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

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COMPILATION OF SELECTED BEST PRACTICES FOR THE IMPLEMENTATION OF RECOMMENDATION CM/REC(2016)4

&

PROPOSALS FOR FURTHER FOLLOW-UP ACTIVITIES

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INTRODUCTION

This overview of selected relevant best practices has been distilled from responses to the Country Questionnaire, the discussion at the CDMSI workshop and desk research by the workshop rapporteurs. Some of the identified practices are concrete, as they already exist. In other cases, the practices are less concrete, as they are emergent, pending or expected. In other cases still, *actual* best practices are not easy to find, so in order to fill such gaps, *potential* best practices, e.g. gleaned from selected NGO reports and recommendations and academic literature, have been considered.

The highlighted practices are in principle directed at State authorities, as Recommendation CM/Rec(2016)4 is formally addressed to Member States. The spirit of the Recommendation, however, points to collaborative engagement with non-State parties, including civil society and more specifically, the media and organisations representing journalists and their interests. For that reason, this report also includes best practices that relate to action by non-state parties, such as media organizations or journalists themselves. States' positive obligation to create a favourable environment for freedom of expression – which is at the heart of the Recommendation – implies that they should facilitate or support relevant initiatives by civil society actors.

It is important to underline at the outset that the identification of "best practices" can prove a very subjective exercise, especially when the selection criteria are either undefined or only partly defined. The present report is exploratory in nature and takes as its starting point the Recommendation and the criteria set out therein. It aims to provide a modest contribution to more extensive research and analysis of best practices to be undertaken in the near future – a task that would necessarily have to be based on clearly-stated selection criteria.

One difficulty encountered when identifying best practices concerns the inevitably divergent perceptions of what constitute best practices. While preparing this report, it became clear that (aspects of) a number of the legislative initiatives presented as "best practices" by CDMSI members have been criticised by various international NGOs for not going far enough in terms of the protection they offer or the scope of their application, etc. The present report seeks to navigate these differing perspectives and potential tensions, taking the view that open, multi-stakeholder dialogue, including critical dialogue, about the content of draft legislation is itself a best practice that can contribute to the strengthening of national legislative frameworks for the protection of journalism and the safety of journalists and other media actors.

The structure of this report follows that of the Guidelines appended to Recommendation CM/Rec(2016)4, namely the four pillars of the Guidelines: Prevention, Protection, Prosecution (including a specific focus on impunity) and Promotion of information, education and awareness-raising. For each pillar, the report has sought to identify best practices for as many issues as possible. The best practices are presented and discussed in roughly the same order as the corresponding issues in each of the pillars. The report then focuses on two principal cross-cutting themes of the Guidelines: gender-specific issues and digital security. After a short conclusion, the final section of the report concentrates on proposals for further

follow-up activities by the Council of Europe to stimulate the effective implementation of the Recommendation by Member States.

PILLAR I: PREVENTION

In terms of prevention, the Recommendation is primarily concerned with the creation of a favourable environment for freedom of expression, which requires safeguards for media independence and pluralism, including for the independence and sustainability of public service and community media.[1] In keeping with the case-law of the European Court of Human Rights, the Recommendation sees a comprehensive legislative framework as a key requirement of a favourable environment for freedom of expression for journalists and other media actors.[2]

Such legislative frameworks should address a range of issues that influence the exercise of the right to freedom of expression, such as access to information, protection of journalistic sources and whistle-blowers and data protection. In light of this, various general positive developments are noteworthy, e.g. the extension of existing protection to other media actors; the (re-)affirmation of the importance of source protection for investigative journalism; provisions to prevent the obstruction of journalistic activities, and provisions shielding members of the media from punishment for acting as accessories to a violation of official secrecy and of a special duty of secrecy.[3]

The Guidelines to the Recommendation state that the "legislative framework and its implementation should guarantee effective protection of female journalists and other female media actors from gender-related dangers in the course of their work".[4] It should be recalled in this connection that in 2013, the Committee of Ministers stated that Member States should adopt (unless it already exists) "an appropriate legal framework intended to ensure that there is respect for the principle of human dignity and the prohibition of all discrimination on grounds of sex, as well as of incitement to hatred and to any form of gender-based violence within the media".[5]

1. Whistleblower protection

As mentioned above, the protection of whistleblowers who expose wrongdoing in the public interest, is an important focus of the Recommendation. The United Kingdom has a whistleblower procedure that could be identified as a good practice. As part of the Ministry of Justice, the Office of the Civil Service Commissioners can receive complaints related to

