

## Information Documents

SG/Inf(2021)36

22 November 2021

---

**Current trends in threats to Freedom of Expression: interference with the coverage of public events, broadcasting bans and strategic lawsuits**

---

## Introduction

While many sources attest to growing pressure on freedom of expression and media freedom in Europe (see for example the conclusions of the Conference of Ministers responsible for Media and Information Society held on 10-11 June in Cyprus,<sup>1</sup> previous information documents<sup>2</sup> and the annual report of the Secretary General),<sup>3</sup> alerts posted on the Platform to promote the protection of journalism and safety of journalists (the Platform) and other recent work of relevant Council of Europe bodies show that three issues are taking worrying dimensions:

- the obstruction of and interference with coverage of public events;
- broadcasting bans; and
- strategic lawsuits against public participation (generally referred to as “SLAPPs”).

This report will focus on these three issues. It recalls the legal commitments entered into by the member states under the European Convention on Human Rights (the Convention) and the relevant case law of the European Court of Human Rights (the Court). It quotes the main recommendations and positions of other Council of Europe bodies and institutions. It duly takes into account alerts from the Platform, in line with its vocation to serve as an early warning system, allowing states to react and resolve issues before they go to the Court.<sup>4</sup> It will also provide suggestions for future action.

### 1. Obstruction of and interference with the coverage of public events

Recent Platform alerts show a recurrence of obstruction to and interference with the coverage of public rallies and protests, many of which were in opposition to restrictions imposed by states in response to the Covid-19 pandemic.

Some refer to misconduct by law enforcement officers during the policing of such events: physical assault, intimidation, excessive use of force, arrest and custody, orders to leave the area or stop filming. Criminal proceedings have sometimes been brought against journalists covering demonstrations.<sup>5</sup> These acts often occur even when reporters wear distinctive “press” gear or show their press card.

Often, instances of obstruction result from action of private or unidentified persons, such as participants in protests, who assault, insult or threaten journalists or crew members, or destroy their equipment.

Both phenomena indicate disregard or inadequate care for the obligation of policing officials to protect journalists and their equipment.<sup>6</sup> The reporting of public events thus becomes increasingly unpredictable, risky, and costly, as journalists invest additional means, such as security personnel, to protect their physical integrity and their equipment.

<sup>1</sup> CM/Del/Dec(2021)1416/5.1.

<sup>2</sup> SG/Inf(2021)2; SG/Inf(2020)19.

<sup>3</sup> SG(2021)1.

<sup>4</sup> Committee of Ministers’ decision CM/Del/Dec(2014)2012/5.1.

<sup>5</sup> Platform alerts “Police Accused of Assaulting Newspaper Matthew Dresch at Protest in Bristol”, 29 March 2021; “Photojournalist Yannis Liakos Attacked by Police During Protests in Athens”, 18 February 2021; “Several Turkish Journalists Detained, Physically Assaulted Covering Women’s March”, 9 March 2021; “Russian RFE/RL Correspondent Daria Komarova Faces Three Trials over Protest Coverage”, 9 April 2021; “Authorities Attempt to Discourage Journalists, Social Media Platforms, and News Outlets from Covering Protests; At least 50 Journalists Subsequently Detained, Obstructed and Assaulted by Police in Russia”, 26 January 2021.

<sup>6</sup> See e.g. “How to protect journalists and other media actors?” (DGI(2020)11) - Implementation Guide to selected topics under the 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.

## 1.1. The principles of the European Convention on Human Rights

The jurisprudence of the Court concerning the coverage of public events is closely interlinked with the issue of protests and the right to peaceful assembly guaranteed by Article 11 of the Convention.

Pursuant to the Court's constant case law, protests constitute an expression of opinion within the meaning of Article 10 of the Convention. This provision applies not only to the content of information, but also includes the right of media actors and of the public to receive, to impart information and to report about these events.<sup>7</sup> Journalists must be allowed access to public space to report on public events.<sup>8</sup>

The Court's case law covers notably (a) the blockage of internet use to dissuade participation in public events, with journalists and media being the primary targets; (b) interference with media coverage of ongoing live events or restrictions to subsequent reporting on such events; (c) various forms of sanctioning of participation in such events. Since the way public order is maintained is a matter of public interest in itself, the filming of such operations must not be prohibited.<sup>9</sup> All threats to the physical integrity of reporters and media workers must be investigated and the perpetrators brought to justice, whether the source of the threat is a public body or a private actor.<sup>10</sup>

The Convention allows for interference with the exercise of the right to freedom of expression when these are provided for by law, pursue an aim which is recognised as legitimate under the Convention and are necessary in a democratic society. Pursuant to the principle of subsidiarity, national courts play an important role in ensuring that these conditions are met.

