Council of Europe Steering Committee on Media and Information Society

Workshop

How to protect journalists and other media actors in Europe: implementing the Council of Europe's standards

Strasbourg, 30 June 2016

RAPPORTEURS' CONCLUSIONS[*]

by

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and

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Background to the workshop

The workshop, 'How to protect journalists and other media actors in Europe: implementing the Council of Europe's standards', was organised on 30 June 2016 during the 10th meeting of the Council of Europe's Steering Committee on Media and Information Society (CDMSI) in Strasbourg.[1]

The CDMSI decided to hold a workshop focusing on ways of enhancing the implementation of Council of Europe standards on the safety of journalists and other media actors in Europe. It was decided to combine this workshop with a presentation and discussion of the Internet based platform on safety of journalists one year after it commenced operation in April 2015. The workshop was also intended to provide CDMSI members with an opportunity for a first, collective reflection on how to implement Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, which was adopted on 13 April 2016.[2]

More specifically, the two main objectives of the workshop were to:

1) Have a debate amongst the CDMSI members on how to facilitate the implementation of the pillars set out in the above Council of Europe CM/Rec(2016)4 and to identify possible needs of member States for assistance from Council of Europe related to this;

2) Provide a forum for member States to exchange best practices on the protection of journalism and safety of journalists and other media actors and to reflect on how to implement them in their respective countries.

The present report follows the structure of the workshop itself and comprises two main parts:

1. Session 1: How to support member states in implementing Council of Europe standards on safety of journalists and other media actors.
2. Session 2: Mutual engagement on the protection of journalism and safety of journalists and other media actors: identification of best practices for the implementation of the Recommendation CM/Rec(2016)4.

Some of the good or best practices identified during the workshop and mentioned in this report have been included in a separate report that focuses specifically on selected relevant best practices.

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[1] Council of Europe CDMSI Workshop, 'How to protect journalists and other media actors in Europe: implementing the Council of Europe's standards', (CDMSI(2016)Misc2rev10), https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806655 77

[2] Adopted by the Committee of Ministers on 13 April 2016 at the 1253rd meeting of the Ministers' Deputies.

Session 1

This session set out to explore ways to support member states in implementing the Council of Europe's standards on safety of journalists and other media actors. These possible ways were explored by presentations of panelists and contributions made by the resource speakers and CDMSI members. The report of the discussion is organised along the lines of its main thematic focuses: (I) responses to a questionnaire circulated to member states; (II) possible roles for national human rights institutions in implementing relevant Council of Europe standards, and (III) the Council of Europe's online Platform to promote the protection of journalism and the safety of journalists.

Overview of the panelists and recourse speakers:

Name	Function/Affiliation	Role/Focus
Ms Silvia Grundmann	Head of Media and Internet Division, Council of Europe	Moderator
Ms Elfa Ýr Gylfadóttir	Chair of the Steering Committee on Media and Information Society	Opening remarks
Ms Christina Lamprou	Secretariat of Media and Internet Division, Council of Europe	Analysis of the answers to the questionnaire on the implementation of Council of Europe standards on safety of journalists and other media actor
Mr Joan Barata Mir	International expert in freedom of expression, media freedom and media regulation	Study "How to strengthen soft powers for press freedom: national human rights institutions"
Mr Matjaž Gruden	Director of the Policy Planning Directorate, Council of Europe	Overview and stock-taking of the Council of Europe's Online Platform to promote the protection of journalism and the safety of journalists
Mr Ricardo Gutiérrez	General Secretary of the European Federation of Journalists	Exchange of views on the results of the Council of Europe's Platform
Mr Volodymyr Ariev	Member of the Parliamentary Assembly, Chairperson of the PACE Committee on Culture, Science, Education and Media, General Rapporteur on media freedom and safety of journalists	Exchange of views with CDMSI members
Ms Katie Morris	Head of Europe and Central Asia at Article 19	Resource speaker
Mr Tarlach McGonagle	Senior Researcher and Lecturer, Institute for Information Law	Resource speaker
Ms Eugenia Siapera	Deputy Director of the Institute for Future Media and Journalism	Resource speaker

