or obstruct the investigation, prosecution and punishment of offences against journalists. ▶ Possibly, taking into account their serious nature, recognizing crimes against freedom of expression either as a separate category of crimes or as an aggravated circumstance leading to heavier penalties.

Training of law enforcement, judicial and other public officials who are instrumental in ensuring the safety of journalists and other media actors is key to stemming 'impunity': the phenomenon whereby attacks on journalists go unpunished.⁶² The training of judges, police officers and prosecutors should be informed by the case-law of the European Court of Human Rights and Council of Europe standards including CM/Rec(2016)4. Training should emphasize the important role that journalists play in democracies, including when reporting on demonstrations; explain the risks faced by journalists; and urge that investigations into violence or threats take into account evidence showing a link between journalists' work and the violence. Training and guidance should also emphasise that threats and harassment online that amount to criminal offenses must be prosecuted and treated like offline offenses and that threats to life and physical integrity of women, including rape threats, should be prioritised for prosecution; and include the right of journalists and other media actors not

61. See <https://www.bbc.co.uk/safety/safetyguides> and <https://www.acosalliance.org/>.

62. The UN also places this centrally: See "Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity" Consultation outcome document, August 16, 2017, pg 6: https://en.unesco.org/sites/default/files/options_geneva_consultation.pdf

to reveal their confidential sources of information. Training for judges should specifically cover the need to avoid the arbitrary application of restrictive legislation.

The urgent need to prevent and detect violence against women must be centrally addressed. The OSCE Representative on Freedom of the Media has highlighted that female journalists receive about three times as much online abuse as their male counterparts.⁶³ It is crucial that law enforcement authorities are sensitised to this and that they take crimes that occur online as seriously as they do crimes that are committed offline. Gender equality needs to be addressed as well as victim concerns, and the need to prevent re-traumatization or secondary victimization. Examples of current state practice include internal training developed by the Swedish Police Authority⁶⁴ and the various training programs supported by the Council of Europe throughout the region. These must be coordinated with ongoing efforts to end violence against women in general - for example, the ongoing work in Serbia in the Implementing Norma, Changing Minds campaign on ending violence against women.⁶⁵

The establishment of specific units within the police and prosecutors' offices to investigate violence against journalists can give strong impetus. Specialist units have been set up in a number of European countries, including Serbia and Sweden (the Swedish Police Authority has dedicated democracy and hate crime units that investigate offences that threaten fundamental rights and freedoms). In Kosovo, the Police Serious Crimes Unit has been designated as responsible for the investigation of crimes against journalists and coordinators have been appointed at courts - an initiative credited with speeding up the successful prosecution of cases that had been pending for four years.⁶⁶ Similarly, the Dutch public prosecutor has agreed to give high priority to the prosecution of attacks against journalists. In Estonia, a specialized court has been established for online harassment, and judges and law enforcement officials have received training on this issue. Mexican and, in particular, Colombian law enforcement authorities have a long history of specialised units working on cases of violence against journalists and efforts should be made to learn from them (although the Mexican unit has been criticised for achieving very few convictions, the reasons for that - if known - are an important learning point in and of themselves).

Given the specific nature of crimes against journalists and the manner in which journalists can be targeted for their work, it is recommended that police and prosecutors develop specialized protocols. These protocols should require the police and prosecution to take into account links between the journalist's work and threats or attacks against them, as well as racist attitudes and gender dimensions. In the context of contract killings, genuine and sustained efforts must be made to identify those who commissioned the killing (the so-called "masterminds").⁶⁷ The protocols must make it clear that cases should be treated as a matter of priority, including threats to life and physical integrity such as rape threats. Moreover, threats and harassment online that amount to criminal offenses must be prosecuted and treated like offline offenses. It should further specify that police and prosecutors are required to act on their own motion, without the next of kin needing to start investigations and that victims or the next of kin should be informed throughout the process. It should further specify that investigation and prosecution should be gender sensitive so that women journalists are not dissuaded from reporting on attacks and that victims should be provided adequate support, including psychosocial support. Serbia's Public Prosecution Office has adopted a specific Instruction for the gathering evidence of crimes against journalists, which envisages a high priority for cases. As of December 2018, such a protocol was also being developed by the Dutch authorities, under the Dutch Action Plan on Violence against Journalists.⁶⁸

Where there are suspicions of police involvement in crimes against journalists, or obstruction of investigations and prosecutions, it is important that there is recourse to an independent and effective body that can investigate

63. New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists, OSCE, 2016, p. 41. See also, OSCE Representative on Freedom of the Media, Dunja Mijatović, Communiqué on the growing safety threat to female journalists online, 02/2015: <https://www.osce.org/fom/139186>