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[1] Guidelines to the Recommendation, para. 1.
[2] Guidelines to the Recommendation, para. 2.
[3] These (pending) developments concern the Netherlands, Norway, Ukraine and Germany respectively. More details of each can be found in those countries' replies to the CDMSI Questionnaire, as summarised in the compilation of replies to the Questionnaire.
[4] Guidelines to the Recommendation, para. 2.
[5] Recommendation CM/Rec(2013)1of the Committee of Ministers to Member States on gender equality and media, 10 July 2013, Guideline A. 1.

retaliation against whistleblowers, investigate them and provide remedies.[6] The Office also has the task to make sure that whistleblowers are not penalised unfairly for raising their concerns.

Another positive development in this field is the 'House for Whistleblowers', which was recently launched by the Dutch government.[7] Under the auspices of the national Ombudsman, this institution acts as a clearing house for whistleblowing in public and private organisations. In addition, it can provide (legal) advice to whistleblowers. The House also has investigative powers to request documents from the organisation in question. With the launch of the House for Whistleblowers, the Netherlands has also introduced a binding legal requirement for large companies to create internal avenues for whistleblowing (which was previously a matter of voluntary self-regulation).

Best practices regarding the protection of whistleblowers can also be identified in the private sector. In several Member States, platforms have been developed to support whistleblowers, such as *MagyarLeaks* (Hungary), *Nieuwsleaks* (Belgium), *Publeaks*[8] (the Netherlands) and *RegeniLeaks*[9] (Italy). These platforms can, *inter alia*, provide technical tools to enable secure and confidential communications, legal advice, and contact with relevant journalists and media organisations. In this regard, the Dutch platform *Publeaks* is noteworthy for bringing together a wide variety of media organisations, including public service broadcasters. The technical design of the platform allows potential whistleblowers to choose to which media organisations they will submit their information, making it a particularly powerful and attractive tool for potential whistleblowers.

It could also be considered a best practice when Member States take steps to limit the liability of whistleblowers for public interest disclosures, since such liability can have significant chilling effects. Good practice would be to ensure that State secret and trade secret laws are not used to silence whistleblowers and affiliated journalists, e.g. through unfair burdens of proof or disproportionate penalties. Another good practice would be to include adequate carve-outs from liability and exceptions in order to protect whistleblowers from undue chilling effects.

A best practice in this regard is the creation of explicit, positive protection for whistleblowers against liability and other reprisals. One example is the United Kingdom's Public Interest Disclosure Act 1998, which protects whistleblowers against dismissal, disciplinary actions and other social and work related discrimination in the workplace.[10] Another best practice is

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[6] Ministry of Justice Human Resources Directorate, Conduct – Whistleblowing, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214887/whistleblowing.pdf

[7] Wet van 14 april 2016, houdende de oprichting van een Huis voor klokkenluiders (Wet Huis voor klokkenluiders), Stb. 2016, 147. Website of the House For Whisleblowers (in Dutch), www.huisvoorklokkenluiders.nl or information in English, 'The Netherlands: change in whistleblowing legislation', http://www.lexology.com/library/detail.aspx?g=ecaa61fe-8c67-469c-a988-f7602f70247a.

[8] For information about *Publeaks* in English, see: https://www.somo.nl/support-us/publeaks/

[9] Preliminary information about RegeniLeaks and first access: http://espresso.repubblica.it/inchieste/2016/04/28/news/preliminary-information-about-regenileaks-and-first-access-1.263127

[10] http://www.legislation.gov.uk/ukpga/1998/23/contents

Ireland's Protected Disclosures Act 2014, which contains similar safeguards.[11] Reforms have been ongoing in France, in the context of anti-corruption efforts of the '*Loi Sapin* II'. It should be noted, however, that specific whistleblowing laws can also have counter-productive effects if eligibility criteria are defined too narrowly. General principles on the design of effective whistleblowing protections can also be found in Transparency International's 2013 report, *International Principles for Whistleblower Legislation*.

2. Reviews of national laws and practices

The Recommendation calls for independent, substantive reviews of the national legislative framework in order to ensure that safeguards for the exercise of the right to freedom of expression are robust and effective in practice and that the legislation is backed up by effective enforcement machinery.[12] The reviews should cover all existing and draft legislation that affects the right to freedom of expression of journalists and other media actors. The reviews should target vague and/or overbroad laws that interfere with the right to freedom of expression, as well as laws in which key terms and concepts are either not defined or defined with insufficient precision. The application of such laws can create legal uncertainty and lead to "function creep" by going beyond their original or stated purpose.