I.   Questionnaire

An analysis of the answers to a questionnaire on the implementation of the Council of Europe's standards on safety of journalists and other media actors was presented by Ms Lamprou. At the CDMSI Bureau meeting of 31 March-1 April 2015, it was decided to send a questionnaire comprising eight questions about the implementation of Council of Europe standards related to safety of journalists and other media actions CDMSI members. The collected responses – 38 by 30 June 2016 - have been made available online.[3] The aim of the exercise is to contribute to a more coherent and systematic approach to the identification of the similarities and differences member states.

Some best practices can be drawn from the responses to the questionnaire. For instance, several countries (the Netherlands, Italy and Ireland) are reportedly taking steps to remove **defamation** from their criminal codes or limit the use of criminal sanctions in respect of defamation. In the Dutch parliament, there is a currently proposal to widen the scope of **confidentiality of sources** to include publicist. In Georgia, the public defender may express specific interest in the process of the **investigation of cases regarding journalists** and may prepare proposals or recommendations and may make public statements to raise awareness. In Lithuania, the provision of the Criminal Law related to the **insult targeting a civil servant** will be transferred to the Code of Administrative Offences in 2016. In Norway, case-law of the Norwegian Supreme Court shows that **threats against journalists with the purpose of influencing the media's activity** are punished more severely than ordinary threats.

Analysis of the responses to the questionnaire prompts additional observations relating to specific focuses of CM/Recommendation (2016)4. For instance, it would appear that none of the respondent member states identified a mechanism specifically designed to **ensure investigation and prosecution of attacks** against journalists and other media actors. Also none of the respondent member states appear to have a coherent/comprehensive plan directly addressing the gender-specific needs and interests of **female journalists**.

It should be noted that the questionnaire was launched before Recommendation CM/Rec(2016)4 was adopted. For that reason, it would be important to identify if there has been improvement since the adoption of the recommendation.

Some of the best practices that emerged during the stocktaking exercise will be discussed in more detail later in the report in the context of the discussion of best practices.

II.   National Human Rights Institutions

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[3] CDMSI Compilation and analysis of replies received from CDMSI members on the implementation of Council of Europe relevant standards on safety of journalists and other media actors, Doc. No. CDMSI(2015)18rev4, 9 June 2016:
https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680665c1a.

Mr Barata Mir presented his study, "How to strengthen soft powers for press freedom: national human rights institutions". Recommendation CM/Rec(2016)4 stresses the that States have a positive obligation to create a favourable environment for freedom of expression and that a range of measures are required in order to fulfil that obligation.[4] National Human Rights Institutions (NHRIs) can play an important role in ensuring higher levels of protection and safety for journalists.

NHRIs are institutions that have powers that are not legally binding, but can have strong legitimacy, such as the ombudsman. Whereas NHRIs have different mandates, they all share the task of protection of human rights. NHRIs can be ombudspersons, research institutes, committees that play an advisory role, etc.

NHRIs' main features include:

1. NHRI's can play an important role in ensuring effective protection on the ground.
2. NHRI's have a constitutional and legal mandate, which allows them to perform their task in an independent manner.
3. NHRI's have a good toolkit when it comes to dialogue with civil society, citizens, journalists, media organisations, etc.
4. NHRI's can collaborate with international organizations.
5. Most importantly, NHRI's have an oversight power, which allows them to perform a monitoring task *vis-à vis* the institutions of the State

The three areas where improvement can be made, according to Mr Barata Mir, are as follows:

1. NHRI's can use the mandate or powers they already have to enhance and improve their activities. Examples are the implementation of Council of Europe standards, training of law enforcement officers, collaboration with the Council of Europe, etc.
2. NHRI's can facilitate the effective execution of judgments of the European Court of Human Rights. They can, for instance, handle individual complaints when a judgment is not effectively implemented; monitor the execution of judgments, or assess the best ways to implement judgments per member state.
3. Improve cooperation between NHRIs and the Council of Europe. This could be done by permanent participation (as an observer) at the CDMSI or by training members of staff, or by creating a network of permanent interlocutors.