64. As reported in the Swedish Action Plan Defending Free Speech, note 35.

65. See <http://tiny.cc/incmserbia>. For other commitments made in Member States, see <http://tiny.cc/endvaw>

66. Western Balkans Platform, 'Indicators on level of media freedom and journalists' safety: Kosovo, 2018: <http://safejournalists.net/wp-content/uploads/2018/12/Indicators-on-the-level-of-media-freedom-and-journalists-safety-Kosovo-2018.pdf>

67. In *Mazepa and others v. Russia*, the European Court of Human Rights held that, "the investigation into a contract killing cannot be considered adequate ... in the absence of genuine and serious investigative efforts taken with the view to identifying the intellectual author of the crime, that is, the person or people who commissioned the assassination. The domestic authorities' scrutiny in the case concerning a contract killing must aim to go beyond identification of a hitman..." No. 15086/07, 17 July 2018.

68. Written Answer from the Minister of Justice to Parliamentary Questions, 20 December 2018: <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2018D61035>

these allegations. 2017 research by the Helsinki Committee across seven European countries identified serious shortcomings in this regard in practice, and its findings and recommendations should be acted on.⁶⁹

In some countries dedicated Commissions of Inquiry have been established with dedicated responsibilities for addressing impunity, either as a stand-alone entity or as a specialised section or programme within an existing body. Such commissions can join law enforcement authorities responsible for investigation and prosecution with parliamentarians, journalists and civil society to ensure a thorough and diligent investigation. Commissions on impunity have enjoyed some success in Serbia and in Montenegro, where the mandate of the respective Commissions was recently extended.

Finally, it is important that reliable statistics are recorded on the number of complaints reported, investigations opened, prosecutions and convictions related to attacks against journalists. This allows the scale and severity of the problem to be accurately captured and can in turn, help to inform further strategies to combat impunity.

4. Promotion

The fourth pillar requires information, education and awareness raising and the development of civil society partnerships in order to promote the safety of journalists. Paragraphs 28-30 of the Guidelines to the Recommendation suggest various measures; specific potential SMART action points include the following:

Threat to safety of journalists	Action points
<ul style="list-style-type: none"> ▶ Insufficient awareness of the importance of the safety of journalists and the existence of international and national guidelines and plans of action 	<ul style="list-style-type: none"> ▶ Publication, including in national and minority languages, and awareness campaign about Rec(2016)4 ▶ CM/Rec(2016)4 and educational materials on the safety of journalists, including gender-specific issues, to be included in training programmes in journalism schools and in continuing education for journalists, as well as in media and information literacy initiatives. ▶ Partnership with civil society and the media for the promotion of best practices for the protection of journalists and combating impunity.

Whilst examples of media literacy programs abound across Europe, there is no evidence that any of these include elements raising awareness around the challenges faced by journalists and the need to protect their safety. This would indicate a strong need for action on this throughout Europe. Similarly, whilst the Council of Europe has provided translations in various languages, no systematic data was available on how many States have translated Recommendation (2016)4 into national and minority languages and engaged in awareness raising campaigns at the national level.

CONCLUSION AND RECOMMENDATIONS

There is a growing and urgent threat to the safety of journalists across Europe which constitutes a terminal threat to democracy and urgent action by Council of Europe Member States is required. At the international level, detailed guidance and standards for the protection of journalists have been developed, based on the binding legal requirements of the European Convention on Human Rights. Member States should now put in place National Action Plans to ensure that these international standards are implemented in practice.

The foregoing paragraphs summarize the most urgent action points along with examples of State practice. There is much that Member States can learn from each other, and from countries outside Europe who have taken action to protect the safety of journalists. It is recommended that Member States conduct a thorough review of the threats to journalists' safety in their countries and engage in genuine partnership with journalists and civil society to remedy these risks. All-encompassing National Action Plans should be drawn up, implemented, and kept under regular review. These Plans must contain 'SMART' (specific, measurable, attainable, relevant, time-bound) action points that respond to the needs on the ground – for example, providing police protection, or supporting evacuation mechanisms for journalists. Underpinning the National Action Plan must be a positive and genuine commitment to the importance of the right to freedom of expression: political leaders and public officials should explicitly recognize that violence against journalists constitutes a threat to democracy, unequivocally condemn violent attacks, and stop denigrating the media. A positive message needs to come from the top that freedom of expression is vital to democracy.

⁶⁹. Investigation of Ill-treatment by the Police in Europe, 2017: <https://www.europewithouttorture2017.com/>

There is a growing threat to the safety of journalists across Europe. Pressures and dangers that journalists and other media actors face in their work undermine freedom of expression and democratic values generally. Therefore, urgent action by Council of Europe member states is required. At the international level, detailed guidance and standards for the protection of journalists have been developed, based on the binding legal requirements of the European Convention on Human Rights. Member states should now put in place National Action Plans to ensure that these international standards are implemented in practice.

www.coe.int/freedomofexpression

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