2.1 Gender-related issues

In keeping with other standard-setting work by the Committee of Ministers, i.e., its Recommendation CM/Rec(2013)1 to Member States on gender equality and media, the reviews should pay specific and explicit attention to gender-related issues. That Recommendation calls on Member States to "[r]eview and update the legal framework on media from a gender equality perspective on a regular basis".[13]

Neither the responses to the CDMSI Questionnaire nor the CDMSI workshop revealed examples of systematic reviews of gender-related aspects of national legislative frameworks and their implementation. A best practice for the future would be for Member States to systematically include gender-related issues as an explicit focus in their overall reviews of laws and practice envisaged by the Recommendation.

2.2 Anti-terrorism, extremism and national security

The Guidelines to the Recommendation make specific reference to legislation concerning "terrorism, extremism and national security". For some time now, Member States have been expected to review their anti-terrorism legislation to ensure its compatibility with freedom of expression guarantees. Participating Ministers at the Council of Europe Conference of

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[11] http://www.per.gov.ie/en/protected-disclosures-i-e-whistleblowing/
http://www.irishstatutebook.ie/eli/2014/act/14/enacted/en/html
https://www.transparency.org/news/pressrelease/transparency_international_welcomes_protected_disclosures_act_2014

[12] Recommendation CM/Rec(2016)4, para. 3. See also in this connection, the similar 'review' proposal ("at least once every two years") contained in the Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, 30 April 2014, para. 11.

[13] Guideline C.5.i.

Ministers responsible for Media and New Communication Services, entitled "A new notion of media?" (2009), committed to:

> review our national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights.[14]

Nevertheless, it appears difficult to find best existing practices of structured, ongoing reviews of anti-terrorism legislation, as was borne out by the CDMSI workshop. One mechanism that was mentioned at the workshop as an example of a best practice is the United Kingdom's Independent Reviewer of Terrorism Legislation. A best practice for the future would be for Member States to systematically include anti-terrorism as an explicit focus in their overall reviews of laws and practice envisaged by the Recommendation.

3. National review mechanisms

The Recommendation envisages the reviews of national laws and practices as being carried out at periodic intervals by national human rights commissions, ombudsperson and/or another independent body.[15] A best practice in this context is Iceland's Modern Media Initiative (IMMI), which was founded after the adoption of a resolution that was aimed at making Iceland a journalistic safe haven.[16] It brings together members of parliament and stakeholders from various media organisations and it 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 (pending) decriminalisation of Icelandic defamation law.

Another best practice could be the initiation of parliamentary debates on designated international days of awareness such as World Press Freedom Day (3 May) and the International Day to End Impunity for Crimes Against Journalists (2 November). Such initiatives could help to translate relevant awareness-raising actions into concrete proposals for reform and to kick-start the national review processes of laws and practice.

General principles and considerations on the review of domestic law by ombudspersons and other national human rights institutions, and their cooperation with the Council of Europe, can be found in Joan Barata Mir's report, 'How to strengthen soft powers for press freedom: national human rights institutions'.[17] One possible improvement described in the report concerns the appointment of permanent interlocutors between the Council of Europe and NHRIs to enable direct cooperation between these bodies, and interaction with national civil

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[14] Resolution on anti-terrorism and freedom of expression and information, 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, 'A new notion of media?', 28-29 May 2009, Reykjavik, Iceland, Adopted Texts, Doc. No. MCM(2009)011.
[15] Recommendation CM/Rec(2016)4, paras. 3-4.
[16] https://en.immi.is/about-immi/.
[17] Joan Barata Mir, 'How to strengthen soft powers for press freedom: national human rights institutions', Report commissioned by the Council of Europe, May 2016.

society organisations. This aim is very much in line with one of the 'Proposed Actions and Recommendations' in respect of freedom of expression that were set out in the 2015 Report of the Secretary General of the Council of Europe, entitled, '[State of Democracy, Human Rights and the Rule of Law in Europe](#)'. That aim involves the adoption of a:

> [two-year] "Europe-wide programme to support national mechanisms to protect journalists, such as ombudsman institutions, press commissioners and nongovernmental organizations. The goal of the programme will be to strengthen the capacities of such mechanisms, to promote networking and exchanges of experience in the area of safety of journalists and to raise the visibility of the issue in the member states".[18]