Successful examples of NHRI's in the member states will be discussed in more detail later in the report in the context of the discussion of best practices.

III.   Platform

Mr Gruden presented an overview and stock-taking of the Council of Europe platform to promote the protection of journalism and the safety of journalists, which was launched in April

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[4] Guidelines appended to the Recomenndation, para. 6.

2015. Recommendation CM/Rec(2016)4 urges member states to "wholeheartedly support and cooperate with the platform".[5]

As explained on its website,[6] the platform is a public space to facilitate the compilation, processing and dissemination of information on serious concerns about media freedom and safety of journalists in Council of Europe member States, as guaranteed by Article 10 of the European Convention on Human Rights. It aims to improve the protection of journalists, better address threats and violence against media professionals and foster early warning mechanisms and response capacity within the Council of Europe. It enables the Council of Europe bodies and institutions to be alerted on time, in a more systematic way and to take timely and coordinated action when necessary. It also helps the organisation to identify trends and propose adequate policy responses in the field of media freedom.

The platform has been developed and is run in cooperation with a number of civil society partners: Reporters Without Borders, the International Federation of Journalists, the European Federation of Journalists, the Association of European Journalists, ARTICLE 19, the Committee to Protect Journalists, Index on Censorship and the International Press Institute.

Mr Gruden identified three features that distinguish the platform from other initiatives:

1. Its use of technology. The advantage of the technology used is that it makes the platform accessible, fast and low-cost.
2. It is a joint exercise. It is carried out in partnership with (currently eight) civil society organisations.
3. Its crowd-sourcing function. The platform does not duplicate work that has been or will be carried out by others.

Based on a stock-taking of the platform, a number of trends can be identified in the alerts posted on the platform:

- prosecution on the basis of defamation or insult.
- physical safety of journalists: arrest, harassment, beatings, killings.
- anti-terrorism legislation.
- unnecessary and disproportionate blocking or filtering of Internet sites, social media sites and other Internet content.
- (lack of) independent financing of broadcasting.
- disproportionate use of force on journalists covering demonstrations and protests.

Mr Gruden pointed out that the platform has had a good start: between April 2015 and June 2016, there have been 174 alerts of 26 member states. 84 replies have been received from the member states. Almost all member states have replied to alerts, except for three countries that

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[5] Guidelines appended to the Recommendation, para. 10.
[6] This passage is adapted slightly from the text on the website: http://www.coe.int/en/web/media-freedom/the-platform .

have not responded (the Russian Federation, Macedonia and Ukraine). Turkey has stopped responding since the end of 2015.

Mr Gutiérrez noted that the platform has initiated dialogue. The success of the platform will predominantly be assessed by the number of cases that are being resolved in a satisfactory manner.

During the exchange of views led by Mr Ariev, some CDMSI members raised their concerns about the low number of alerts (i.e., the fear that actual threats to the protection and safety of journalists and other media actors are underreported via the platform) and the even lower number of alerts that have been responded to. According to Mr Gutiérrez, the absence of a response does not mean there has been no contact with relevant State authorities. There might have been a lot of interaction and some cases have indeed adequately been dealt with by national authorities. Also four cases have been resolved through bilateral dialogue between the partners and the member states.

Improvements were suggested by the panelists, resource speakers and CDMSI members. The representative of Bosnia and Herzegovina suggested that the visibility of the platform should be improved on a national level in order to increase the number of alerts. The Russian representative suggested that other organisations should be able to submit applications as well, such as unions of journalists. According to Mr Gruden, the absence of responses should be made more visible on the platform in order to increase the response rate. Also, the national authorities concerned can do a lot to prompt these responses. Ms Morris argued that the real challenge is where the responses are not constructive. This could be the case when journalists are arrested unlawfully, but member states nevertheless argue that the criminal charges are correct. The discriminatory, arbitrary or vexatious application of laws and sanctions against journalists and other media actors is dealt with in para. 13 of the Guidelines of Recommendation CM/Rec(2016)4. According to Ms Morris, it is very important that civil society is involved in that dialogue.