In the larger context of public events and their coverage, the Court found violations of the Convention in cases such as the following: stopping a peaceful demonstration through excessive force resulting in an escalation and then abducting demonstrators and journalists, ill-treatment and torture by non-state agents hired by law enforcement officials;<sup>11</sup> removal of journalists by the parliamentary security service from the Parliament gallery;<sup>12</sup> restrictions on exercise and coverage of public events closely linked with freedom of religion;<sup>13</sup> ill treatment of a journalist attempting to report on a matter of public interest;<sup>14</sup> and refusal to allow a journalist to access a reception centre for asylum seekers and to conduct research.<sup>15</sup>

## 1.2. Positions and actions of other Council of Europe bodies and institutions

The Committee of Ministers addressed the issue of the coverage of public events in its [Recommendation CM/Rec\(2016\)4 on the protection of journalism and safety of journalists](#). Paragraph 14 of the Recommendation calls on states to take account of the specific nature and democratic value of the role played by journalists and other media actors in particular contexts by:

- Respecting the role of journalists and other media actors covering demonstrations and other events;

<sup>7</sup> *Autronic AG v. Switzerland*, 12726/87, 22 May 1990, § 47; *Ahmet Yıldırım v. Turkey*, 3111, 18 December 2012, § 50. See for more details, [the Court's case law guide on Mass protests](#).

<sup>8</sup> *Gsell v. Switzerland*, 12675/05, 8 October 2009, §§ 49 and 61.

<sup>9</sup> *Pentikäinen v. Finland* [GC], 11882/10, 20 October 2015, § 89; see also, European Court of Human Rights: [Guide on Article 10 of the European Convention on Human Rights: Freedom of expression](#) (Chapter V: "The role of public watchdog").

<sup>10</sup> See, *inter alia* [Human Rights Education for Legal Professionals: Protection and Safety of Journalist](#): New Council of Europe HELP course available for free online (6 January 2021).

<sup>11</sup> *Lutsenko and Verbytsky v. Ukraine*, 12482/14 and 39800/14, 21 January 2021.

<sup>12</sup> *Selmani and Others v. the former Yugoslav Republic of Macedonia*, 67259/14, 9 February 2017.

<sup>13</sup> *Identoba and Others v. Georgia*, 73235/12, 12 May 2015.

<sup>14</sup> *Najafli v. Azerbaijan*, 2594/07, 2 October 2012.

<sup>15</sup> *Szurovecz v. Hungary*, 15428/16, 8 October 2019. The need for restrictions on freedom of expression must be convincingly established. The Court found that considering the absence in its decision of any balancing of the interests in issue, the domestic authorities had failed to demonstrate convincingly that the refusal of permission to enter and conduct research in the Reception Centre, which was an absolute refusal, was proportionate to the aims pursued and thus met a "pressing social need" (§§ 75-76).

- Accepting press or union cards, or other relevant accreditation as journalistic credentials;
- Making every possible effort to ascertain journalists' status where it is not possible for them to produce professional documentation;
- Engaging in dialogue with journalists' organisations to avoid friction or clashes between police and members of the media.

This Recommendation has been further operationalised in the 2020 Implementation Guide to Recommendation CM/Rec(2016)4 titled "[How to protect journalists and other media actors](#)".

The Parliamentary Assembly addressed this issue in its [Recommendation 2168\(2020\)](#) and [Resolution 2317\(2020\)](#) of 28 January 2020 ("Threats to media freedom and journalists' security in Europe").<sup>16</sup> The Resolution calls on member states to facilitate journalists' work in specific difficult contexts, such as public rallies; strongly condemn police violence against journalists and establish deterrent sanctions in this respect; and develop specific training programmes for law-enforcement bodies and officials who are responsible for fulfilling state obligations concerning the protection of journalists.