4. Defamation

Recommendation CM/Rec(2016)4, following the case-law of the European Court of Human Rights, notes that "the imposition of a prison sentence for a press offence is only permissible in *exceptional circumstances*, notably where other fundamental rights have been seriously impaired, for example, in the case of hate speech or incitement to violence".[19] The chilling effect of (the threat of) criminal sanctions for defamation is widely recognised and different actors within the Council of Europe consistently caution that utmost restraint be used when applying such sanctions. Moreover, in its 2007 Resolution, 'Towards decriminalisation of defamation', the Parliamentary Assembly of the Council of Europe has explicitly called on Member States to "abolish prison sentences for defamation without delay".[20]

Yet, the majority of the Council of Europe's Member States which responded to the CDMSI Questionnaire still have criminal defamation law provisions.[21] Some countries, such as Iceland, Ireland, Italy and the Netherlands have reportedly taken steps to remove defamation from their criminal codes or laws or limit the use of criminal sanctions.[22]

Besides the outright decriminalisation of defamation, other steps can also be taken to at least mitigate the chilling effect of criminal defamation legislation and its application. Specific institutional and/or procedural arrangements can facilitate very targeted engagement with the issues involved. For instance, Sweden operates a specialised procedures for such cases, in which prosecution is handled by the Chancellor of Justice, an Ombudsman-like authority,

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[18] 'State of Democracy, Human Rights and the Rule of Law in Europe: A shared responsibility for democratic security in Europe', Report by the Secretary General of the Council of Europe, Strasbourg, 2015, p. 44.
[19] (emphasis added) Recommendation CM/Rec(2016)4, para. 6.
[20] "Towards decriminalisation of defamation", Resolution 1577 (2007), Parliamentary Assembly of the Council of Europe, 4 October 2007, para. 17.1. See also: "Towards decriminalisation of defamation", Recommendation 1814 (2007), Parliamentary Assembly of the Council of Europe, 4 October 2007.
[21] See the analysis of responses to Question 4 in: 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.
[22] See: Session 1 and the 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.

instead of a regular prosecutor.[23] Furthermore, these cases are tried by juries, and may only be directed at responsible editors rather than at individual journalists. The United Kingdom's Defamation Act 2013 introduced higher burdens of proof for defamation (by requiring claimants to establish 'serious harm'), as well as restrictions on forum-shopping.[24] The problems associated with forum-shopping or so-called "libel tourism" from a freedom of expression perspective are set out in, *inter alia*, a 2012 Declaration of the Committee of Ministers on the topic.[25]

Another best practice, again in line with the case-law of the European Court of Human Rights, would be to avoid providing a higher level of legal protection against criticism and insult to state officials than to ordinary people, or to remove such a higher level of protection where it already exists. Nevertheless, a majority of the Council of Europe Member States which replied to the CDMSI Questionnaire still provide a higher level of protection to public officials.[26] In Lithuania, criminal defamation of public officials is due to be reclassified as an administrative offence in 2016.[27] In the Netherlands, there is currently a debate about whether to abolish relevant provisions of the Criminal Code related to the protection of state officials against criticism and insult at a higher level than ordinary citizens.[28]

5. Surveillance

The surveillance and online tracking of journalists and other media actors have chilling effects on freedom of expression and public debate, as is explained in the Recommendation and the Declaration. These issues are explored in more detail in the Resolution on Internet Freedom adopted at the Council of Europe's 2013 Conference of Ministers responsible for Media and Information Society[29] and in the Committee of Ministers' 2013 Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies.[30] The Guidelines to the Recommendation therefore draw attention to the need for State surveillance and interception of communications data to be clearly based in law, transparent

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[23] Office of the Chancellor of Justice, http://www.jk.se/other-languages/english/

[24] UK Defamation Act 2013, Article 1: "A statement is not defamatory unless its publication has caused or is likely to cause **serious harm** to the reputation of the claimant." (emphasis added)
Article 9(2):' (2)A court does not have jurisdiction to hear and determine an action to which this section applies unless the court is satisfied that, of all the places in which the statement complained of has been published, England and Wales is **clearly the most appropriate place in which to bring an action in respect of the statement**.' (emphasis added)
http://www.legislation.gov.uk/ukpga/2013/26/contents/enacted

[25] Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to Ensure Freedom of Expression, 4 July 2012.

[26] See the analysis of responses to Question 6 in: 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.

[27] *Ibid*.

[28] *Ibid*.

[29] Resolution No. 1, 'Internet Freedom', Council of Europe Conference of Ministers responsible for Media and Information Society, 'Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights, Responsibilities', 8 November 2013, Belgrade, Serbia.