The suggested improvements to increase the numbers of alerts and response rate will be revisited later in the report in the context of the discussion of best practices.

Placing the discussion of the Platform in a broader context, Mr. Ariev recalled some of the current threats to democracy, including violent conflicts, the refugee crisis, the struggle against terrorism (mentioning recent attacks in France, Belgium and Turkey) and on a political level, the political scepticism that seems to be currently paralysing the European Union (as he put it). For him, these challenges call for the need to create free media and audience trust. One priority in this regard, he said, is to increase transparency of media ownership, so that people are able to assess whether their sources are trustworthy. He also called for more emphasis on media responsibilities and self-regulation. Faced with propaganda and conscious misinformation, responsibility should be a matter for self-regulatory systems. He also considered it timely to discuss whether private media should use the same principles of equal access (all positions/sides) as public media, especially when it comes to referenda and elections.

Conclusion

In this session, ways have been explored to support member states in implementing the Council of Europe's standards on safety of journalists and other media actors. This has been done by means of presentations and exchange of views on the questionnaire, the study on NHRIs and the platform. The best practices derived from this session are further built upon in the report of the second session.

Session 2

Opening remarks

In the second session, the floor was opened to CDMSI members to present best practices and compare experiences related to the implementation of Recommendation CM/Rec(2016)4. Mr Tarlach McGonagle (University of Amsterdam) and session moderator Mr William Horsley (Association of European Journalists) provided opening remarks.

Mr McGonagle emphasised the urgency of the need to improve the protection of journalism and the safety of journalists and other media actors, and commended the current prioritisation of these issues by the Council of Europe. He explained that the Recommendation's ambition and ability to address these issues in a resolute manner are helped by the Recommendation's firm grounding in the case-law of the European Court of Human Rights. He affirmed that following the adoption of the Recommendation in April, the focus now has to turn to ensuring its effective implementation. He stressed the need for promotional and other follow-up activities, so that the discretionary space of state authorities is utilized optimally. Quoting P.T. Barnum, he stated: "without promotion, something terrible happens: nothing".

Mr Horsley described the CDMSI event as an historic moment, since it was the first time for such a follow-up meeting to be held. On the topic of the protection of journalism, he noted a shift in the Council of Europe's activities from standard setting to more proactive contributions in assisting and guiding the implementation of such standards at the national level. In this session he invited the CDMSI members to join in a positive and constructive discussion and share their ideas and best practices.

The discussion touched on numerous best practices, largely following the 'four pillar' structure set out in the Recommendation's Guidelines: prevention, protection, prosecution (including a specific focus on impunity) and promotion of information, education and awareness-raising.

Pillar I: Prevention

On the topic of Prevention, which calls for the creation of a favourable environment for freedom of expression, built around a comprehensive legal framework, various 'best practices' were outlined.

The Members from Montenegro and Bosnia and Herzegovina referred to the **decriminalisation of defamation** in their countries, and ongoing reforms were announced in respect of Iceland and Italy. In Iceland, decriminalisation is expected in a draft bill scheduled for Fall 2016. Furthermore, in order to minimise the chilling effect on journalistic activities, this bill would also strike out criminal penalties for **insulting public official**s, and update the rules on criminal **hate speech** in order to restrict their applicability. The Member from Italy highlighted the ongoing reform of defamation law in the 'Costa' Bill, which, though not decriminalising defamation, would remove the penalty of imprisonment.