In a statement issued on 1 February 2020<sup>17</sup> the Human Rights Commissioner stressed that the detention of more than 5,000 protesters and dozens of journalists during large-scale demonstrations was contrary to the obligations to uphold freedom of expression, media freedom and freedom of assembly. On 3 September 2020<sup>18</sup> the Commissioner expressed concern about the reported incidence of police violence against journalists covering demonstrations. On 16 December 2020,<sup>19</sup> she stressed that attacks on journalists (covering demonstrations) constitute a serious violation of press freedom and the right to be informed, and that the authorities must ensure that journalists can continue to inform citizens without fear. On 29 April 2020<sup>20</sup> she stressed the right to receive and to impart information and called on member states to protect journalists who cover public assemblies.

The "Guidelines on Freedom of Peaceful Assembly",<sup>21</sup> developed by the Venice Commission and OSCE/ODIHR, devote an entire chapter to the "Duty to protect and facilitate the work of journalists and media personnel". The Guidelines state that the media must be given full access by the authorities to all forms of public assembly and set out a number of core principles concerning the state's duty to protect and facilitate the work of journalists and media personnel in a large sense.

The Guidelines in particular recommend that:

- No media credentials should in principle be required to cover an assembly;
- The media have the right to record police activities at assemblies, subject only to reasonable restrictions on time, place, and manner;
- Law enforcement authorities have a duty to protect media professionals from violence emanating from third persons and to refrain from interfering with the work of journalists, irrespective of whether they represent national or foreign media; this duty also covers the freedom of media representatives from arbitrary arrest or detention in connection with their coverage of an assembly;
- The right of media representatives to conduct their journalistic activities during an assembly should not be made dependent upon the wearing of special clothing or badges identifying them as a journalist, as long as their identity is known to the police;
- Journalists should be free to cover all forms of assemblies regardless of whether the assembly is compliant or not with domestic legislation;

<sup>16</sup> Also in the [Opinion](#) of 5 October 2020 of the Committee on Culture, Science, Education and Media on the report of the Committee on Legal Affairs and Human Rights ("The impact of the Covid-19 pandemic on human rights and the rule of law").

<sup>17</sup> [Statement](#) "Russian Federation: freedom of expression and the right to peaceful assembly must be respected".

<sup>18</sup> [Statement](#) "Bulgaria must investigate police violence against journalists".

<sup>19</sup> [Statement](#) "Albanian authorities must prevent further police violence and uphold the right to freedom of peaceful assembly".

<sup>20</sup> [Statement](#) "Journalists covering public assemblies need to be protected".

<sup>21</sup> (Third edition), [CDL-AD\(2019\)017rev](#), B.1., p. 73 et seq.

- As journalists are not participants in, but observers of an assembly, dispersal orders directed at assembly participants should not oblige journalists to leave the area, unless their continuing presence would significantly hinder security forces in doing their work;
- In case of violence against media representatives, as in other instances of unlawful/disproportionate use of force by the security forces, a thorough and independent investigation should be conducted and, if warranted, criminal charges should be sought - ultimately “to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice”.

## 2. Broadcasting bans and blocking of access to the internet

States are in charge of regulating broadcasting and the internet, including licensing, and may, in this context, issue broadcasting suspensions or bans, regulate content or impose sanctions. Our Organisation has elaborated standards providing guidance in this field.<sup>22</sup>

A series of recent alerts on the Platform refer to decisions taken by media or telecommunications regulators such as fines,<sup>23</sup> advertising bans,<sup>24</sup> blocking of online content,<sup>25</sup> and broadcasting suspensions, withdrawals or non-renewals.<sup>26</sup> Some alerts expose the blacklisting of critical media by government agencies and non-renewal of licenses.

Measures such as broadcasting bans and blocking of access to the internet are an extremely severe form of administrative sanction amounting to the silencing of a specific media or voice. Therefore, any measure of this kind must be addressed with utmost care and comply strictly with the conditions set out in paragraph 2 of Article 10 of the Convention. This provision sets out the legitimate aims that restrictions to freedom of expression and media may pursue; these include the protection of national security, territorial integrity, or public safety, the prevention of disorder or crime, the protection of health or morals and the protection of rights of others.