[30] Adopted on 11 June 2013.

and subject to safeguards against misuse and abuse, e.g. appropriate forms and levels of oversight and review.[31]

While best practices in this area were not readily forthcoming during the CDMSI Workshop, the criteria for best approaches were discussed at some length during Session 5 – 'Decrypting the implications and assessing the costs of mass surveillance on freedom of expression' at the conference, *Freedom of expression: still a precondition for democracy?*, organised by the Council of Europe in October 2015.[32]

PILLAR II: PROTECTION

The Guidelines to the Recommendation reiterate that "State authorities have a duty to prevent or suppress offences against individuals when they know, or should have known, of the existence of a real and immediate risk to the life or physical integrity of these individuals from the criminal acts of a third party and to take measures within the scope of their powers which, judged reasonably, might be expected to avoid that risk".[33] Police protection and (voluntary) evacuation to safe places are among the measures envisaged.

1. Safe places

Examples of schemes providing safe houses or shelter cities could be considered best practices in this connection. In Sweden in 2010 and 2011, the FOJO Media Institute opened a safe house to give shelter to journalists who are under severe and acute threat related to their profession.[34] The geographical scope was global and journalists could stay for a limited three-month period. The project was funded under Sweden's Special Initiative for Democratisation and Freedom of Expression.

2. Hotlines

The Guidelines to the Recommendation also call on Member States to provide backing for early-warning and rapid-response mechanisms, such as hotlines.[35]

The International Committee of the Red Cross (ICRC) has a 24-hour hotline that may be used when a journalist on assignment disappears, is captured, arrested or detained.[36] The ICRC may be alerted by the journalist's family, the journalist's editor, the journalist's national press organization or a regional or international press association. The ICRC can seek to obtain information, pass information to family, request permission to visit the journalists (accompanied by a doctor) and ultimately repatriate the journalist.

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[31] Guidelines to the Recommendation, para. 7.
[32] For a summary of the discussion and additional references, see: Tarlach McGonagle, Conference report, 'Freedom of expression: still a precondition for democracy?', Strasbourg: Council of Europe, 2015, pp. 15-16.
[33] Recommendation CM/Rec(2016)4, para. 9.
[34] See: https://medarbetare.lnu.se/polopoly_fs/1.31433!Safehouse%20Guidelines,%20Fojo%20Media%20Institute.pdf. It is unclear whether this safe house is still functioning.
[35] Recommendation CM/Rec(2016)4, para. 10.
[36] https://www.icrc.org/eng/assets/files/other/icrc-002-0394.pdf

Reporters Without Borders (RSF) has a 24/7 press SOS hotline in cooperation with American Express.[37] The hotline can be alerted by journalists in trouble, their families, employers, or professional organizations who may reverse the charges if they wish. A RSF representative will provide the journalist with advice or contacts, or will alert local or consular authorities, dependent on the problem.

In March 2016, the European Centre for Press and Media Freedom (ECPMF), in partnership with the European Federation of Journalists, created an [Alarm Centre for Female Journalists Under Threat](). It acts as a reporting point or hotline for female journalists who have been the target of gender-based threats, such as sexual and abusive comments, threats of rape or publishing pictures and phone numbers on sex and dating websites. The Alarm Centre allows for confidential, encrypted communication handled exclusively by female staff at the ECPMF, who offer solidarity and legal assistance, and also work to make the dimension of gender-based attacks more visible.

Hotlines and helplines are also in place at the national level. The Dutch association of journalists, the NVJ, for instance, also operates a 24/7 hotline.[38] In Bosnia and Herzegovina, too, the [Free Media Helpline]() is run under the auspices of the BH Journalists Association.

3. **The Council of Europe's Platform to promote the protection of journalism and safety of journalists**

The Recommendation urges Member States to "wholeheartedly support and co-operate with the Council of Europe's Platform to promote the protection of journalism and safety of journalists".[39] A number of suggestions for improving the effectiveness of the Platform have been floated in different forums. One suggestion is to increase the visibility of the Platform at the national level, inter alia by increasing the level of interaction between the Platform and local actors. Active participation by national organisations could serve to ensure a more comprehensive coverage of threats to journalism and against journalists and to use publicity to put Member States to improve their responses to alerts registered on the Platform. Some of the Member States' responses to platform alerts have been criticized for their lack of detailed information. Member States can contribute to the development of the platform by providing adequate responses in terms of quantity, quality and promptness.