The Members from the Netherlands, Russia, Norway and France described reforms for the **extension of journalistic privileges to other media actors**. In the Netherlands, a Bill is

currently under consideration for the protection journalistic sources in criminal proceedings, which grants this right not only to journalists in the conventional sense, but also to 'publicists', extending protections to all media actors who play a role with their publications in the public debate about current affairs in Dutch politics and society. The Member from Russia mentioned that the recently introduced 'blogger law' extends certain journalistic privileges to bloggers in certain circumstances. Furthermore, the Member from Norway described a recent Norwegian Supreme Court judgment which extended the right to confidentiality of sources to a documentary filmmaker. Finally, the Member from France pointed towards ongoing reforms aimed at defining the concept of 'whistleblowers', in order to safeguard their confidentiality and protect them against reprisals such as dismissal.

The Recommendation specifically calls for reviews of legislation to ensure its compatibility with free speech guarantees, including legislation concerning anti-terrorism and mass surveillance. On this issue, no best practices were forthcoming. A common theme in the discussion from members and invited experts, Ms Morris and Ms Siapera, however, was the need for evidence-based assessments of effectiveness, necessity and proportionality, whenever such measures put the right to freedom of expression at risk.

Review mechanisms

For the purposes of improving national legislation, the Recommendation calls for independent, substantive reviews by a national human rights commission, ombudsperson or other another independent body. While the workshop's first session already involved extensive discussion on the role of National Human Rights Institutions in performing these tasks, some additional comments and best practices arose in the second session. Various CDMSI members welcomed Mr Barata Mir's suggestion that the Council of Europe's Committee of Ministers should adopt a Recommendation on Standards for NHRIs.

In terms of best practices, the Member for Bosnia and Herzegovina outlined a recently-created platform aimed at identifying policy priorities in the area of protecting journalism, which benefited from the active involvement of the national association of journalists. Furthermore, the Member from Sweden informed the meeting that the Swedish Ministry of Culture has created an action plan on safeguarding democratic institutions including the media and artists, which also involves cooperation with other ministries and law enforcement authorities. The Norwegian Member added that, while the reliance on ombudspersons is generally considered a typically 'Nordic model', Norway does not have an ombudsperson competent to deal with issues relating to the media. He noted that such public oversight is not always welcomed by the media industry.

Mr Horsley referred to the United Kingdom's Independent Reviewer of Terrorism Legislation, an independent official appointed by the Home Secretary and the Treasury who monitors domestic anti-terrorism laws via reports to Parliament, in evidence to Parliamentary

Committees, and in the media. To this end, the Independent Reviewer enjoys a very high degree of clearance to confidential documents.[7]

Finally, the Member for Iceland described the Icelandic Modern Media Initiative (IMMI), a platform initiated through a parliamentary resolution, which brings together members of parliament and stakeholders from various media organisations, and which has also collaborated with academics and NGOs. The IMMI has advised the government in Iceland and others abroad with the aim of enhancing and empowering freedom of expression as well as ensuring source protection and whistleblower protection. Its successes include contributions to the legislative reform of defamation law discussed above. Citing the IMMI as an example, Mr McGonagle suggested that it can be more efficient to examine a range of laws affecting the right to freedom of expression in a systematic, coordinated way, than to examine them in piecemeal fashion. This is the type of approach to be taken under the national reviews of laws and practices envisaged under Pillar 1 of the Recommendation's Guidelines.

Pillar II: Protection

On the topic of protection, the Recommendation calls for measures to ensure the safety, protection and liberty of journalists and other media actors. These measures can include 'early-warning and rapid-response mechanisms' such as the Council of Europe's platform for the protection of journalists and other media actors, discussed in greater detail during Session I.

The Recommendation outlines that effective protection also requires measures to prevent the frivolous, vexatious or malicious use of the law and legal process to intimidate and silence journalists and other media actors. Here, Mr Horsley noted the chilling effect that arises when charges are hanging over the heads of journalists, either pending trial or through an amnesty. The release – during the workshop - of the imprisoned journalist and Reporters Without Borders representative in Turkey, Erol Önderoğlu, was welcomed, but accompanied by calls to drop the charges against him.