However, in order to comply with the Convention, such measures must in addition be necessary in a democratic society and, in this context, be proportional to the purpose they serve. The case law of the Court provides important guidance in this respect.

---

<sup>22</sup> Some of the more recent texts: [Recommendation on human rights impacts of algorithmic systems \(CM/Rec\(2020\)1\)](#); [Recommendation on the roles and responsibilities of internet intermediaries \(CM/Rec\(2018\)2\)](#); [Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes \(2019\)](#); [Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation \(Steering Committee for Media and Information Society - CDMSI, 2021\)](#); [Guidelines on Artificial Intelligence and Data Protection \(T-PD\(2019\)01\)](#); [Council of Europe Study: “Prioritisation uncovered: The Discoverability of Public Interest Content Online” \(2020\)](#); [Resolution on freedom of expression and digital technologies adopted by the Conference of Ministers responsible for Media and Information Society \(10-11 June 2021, online\)](#); [How to protect journalists and other media actors? Implementation Guide to selected topics under the 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, DGI\(2020\)11, June 2020, p. 23 et seq.](#)

<sup>23</sup> Platform alerts [“Heavy Fines and Shutdown Threat against Albanian TV Channel”](#), 19 May 2020; [“Russian Regulator Announces Fines for RFE/RL Outlets under Expanded ‘Foreign Agent’ Law”](#), 15 January 2021.

<sup>24</sup> Platform alert [“Public Advertising Ban on Turkey’s Independent Newspapers”](#), 7 February 2020.

<sup>25</sup> Platform alerts [“Blogging Site ‘Medium.com’ Blocked in Albania”](#), 22 April 2020; [“Results of Investigation Remain Offline Amid Ongoing Lawsuit Against Estonian Public Broadcaster and Journalists Mihkel Kärmas and Anna Pihl”](#), 10 December 2020.

<sup>26</sup> Platform alerts [“Radio Television High Council Bans Halk TV after Interview with Opposition Politician”](#), 11 May 2020; [“Turkish Radio and Television High Council Cancels Broadcast of Northern Cypriot Diyalog TV”](#), 11 May 2020; [“Fox TV Banned from Broadcast, Anchor Fatih Portakal Faces Three-year Imprisonment”](#), 11 May 2020; [“Hungary’s Last Independent Radio Station had License Extension Rejected by Media Council”](#), 11 September 2020; [“TV Channels 112 Ukraine, NewsOne and ZIK Suspended by Presidential Decree”](#), 5 February 2021.

## 2.1. The principles of the European Convention on Human Rights

The Court found broadcasting bans compatible with the Convention, when the expression of information at stake, by its very nature, could not benefit from the protection of Article 10. For example, when considering the withdrawal of a licence from a TV station<sup>27</sup> and its conviction for terrorism offences, the Court found that the TV station could not benefit from the protection afforded by Article 10 as it had tried to employ that right for ends which were contrary to the values of the Convention, including incitement to violence and support for terrorist activities in violation of Article 17, prohibiting the abuse of rights.<sup>28</sup>

When Article 10 of the Convention applies, the Court examines the legality and the necessity of the measure at stake in a democratic society, stressing that the free flow of information and opinions, including those that can offend and disturb, must in principle be allowed. Whereas a temporary ban or a high licence fee may be seen as proportional in the specific circumstances,<sup>29</sup> economic sanctions or other measures against media organisations or individuals which amount to broadcasting bans, or blocking of entire websites, may comply with the requirements of Article 10 paragraph 2 only if there is credible evidence that there was no other means of achieving the same end that would interfere less seriously with the fundamental right to freedom of expression. According to the Court, “even if there were exceptional circumstances justifying the blocking of illegal content, a measure blocking access to an entire website has to be justified on its own, separately and distinctly from the justification underlying the initial order targeting illegal content, and by reference to the criteria established and applied by the Court under Article 10 of the Convention”.<sup>30</sup> The Court also made clear that states must give reasons for refusals to grant a TV broadcasting licence,<sup>31</sup> that they must allow a judicial review of the refusal-decision, and in tender procedures they must properly sustain and reason their decisions.<sup>32</sup>

As with broadcasting bans, the wholesale blocking of entire websites can be an excessive and disproportionate measure stifling freedom of expression or media freedom. The Court found in several cases that a wholesale blocking order against a website is an extreme measure; even when it pursues an aim recognised as legitimate by the Convention, it will only be compatible with Article 10 obligations when it is based on a strict legal framework affording the guarantee of judicial review to prevent possible abuses.