The mandate of the PACE's General Rapporteur on Media Freedom and Safety of Journalists provides that s/he should, *inter alia*, "follow-up the alerts posted on the Council of Europe Platform to promote the protection of journalism and safety of journalists, and report periodically on those cases to the Committee [on Culture, Science, Education and Media], keeping it informed on action taken, or to be taken, to deal with them".[40] By way of spin-off, PACE members could use relevant channels with their national parliaments to promote (debates about) the implementation of the Recommendation.

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[37] [http://www.rcmediafreedom.eu/Tools/Support-centres/Reporters-Without-Borders-S.O.S.-Press]()
[38] [https://www.nvj.nl/wat-wij-doen/veiligheid]()
[39] Guidelines to the Recommendation, para. 10.
[40] Terms of Reference for the General Rapporteur on Media Freedom and Safety of Journalists, on Culture, Science, Education and Media, Parliamentary Assembly of the Council of Europe, 2016.

4. Training programmes

The Guidelines envisage the development of protocols and training programmes for all relevant branches of State authorities on topics relating to the Recommendation.[41] This objective is very much in line with a call made during the Council of Europe's Conference, *Freedom of expression: still a precondition for democracy?*, in October 2015, "for a shift in understanding of 'monitoring' exercises, so that a perception of shame would be replaced by a more constructive relationship centring on the provision of high-level legal expertise, to help certain States to develop their freedom of expression standards in a sustainable manner".[42] Various forms of fruitful collaboration between (different bodies of) the Council of Europe and Member States can be pointed to here.

4.1 Training of judges and other legal professionals

A best practice is the European Programme on Human Rights Education for Legal Professionals (HELP Programme). According to the HELP programme's website, "this is done by enhancing the capacity of judges, lawyers and prosecutors in all 47 member states to apply the ECHR in their daily work." It consists of an E-learning platform that includes distance-learning courses and self-learning courses mostly available in national languages. Distance-learning resources "are available for selected groups of legal professionals participating in pilot courses moderated by national tutors." The HELP programme would be a good mechanism to offer specific courses on the protection of journalism and safety of journalists and other media actors. Those courses should be available for judges, lawyers and prosecutors in all Member States.

4.2 Training of law enforcement officers

The training of police officers in the case-law of the European Court of Human Rights and the Council of Europe's standards could also be considered a best practice. Such training programmes could have, as well as a general focus on the broad lines of the Recommendation, specific focuses on themes that require particular approaches, e.g. the role of journalists and other media actors when covering public demonstrations or in conflict zones.[43] Civil society organisations with relevant mandates and the requisite legal expertise could play an important role in this connection. This is particularly true when such organisations already enjoy good working relations with law enforcement services or have collaborated with them in the past when providing similar tailored trainings on other topics.

5. Making threats public and public condemnation

The Guidelines to the Recommendation state - rather emphatically - that "State officials and public figures should publicly and unequivocally condemn all instances of threats and

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[41] Guidelines to the Recommendation, para. 12.
[42] Tarlach McGonagle, Conference report, 'Freedom of expression: still a precondition for democracy?', Strasbourg: Council of Europe, 2015, p. 20.
[43] Guidelines to the Recommendation, para. 14.

violence against journalists and other media actors, irrespective of the source of those threats and acts of violence".[44] Similarly, making threats public has also been suggested as a best practice. In 'Building a Safety net for European Journalists', Eugenia Siapera has written that:

> if a journalist is threatened because they are researching a specific area, then by going public with such threats may expose those responsible to more adverse publicity, forcing them therefore to withdraw. Moreover, publicity contributes to the longer term management of threats, because it makes the public aware and keeps the spotlight on the journalist.[45]

Publicity often proves instrumental in resolving all types of cases, including cases where journalists are imprisoned. Recently, for instance, when the Azerbaijani journalist Khadija Ismayilova was released from custody, she acknowledged how much she had been assisted by the international condemnation and calls for her release by governments and press-freedom groups.[46]

Journalists working for the Irish media company, 'Independent News & Media', who had reported on a feud involving criminal gangs were intimidated and threatened. The media company made these threats public to highlight the danger posed to the journalists and to the freedom of speech in general.[47]

6. The role and responsibilities of media organisations

The Recommendation calls on Member States in para. 16 of the Guidelines to "encourage media organisations, while not encroaching on their editorial or operational autonomy, to fulfil their institutional responsibilities towards all journalists and other media actors working for them – in salaried, freelance and other capacities". Training, (professional, legal and psychological) advice/counselling and financial and moral support are all relevant in this connection. It is important for training to cover all aspects of journalistic and related activities (so-called 360-degree training[48]), with attention for physical and digital security, gender-related issues, conflict and other traumatic situations, etc. Many media organisations have developed in-house practices and procedures that encompass regular and *ad-hoc* training sessions. A useful overview of good practices can be found via the UNESCO webportal, News organizations standing up for the safety of media professionals. The portal draws on the experiences shared at an identically-titled UNESCO conference in February 2016. The compendium document, 'What the media can do to strengthen the safety of journalists', which

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[44] Guidelines to the Recommendation, para. 15.