The Member for Italy noted that his country has long-standing experience with threats of violence from organised crime, which has led to best practices in the area of protecting journalists.

Ms Siapera added that digital security tools can also be valuable in ensuring the protection of journalists. To illustrate she discussed the EyeWitness project, an app launched by the International Bar Association which allows users to securely and instantaneously store footage in cloud-based servers. Thus, it helps witnesses, journalists and other media actors to create verifiable records which can be accessed even after recording devices are confiscated or broken.

Pillar III: Prosecution (including a specific focus on impunity)

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[7] https://terrorismlegislationreviewer.independent.gov.uk/about-me/

On the issue of prosecution, the Recommendation calls (*inter alia*) for investigations into violence against journalists to respect the essential requirements of adequacy, thoroughness, impartiality and independence, promptness and public scrutiny.

In this regard, the Member from the Ukraine outlined ongoing reform of prosecution offices, as well as legislative changes to introduce penalties for the wilful obstruction of journalistic activities. These combined changes are intended to lead to more effective prosecution of the perpetrators of violence and threats of violence against the media.

The Member from Montenegro described the recently formed Commission for the monitoring of investigations of cases of attacks on journalists. The Commission consists of government officials from the police and the public prosecutor, as well as representatives of media organisations. Mr Horsley noted that a comparable Commission of Inquiry had also achieved some success in Serbia.

The Member from Italy described the preparation of new rules on the intimidation of public officials, intended to combat impunity ensures by threats of violence form organised crime. However, he also noted that, in its current form, this rule was so broad that it could also be used against journalists who were critical of public authority, thus creating a counterproductive chilling effect.

Pillar IV: Promotion of information, education and awareness-raising

The Recommendation's fourth pillar is the promotion of information, education and awareness-raising. In this regard, the Member from Greece noted a 'training week' organised by Hellenic Multinational Peace Support Operations Training Center (MPSOTC). This pilot programme, scheduled for Fall 2016, is aimed at improving the protection of journalists in conflict reporting, through the provision of training in physical and digital security as well as trauma counselling. It is open to journalists and media workers, as well as civil servants and government officials from e.g. the Ministries of Foreign Affairs, Defence, Environment and Internal Affairs.

The Recommendation recognises the potential of awareness-raising days such as World Press Freedom Day (3 May) and the International Day to End Impunity for Crimes Against Journalists (2 November). The Member from Greece noted an event organised by the General Secretariat for Information and Communication on International Womens' Day 2016, titled 'Women in the Battle for Information'. This event brought together academics, journalists, members of parliament and government representatives from the Secretariats for Information and Communication and Gender Equality, to discuss the issue of gender stereotypes in the media working environment.

To capitalise on the publicity generated by designated annual international days, Mr. Horsley noted that such days also present an opportunity for Member States to kick-start the national reviews of law and practice envisaged under Pillar 1 of the Recommendation's Guidelines, e.g. by holding debates in national parliaments on relevant topics.

Another best practice discussed was the Global Media Monitoring Project (GMMP), a research and advocacy initiative that pursues gender equality in and through the media hosted by Who

Makes The News, a knowledge, information and resource portal on gender and the media. The GMMP has published reports every five years since 1995, with the 2015 version covering over 100 countries and 20,000 news items, focusing on selected indicators of gender in the news media, studying women's presence in relation to men, gender bias and stereotyping in news media content.[8]

Concluding remarks

In her concluding remarks, CDMSI chair Ms Ýr Gylfadóttir thanked the members for their participation and contributions, which would serve as valuable input for a more detailed exploration of selected best practices to be compiled by the workshop rapporteurs. She also invited the Committee members to submit in writing any additional comments and input they may have. The point in identifying good or best practices at the national level and explaining why particular practices work well in particular countries is, after all, to stimulate reflection and discussion on which exemplary practices could be suitable for replication in other countries.

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[8] http://whomakesthenews.org/gmmp.