## 2.2. Positions of other Council of Europe bodies and institutions

According to Committee of Ministers’ [Recommendation CM/Rec\(2016\)5 on internet freedom](#), any restriction of the right to freedom of expression on the internet should be made in compliance with the requirements of Article 10 of the Convention. Consequently, any decision to restrict access to the internet should be targeted, specific, subject to judicial review, and based on an assessment of the effectiveness of the restriction and risks of over-blocking. This assessment should determine whether the restriction may lead to disproportionate banning of access to internet content, or to specific types of content, and whether it is the least restrictive means available to achieve the stated legitimate aim.

<sup>27</sup> *Roj TV A/S v. Denmark*, 24683/14, decision on the admissibility, 24 May 2018.

<sup>28</sup> *Perinçek v. Switzerland [GC]*, 27510/08, 15 October 2015, § 115.

<sup>29</sup> In *Atamanchuk v. Russia*, 4493/11, 11 February 2020, the Court found that the criminal conviction, fine and two-year ban on journalistic or publishing activities imposed on a businessman for hate speech against ethnicities did not constitute a violation of Article 10 of the Convention; it underlined that the ban on journalistic or publishing activities was only temporary and not blanket. In a case where a company complained that the limitation of the list of programmes that it was permitted to provide and the requirement to pay the licence fee imposed by the regulator had amounted to a violation of its rights under Article 10 of the Convention, the Court ruled that it would not intervene unless their interpretation was arbitrary or manifestly unreasonable, which was not the case (*Telecompaniya Impuls, TOV v. Ukraine*, 51010/10, decision on the admissibility, 25 July 2019).

<sup>30</sup> *OOO Flavus and Others v Russia*, 12468/15, 23 June 2020.

<sup>31</sup> *Meltex Ltd and Movsesyan v. Armenia*, 32283/04, 17 June 2018.

<sup>32</sup> *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, 14134/02, 11 October 2007.

In its [Resolution 2035\(2015\) on Protection of the Safety of Journalists and of Media Freedom in Europe](#), the Parliamentary Assembly considered “the generalised blocking by public authorities of websites or web services as a serious violation of media freedom, which deprives a high and indiscriminate number of internet users of their right to internet access”.

The Venice Commission has not issued a document specifically on broadcasting bans. However some of its opinions on national laws expose the general principle according to which an authority may use its powers to impose heavy sanctions (such as high fines or interruption of broadcasting, blocking of access etc.) only as a measure of last resort, where all other reasonable attempts to steer the media outlet on the right path have failed, and where its publications repeatedly and seriously (both conditions should be satisfied) endangered public peace and order.<sup>33</sup> It also stressed the need for a judicial review, underlining that “the duty to carry out the balancing between the right to privacy and the freedom of expression should, in the case of a decision with such serious consequences, be incumbent primarily on a judge and not on an administrative body”.<sup>34</sup> The party affected by measures such as a heavy fine or termination/ suspension of broadcasting “should be given sufficient time to bring court proceedings, and the measure must remain suspended until the court itself decides on the issue of further suspension”.<sup>35</sup> Judicial review by the administrative courts of the “lawfulness” of the decisions of the national media regulator should include not only the verification of the formal compliance of the measure with the Media Act, but also questions of proportionality of the contested measures.<sup>36</sup> Finally, “judgments of courts and tribunals should give an adequate statement of the reasons on which they are based. A lower court should also give such reasons as to enable the parties to make effective use of any existing right of appeal”.<sup>37</sup>

### 3. Strategic lawsuits against public participation (SLAPPs)

Whereas the exercise of legal remedies is a fundamental right in a state governed by the rule of law, there are signs that this right may be abused to stifle journalists and the media. This development is a serious threat to freedom of expression.