[45] Eugenia Siapera, 'Building a Safety Net for European Journalists', Osservatorio Balcani e Caucaso, Italy, 2015, p. 59.

[46] Journalist Ismayilova Released From Custody, http://www.rferl.org/content/azerbaijan-ismayilova-khadija-supreme-court-appeal/27756276.html

[47] Tom Brady, "Security increase after threats made to INM journalists", *Irish Independent*, 12 February 2016: http://www.independent.ie/irish-news/news/security-increase-after-threats-made-to-inm-journalists-34446516.html

[48] Tarlach McGonagle, Rapporteur's Conclusions, Seminar and Inter-regional Dialogue on the Protection of Journalists: Towards an effective framework of protection for the work of journalists and an end to impunity, 3 November 2014, p. 9.

was drawn up after the conference and a focused follow-up meeting, provides plenty of inspiration for good or best practices.

In February 2015, a coalition of major news companies and journalism organisations called A Culture of Safety (ACOS) Alliance, developed Freelance Journalist Safety Principles. ACOS subsequently went on to launch new security information sharing, training, insurance and communications initiatives later in 2015. These principles and initiatives also provide many examples of good or best practices that could be replicated.

6.1 Trauma support systems/psychological aftercare

Dart is a resource center and global network of journalists dedicated to improving media coverage of trauma, conflict and tragedy.[49] In its vision, you need to understand the effects of trauma to address safety of journalists. If you are not aware of those effects, you will also make poor decisions regarding your own personal safety and that of others. The training programmes they offer includes a training on how to deal with and mitigate the impact of traumatic events, such as the training, 'Free PTSD Help for Journalists in Distress'.[50] That training is an eight-session clinical trial delivered by a clinical psychologists via Skype, phone or through a self-help manual.

Another approach is the one taken by the Dutch Association of Journalists, which does not provide any psychological support itself, but works with an affiliated psychologist that has worked for Doctors without Borders.[51] Certain Dutch media organizations provide financial support for this treatment.

7. Support programmes and measures

States may fulfil their obligations to protect journalists and other media actors first by taking different kinds of *direct* action, but also by supporting, especially financially, actions taken by other, non-state parties. Donations by individual States, especially when they take the form of multi-annual, structured funding, play a crucial role in ensuring the viability of national and international programmes designed to enhance protection of journalists and other media actors.

The Media Legal Defence Initiative (MLDI) has compiled a useful overview of International Support Programmes for Journalists. Examples from the overview include safe houses for journalists, safety and emergency funds for journalists, support schemes targeting freelance newsgatherers, programmes focusing on the specific needs of female journalists and of journalists covering conflict situations and trauma. The overview is part of a broader collection of resources for human rights defenders put together by MLDI. The broader collection includes a section devoted to European support programmes.

Another noteworthy webportal in this connection is the Resource Centre operated by the European Centre for Press and Media Freedom. This platform compiles resources including

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[49] http://dartcenter.org/programs/training
[50] http://dartcenter.org/blog/2016/03/free-ptsd-help-journalists-distress-now-available
[51] https://www.nvj.nl/wat-wij-doen/veiligheid/

publications and multimedia, as well as event schedules, and news bulletins. These materials can be searched and explored by topic or by country. The platform also provides links to legal resources, support centres and trainings. Within the Resource Centre, there is a section under 'Tools' that is specifically devoted to Support Centres.

UNESCO's Research Good Practices on Safety of Journalists, another valuable webportal, also merits further exploration.

In 2011, Free Press Unlimited launched 'Reporters Respond', an emergency fund to help journalists who have been confronted with vandalism or intimidations get started again as soon as possible.[52] Reporters respond can offer equipment, knowledge and resources to circumvent censorship and communicate safely, safety and security sources and quick, and concrete solutions in the event of an emergency.

PILLAR III: PROSECUTION

The Guidelines to the Recommendation use very strong language when recalling Member States obligations to investigate crimes against journalists and to prosecute the perpetrators of such crimes.[53] In doing so, the Guidelines follow the case-law of the European Court of Human Rights very closely.

