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**PLATFORM TO PROMOTE THE PROTECTION OF JOURNALISM
AND SAFETY OF JOURNALISTS**

Reply by the Government of Finland to the platform alert no. 167/2023

11 October 2023

Alert no. 167/2023 on Finland, published on the Council of Europe's Safety of Journalists Platform, concerns a situation where threats of physical and sexual violence emerged against Iltalehti journalist Ida Erämaa after Members of Parliament discredited and insulted the Iltalehti journalist following a column published on 2 July 2023, in which the ruling Finns Party (PS) had been criticised for trying to prevent the media from bringing out what was termed the "extreme right-wing connections" of its MPs.

Domestic proceedings

The Government notes that the matter referred to in the alert has been reported as an offence and that the police have initiated a criminal investigation of the matter. Under section 24, subsection 1, paragraph 3 of the Act on the Openness of Government Activities (1999/621), all information on the ongoing investigation is secret.

The criminal investigation covers those acts which fall within the statutory definition of an offence. The Government has not been informed in more detail about the lines of investigation followed by the police in the matter.

Any reports of offences related to the case are processed and the police are responsible for the criminal investigation of the offences.

Policy and legislation

Freedom of expression is one of the most essential elements of a free and democratic society. The Government promotes the realisation of the freedom of expression and emphasizes the right to information as a key fundamental and human right. The Government is committed to supporting and maintaining broad-based freedom of expression across society as stated in Prime Minister Orpo's Government Programme.

Finland is a party to several European and international core human rights treaties that lay down the obligation to respect, protect and promote freedom of expression.

The Constitution of Finland safeguards everyone's right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of freedom of expression are laid down by an Act, including the Act on the Exercise of Freedom of Expression in Mass Media (460/2003), and by policy recommendations and instructions.

The Constitution of Finland also safeguards everyone's right to private life, honour and sanctity of the home.

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The government proposal for the Constitution of Finland (HE 309/1993 vp) states that the key purpose of the provision on freedom of expression is to ensure free formation of opinion, an open public discourse, free development and pluralism of mass media, and the possibility of public criticism of the exercise of power, which are prerequisites for a democratic society. The scope of the concept of freedom of expression underlying the provision is considerably wide, in line with international human rights treaties and the interpretations of the Constitutional Law Committee of Parliament. To "disseminate" refers to all publication, distribution and transmission of messages. The freedom of expression provision protects journalistic work of the media against interference by public authorities even before the media actually expresses and publishes any message.

In its interpretations, the Constitutional Law Committee of Parliament has outlined the general conditions for restricting fundamental rights (PeVM 25/1994 vp). Any restrictions on fundamental rights must be based on an Act enacted by Parliament. The restrictions must be clearly delimited and formulated with sufficient precision. The grounds for the restrictions must be acceptable and required by an important societal need. A restriction affecting the core of a fundamental right cannot be laid down by an ordinary Act of Parliament. The restrictions must comply with the proportionality requirement and be necessary for achieving an acceptable purpose. A restriction of a fundamental right is permitted only if the objective of the restriction cannot be achieved by means less intrusive on the right. In restricting fundamental rights, adequate legal safeguards must be ensured and the restrictions must not conflict with the international human rights obligations binding on Finland.

At the beginning of 2014, significant amendments of the Criminal Code were enacted by Act 879/2013 in order to make the provisions on the protection of private life and honour to comply with the requirements of the Council of Europe's standards and the case law of the European Court of Human Rights.

Freedom of expression is restricted, for example, by the criminalisation of defamation in the Criminal Code of Finland. Chapter 24, section 9, subsection 1 of the Criminal Code (879/2013) provides that a person who presents false information on or a false insinuation of another person so that the act is conducive to causing damage or suffering to that person or subjecting that person to contempt, or disparages another person in a manner other than that described above shall be sentenced for defamation to a fine. According to section 9, subsection 3, criticism that is directed at a person's activities in politics, business, public office or position, science, art or in other comparable public activity and that does not clearly exceed what can be deemed acceptable does not constitute defamation. According to section 9, subsection 4, presenting information for the purpose of dealing with a matter of general importance shall neither be considered defamation, if presenting the information, considering its contents, the rights of others and the other circumstances, does not clearly exceed what can be deemed acceptable.

Among other things, the amendments removed the possibility of imprisonment as punishment for the basic form of defamation. The amendments were also in line with the established Finnish case law, where, in practice, only a fine had been imposed for defamation.

Imprisonment is still possible as punishment for aggravated defamation referred to in chapter 24, section 10 of the Criminal Code (879/2013). If the defamation causes great suffering or particularly serious harm and the offence is also aggravated when assessed as a whole, a fine or imprisonment for at most two years may be imposed for it.

With the amendments of the Criminal Code, the use of mass media in committing defamation was deleted from the definition of the aggravated form of the offence. Consequently, the use of mass media in committing defamation is not in itself an express ground for increasing the punishment. The purpose of this amendment was to take into account the case law of the European Court of Human Rights where the Court had paid particular attention to the role of the media in transmitting information and considered the possibility of imprisonment very problematic in this context.

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