

RECOMMENDATION (2016)4 ON THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS AND OTHER MEDIA ACTORS

PROSECUTION

RECOMMENDATION (2016)4 – THE PROTECTION PILLAR

- ▶ calls on states to uphold their positive obligations under Article 10 ECHR and to establish effective safeguards that enable journalists and other media actors to work without fear of intimidation or harm
- ▶ journalism is defined by its public watchdog function and extends protections to a broad range of media actors, including citizen journalists and bloggers

GUIDING PRINCIPLES

Requirements for an effective investigation

Investigations are effective (capable of leading to the establishment of the facts, the identification and, if appropriate, punishment of those responsible) and respect the essential requirements of:

- ▶ adequacy;
- ▶ independence;
- ▶ thoroughness;
- ▶ promptness;
- ▶ openness to public scrutiny/accessibility to the victims or their families

Independence

- ▶ The investigation must be independent from those implicated in the events ([Najafli v. Azerbaijan](#))
- ▶ If there are allegations against the police, there should be no connections between the investigators and the officer against whom a complaint has been filed; there should be practical independence ([Enukidze and Girgvliani v. Georgia](#))
- ▶ The investigation should not rely entirely on the evidence produced by police officers allegedly implicated, nor should the investigation be led by their colleagues and those employed by the same authority ([Ramsahai v. the Netherlands](#))

Adequacy

The investigation must:

- ▶ be capable of leading to the identification and punishment of those responsible;
- ▶ shed light on the cause and circumstances of the death, as to whether any use of force was justified under Article 2 ([Nachova v. Bulgaria](#))
- ▶ take reasonable steps to secure all the relevant evidence concerning the incident including, among others, eyewitness testimony, forensic evidence and, where appropriate, an autopsy providing a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death ([Hugh Jordan v. UK](#))
- ▶ consider the possibility of state officials' (such as members of the security forces) implication in attacks ([Yasa v. Turkey](#))
- ▶ make genuine efforts to identify those who commissioned the killing (the 'mastermind(s)') ([Mazepa and others v. Russia](#))

Thoroughness

The investigation must:

- ▶ address all of the relevant background circumstances, including any racist, gender-based or other discriminatory motivation, any political motivation and possible link between the violence and the exercise of journalistic activities by the victim ([Adali v. Turkey](#))
- ▶ be capable of identifying any systematic failures that had led to the violation, taking all reasonable steps to secure evidence, and assess the evidence in a thorough, consistent and objective manner ([Guidelines and reference texts on eradicating impunity for serious human rights violations](#), H/Inf(2011))
- ▶ where there is some evidence that the crime at issue may be a crime against journalism, the investigation should be conducted with the presumption that it was so, until proven otherwise and relevant lines of inquiry related to the victim's journalistic activities have been exhausted ([Joint Declaration on Crimes against FoE](#))

Promptness

- ▶ the investigation must be prompt, in order to secure quality evidence. Any delay in investigating and prosecuting threats or violent crimes towards journalists and other media actors gives a sign that such crimes are assigned low priority, and feeds the phenomenon of impunity
- ▶ the authorities must act of their own motion, once the matter has come to their attention, and should not require the initiative of the next of kin to instigate an investigation
- ▶ when a victim does not wish to lodge an official complaint, later withdraws such complaint, or decides to discontinue the proceedings, this does not absolve the authorities from their obligation to carry out an effective investigation ([Yasa v. Turkey](#))

Public scrutiny

- ▶ the complainant must have effective access to the investigatory procedure ([Yasa v. Turkey](#))
- ▶ victim or next of kin should in practice be able to receive information on the investigation, including having access to the case file, and to present evidence ([Huseynova v. Azerbaijan](#))
- ▶ next of kin should be involved in the procedure to the extent necessary to safeguard their legitimate interests ([Adali v. Turkey](#))
- ▶ public scrutiny is required to ensure accountability and maintain public confidence in the justice system. While it may be sufficient for the investigation to be carried out in private, a thorough report must be made public in some cases, accountability to the public may require that the investigation be conducted in public ([Paul and Audrey Edwards v. the UK](#))

OPERATIONAL REQUIREMENTS

**(in addition to 'regular' requirements regarding
the investigation and prosecution of crime)**

Specialised investigation units

The establishment of specific units within the police, as well as in the prosecutor's office, with specific expertise in human rights and the safety of journalists can improve the effectiveness and impartiality of investigations.

Conflict of interest rules must nevertheless apply also in relation to these specific units/arrangements: if a member of that specific unit/police force be implicated in a specific case, it would need to be referred to an independent body.

Prioritised attention to crimes against journalists: examples

- ▶ **Special prosecutor** appointed in Public Prosecutor's Office of Sarajevo Canton, to ensure that the cases are processed efficiently and as a matter of priority
- ▶ Swedish police **Democracy and Hate Crime Unit** addresses crimes that threaten democratic values, including those targeting journalists
- ▶ 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
- ▶ in Montenegro, an instruction was issued to all prosecutors to intensify work on cases of violence against journalists, requiring monthly update reports

Judicial/non-judicial inquiries

Where investigations and prosecutions do not result in bringing to justice the perpetrators, special judicial or non-judicial inquiries / inquiries by independent specialised bodies are carried out.

Example: [Public Inquiry into murder of Daphne Caruana Galizia](#)

Independence and safety of judiciary is guaranteed

- ▶ independence of judiciary guaranteed through (1) the manner of appointment; (2) duration of term of office; (3) protection against outside pressures;
- ▶ judiciary and prosecutors, as well as lawyers and witnesses able to conduct/participate in the investigation free from fear and from political or other pressure;

Appropriate criminal law framework

- ▶ aggravated penalties
- ▶ removal of limitation periods for the prosecution of crimes involving ill-treatment by state agents, crimes against freedom of expression and for obstruction of justice
- ▶ no amnesties/pardons

(see also [Guidelines on eradicating impunity for serious human rights violations, H/Inf\(2011\)7](#), adopted by the Committee of Ministers, 30 March 2011)

Remedies available to journalists and their next of kin

Effective and appropriate remedies are available, including:

- ▶ legal redress;
- ▶ financial compensation;
- ▶ medical and psychological treatment, relocation and shelter;
- ▶ the victim's next of kin can be involved in the procedure.