The notion of SLAPPs was first defined in a study<sup>38</sup> as a) lawsuits without substantial merit, b) to stop citizens from exercising their political rights or punish them for having done so, c) forcing the target into the judicial arena, where the filer foists upon the target the expenses of the defense.<sup>39</sup>

A major source of intimidation is the practice by which specialist law firms send letters demanding editorial changes or removal of content, often under threat of civil law proceedings<sup>40</sup> claiming important financial damages. Such SLAPPs may involve a strategic choice of forum, taking cases to jurisdictions that apply laws which are particularly restrictive and possibly at odds with the case law of the Court. Through proceedings for interim measures claimants seek to obtain take-down orders resulting in *de facto* censorship of media content. Such threats and proceedings have a severe chilling effect on media freedom.<sup>41</sup>

The chilling effect increases when influential public or private figures file complaints to seek redress for alleged criminal offences such as defamation, insult or blasphemy.

<sup>33</sup> [CDL-AD\(2015\)015](#), Opinion on Media Legislation (ACT CLXXXV on Media Services and on the Mass Media, Act CIV on the Freedom of the Press, and the Legislation on Taxation of Advertisement Revenues of Mass Media) of Hungary, § 41.

<sup>34</sup> [CDL-AD\(2016\)011](#), Turkey – Opinion on Law No. 5651 on regulation of publications on the Internet and combating crimes committed by means of such publication (“the Internet Law”), § 71.

<sup>35</sup> See above, [CDL-AD\(2015\)015](#), Opinion on Media legislation of Hungary, § 44.

<sup>36</sup> See above, [CDL-AD\(2016\)011](#), Opinion on the “Internet Law” in Turkey, § 45.

<sup>37</sup> See above, [CDL-AD\(2016\)011](#), Opinion on the “Internet Law” in Turkey, § 38.

<sup>38</sup> George William Pring and Penelope Canan “Getting sued for speaking out”, Denver 1996, pages 8 and 11.

<sup>39</sup> The study only examined civil law SLAPPs because criminal law SLAPPs would have gone beyond the scope of what could have been accomplished in this study. The authors pointed out that criminal law SLAPPs were not less dangerous and certainly merited another study.

<sup>40</sup> Platform alert “[Lawsuit against Swedish Outlet Realtid Filed in London](#)”, 9 December 2020.

<sup>41</sup> Platform alert “[Minister of Justice sues Gazeta Wyborcza Editor-in-chief Adam Michnik](#)”, 23 March 2021.

The frequency of such criminal lawsuits in some jurisdictions indicates how easily the law enforcement and judicial authorities can be set in motion on the basis of charges of disseminating false or defamatory information, support to a terrorist organisation, insulting a holder of public office, disclosing confidential information, or violating Covid-19 response rules. Arrests and police custody are often followed by preliminary investigations and further pre-trial detention orders.<sup>42</sup>

In some cases, judicial authorities have properly upheld freedom of expression by refusing to prosecute when claims are manifestly meritless or spurious. In other cases, evidence was found to have been fabricated or charges were brought that were unrelated to journalistic activities, practices the Court has found in violation of Articles 5 and/or 6 of the Convention.<sup>43</sup> However, even in such cases, SLAPP practices can have intimidating effects and can lead to self-censorship.

This dangerous phenomenon raises delicate issues in particular as regards the role of the judiciary. In light of its mandate and experience, the Council of Europe has a role to play to develop criteria for SLAPPs and recommend measures against them.

### 3.1. The principles of the European Convention on Human Rights

The jurisprudence of the Court in the field of cases related to the defendant covering matters of public interest can serve as general guidance on applicable principles, also in the relatively new field of SLAPPs. There are several examples of cases where the defendants were sued before a national court and sanctioned in breach of Article 10 for having covered a matter of public interest. The violations established relate to insufficient reasons invoked to justify a finding of defamation and the arbitrary application of anti-terror legislation to sanction statements;<sup>44</sup> a sentence to imprisonment for a “press offence”<sup>45</sup> whose gravity could not justify a deprivation of liberty; disproportional damages imposed on an electronic media for having published news on consumer protection of considerable public interest whereby the domestic court failed to justify the reasons why it had accorded more weight to the reputational interests of a politician than to the interest of the public to be informed;<sup>46</sup> a criminal conviction of a newspaper editor for publishing articles which allegedly contained statements “*aimed at inciting enmity and humiliating the dignity of a group of persons*”,<sup>47</sup> whereby the domestic courts had failed to sufficient reasons to justify the conviction, thus producing a chilling effect on the exercise of journalistic freedom of expression.

### 3.2. Positions of other Council of Europe bodies and institutions

In 2012, the Committee of Ministers called on member states to put an end to forum shopping in respect of defamation/“libel tourism”.<sup>48</sup> Its 2016 Recommendation on the protection of journalism and safety of journalists and other media actors<sup>49</sup> called on member states to proceed to thorough and effective reviews of domestic laws, policies and practice that affect freedom of expression and the practice of journalism, and to revise them. It makes clear that “frivolous, vexatious or malicious use of the law and legal process, with the high legal costs required to fight such lawsuits, can become a means of pressure and harassment, especially in the context of multiple lawsuits”. Such actions can be particularly chilling when directed against freelance journalists and other media actors or those working for small organisations, as they do not benefit from the same legal protection or financial and institutional backing as those that can be offered by large media organisations. The Recommendation specifically calls on states to take appropriate measures, including the institution of legal aid schemes, to ensure equality of arms in proceedings against journalists and media.

<sup>42</sup> Platform alerts “[Turkish Police Raid Mezopotamya News Agency, Detain Journalist Dindar Karataş](#)”, 25 November 2020; “[Bulgarian Editor Stoyan Tonchev Facing Charges of ‘Hooliganism’](#)”, 15 January 2021.

<sup>43</sup> *Khadija Ismayilova v. Azerbaijan (No. 2)*, 30778/15, 27 February 2020, § 80 et seq.

<sup>44</sup> *Fatullayev v. Azerbaijan*, 40984/07, 22 April 2010.

<sup>45</sup> *Mahmudov and Agazade v. Azerbaijan*, 35877/04, 18 December 2008.

<sup>46</sup> *OOO Regnum v. Russia*, 22649/08, 8 September 2020.

<sup>47</sup> *Dmitriyevskiy v. Russia*, no. 42168/06, 3 October 2017.

<sup>48</sup> Committee of Ministers: [Declaration](#) on the desirability of international standards dealing with forum shopping in respect of defamation, “libel tourism”, to ensure freedom of expression (4 July 2012).

<sup>49</sup> Committee of Ministers: Recommendation [CM/Rec\(2016\)4](#) on the protection of journalism and safety of journalists and other media actors (13 April 2016).



In its Resolution of 28 January 2020,<sup>50</sup> the Parliamentary Assembly called upon member states to create an enabling and favourable media environment and review to this end their legislation, seeking to prevent any misuse of different laws or provisions which may impact on media freedom – such as those on defamation, anti-terrorism, national security, public order, hate speech, blasphemy or memory laws – which are too often applied to intimidate and silence journalists.<sup>51</sup>

On 27 October 2020,<sup>52</sup> the Commissioner for Human Rights called upon member states to take action against SLAPPs by a comprehensive approach: allowing for the early dismissal of such suits and ensuring proper implementation of the case law of the Court on defamation (coupled with awareness raising among judges and prosecutors); introducing measures to punish abuse and reversing the costs of proceedings; and giving practical support to those who are sued.

#### 4. Conclusions and further steps

Recent Council of Europe work shows worrying developments in the three fields on which this report puts the focus, and points toward a need to make further efforts to live up to the obligations which the member states have undertaken in the field of freedom of expression and the media.

The Court and several other bodies and institutions of our Organisation have provided essential guidance on how best to fulfil the obligations of member states in this context: relevant standards, in particular stemming from the Convention and Court judgments, should be implemented and states are encouraged to make full use of the assistance offered by the Council of Europe.

It also remains essential that appropriate protective or remedial action be adopted by the states concerned in reaction to the alerts posted on the Platform. To this effect member states should carefully consider the alerts accessible in Appendix I, reply to them swiftly and provide substantial information on any specific followup given.

In line with the Strategic Framework of the Council of Europe and related Committee of Ministers' decisions, the further strengthening of relations and synergies with other international organisations is essential to create impact, particularly with our key partners: the EU, the UN and the Organization for Security and Co-operation in Europe (OSCE). Notably and as noted with satisfaction by the Committee of Ministers in Hamburg<sup>53</sup>, the Council of Europe and the EU have stepped up their co-operation and the latter's intensity and the scope have increased, notably in the field of freedom of the media. Continuation of this co-operation is important<sup>54</sup>.

The Conference of Ministers responsible for Media and Information Society held on 10-11 June (Cyprus/online) was an important milestone and provided strong guidance on how to follow up relevant decisions adopted at the 131st Session of the Committee of Ministers (Hamburg, 21 May 2021) and in particular on the implementation of the relevant key strategic priorities as identified in the Strategic Framework of the Council of Europe; it should be used to the utmost.

<sup>50</sup> [Resolution 2317\(2020\)](#) "Threats to media freedom and journalists' security in Europe", § 6.

<sup>51</sup> In its [Resolution 1577\(2007\)](#) "Towards decriminalisation of defamation", PACE had already called on member states to abolish prison sentences for defamation, guarantee that there is no misuse of criminal prosecutions for defamation, define defamation more precisely in their legislation so as to avoid arbitrary application and to ensure that civil law provides effective protection of the dignity of persons, and to remove from their defamation legislation any increased protection for public figures, in accordance with the Court's case law.

<sup>52</sup> Commissioner for Human Rights: "[Time to take action against SLAPPs](#)", Human Rights Comment (27 October 2020).

<sup>53</sup> [CM/Del/Dec\(2021\)131/4](#).

<sup>54</sup> Notably with a view to the "EU Media Freedom Act", to be presented by the European Commission in 2022 and the announced Recommendation to protect journalists and rights defenders against abusive litigation / strategic lawsuits against public participation. It is also recalled that on 16 September 2021, the EU Commission issued a Recommendation on the protection, safety and empowerment of journalists and other media professionals in the EU, which not only refers to the European Court of Human Rights and its case law but also largely builds upon the Recommendation CM/Rec(2016)4 of the Committee of Ministers.

Finally and most importantly, the relevant parts of the draft Programme and Budget 2022-2025 (to be examined at the 1418th (Budget) meeting of the Ministers' Deputies, 23-24 November 2021) as well as the draft terms of reference of the CDMSI and its expert committees for 2022-2025 have been prepared while fully taking into account the documents adopted at the Cyprus Ministerial Conference and include proposals to tackle the issues covered by the present report. Proposed priorities for the next four years include the implementation of Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, and also address among others the protection of journalists during protests and abusive lawsuits aimed at silencing critical voices, notably through the preparation of a Draft Recommendation on strategic lawsuits against public participation – SLAPPs.

## **Appendix I: Alerts on the Platform for the protection of journalism and the safety of journalists between 01 January and 30 September 2021**

List published on the homepage of the Platform

## **Appendix II: Other recent developments in the field of freedom of expression and information in the Council of Europe**

- After the entry into force of the Tromsø Convention on Access to Official Documents on 1 December 2020 in 10 member states,<sup>55</sup> nine others have already signed it. State parties can contribute at an early stage in the shaping of this fundamental right and the development of standards for balancing it with other rights. By implementing this Convention, states can contribute to a transparent and accountable functioning of their democratic systems.
- In their 2021 Annual Report,<sup>56</sup> the 14 partner organisations to the Platform have highlighted key areas of law, policy and practice where, on the basis of alerts posted on the Platform, they consider that action is urgently required. They also acknowledge the adoption of good practices and constructive reforms by member states which promote effective protection and redress for violations of freedom of expression and related rights protected under the Convention. The partner organisations have put forward concrete recommendations which they believe need to be taken by member states in order to meet their obligations.
- On 18 October, the Council of Europe, together with the René Cassin Foundation, and the Missions of Japan and the United States of America, organised a Symposium on Human Rights in the Digital Sphere. Together with government representatives, judges of the Court, scientific experts, NGOs and companies discussed how to protect human rights in the face of new technological, social, economic and political developments related to cyberspace (navigating the borderline between limiting freedom of expression and moderating harmful content; human rights in the field of artificial intelligence; and adequate protection against cyber-based illegal activities).

---

<sup>55</sup> Bosnia and Herzegovina, Estonia, Finland, Hungary, Lithuania, Montenegro, Norway, Republic of Moldova, Sweden, and Ukraine.

<sup>56</sup> Partner organisations of the Safety of Journalists Platform: "Wanted! Real action for media freedom in Europe" [2021 Annual report](#), Strasbourg, 2021.