1. Specific rules and procedures for the prosecution of crimes against journalists

The Recommendation envisages that "investigations should be carried out by specialised, designated units of relevant State authorities in which officials have been given adequate training in international human rights norms and safeguards".[54] Therefore, at first glance, it seems striking that none of responses to the CDMSI Questionnaire identified mechanisms specifically designed to ensure the investigation and prosecution of attacks against journalists and media actors. This was explained in at least some cases by the rationale that national criminal law does not distinguish between particular categories of victims.

Nevertheless, a more detailed and nuanced picture emerges when consideration is given to the scope (and practice) that traditional judicial and investigatory authorities have to recognise a connection between journalistic and public commenting activities and crimes against those carrying out such activities. Both the Declaration and the Recommendation on the protection of journalism and safety of journalists and other media actors refer to the investigation or establishment of such a connection as a requirement of effective investigations.[55]

However, in Norway, the case law of the Norwegian Supreme Court shows that threats against journalists with the purpose of influencing the media's activity are punished more

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[52] https://www.freepressunlimited.org/en/projects/reporters-respond-emergency-funding-for-the-media
[53] Guidelines to the Recommendation, paras. 18 *et seq*.
[54] Guidelines to the Recommendation, para. 20.
[55] Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors, 30 April 2014, para. 8 and Guidelines to the Recommendation, para. 19.

severely than ordinary threats.[56] And in Ukraine, a Strategy on Free Speech and Information Policy proposes the creation "of the State Bureau of Investigations of Ukraine with the authorities to investigate crimes committed against journalists and other media actors".[57]

Non-institutionalized or less formalized initiatives can also prove useful. In the Netherlands, for instance, in the wake of the failed coup in Turkey, there has been increased incidence of intimidation and threats against journalists who have been reporting or commenting on related events. The Dutch Association of Journalists is cooperating with the national Public Prosecution Service (PPS) in connection with formal complaints by journalists about such threats and intimidation. The PPS' Board of Procurators General – its highest authority that lays down policy on investigations and prosecutions – is taking the threats "very seriously" and is coordinating them nationally in order to get a better sense of the extent of the problem.[58]

On the related matter of evidence-gathering during investigations into crimes against journalists and other media actors, the Recommendation considers that the investigating authorities should establish "whether there is a connection between the threats and violence against journalists and other media actors and the exercise of journalistic activities or contributing in similar ways to public debate".[59] In Germany, since the start of 2016, the Criminal Police Incident-Based Reporting Service "has recorded politically motivated crimes directed 'against the media' in a separate category of politically motivated crime".[60] This is a useful practice for documenting the scale and severity of the problem of politically-motivated crimes against journalists and other media actors, on account of their journalistic or other public commenting activities. Such disaggregated information can, in turn, point to the urgency of the problem and help to inform strategies for responding to the problem.

2. Involvement of victims in the investigation process

The Recommendation highlights the importance of involving victims in the investigation process.[61] Many Member States allow victims to formally request prosecution, to request investigation and/or to provide evidence, enabling them to better assist law enforcement authorities and to counteract possible inactivity or ineffectiveness. For example, in the Netherlands, there is currently a debate regarding the expansion the rights of victims to request not only prosecution, but also investigation.[62]

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[56] Compilation of responses to CDMSI Questionnaire, responses to Q. 1.
[57] Submission by Ukraine to CDMSI Workshop, 30 June 2016.
[58] 'NVJ en coördinatiepunt OM werken samen bij aangiftes bedreigde journalisten', Dutch Association of Journalists, Press Release, 28 July 2016.
[59] Guidelines to the Recommendation, para. 19.
[60] Submission by Germany to CDMSI Workshop, 30 June 2016.
[61] Guidelines to the Recommendation, para. 20.
[62] Ministerie van Justitie, Discussiestuk 'De vervolgingsbeslissing en de waarborgen en correctiemechanismen rondom de vervolgingsbeslissing' (6 June 2014): https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/publicaties/2014/06/06/de-vervolgingsbeslissing-en-de-waarborgen-en-correctiemechanismen-rondom-de-vervolgingsbeslissing-discussiestuk/boek-3-discussiestuk-vervolging.pdf

So as not to discourage the meaningful involvement of victims in the prosecution process, Member States should also take care to protect victims against further harm and distress. These measures can involve the right to information about their case, as well as anonymity rights to shield them from unwanted breaches of their privacy. Furthermore, Member States can also consider reducing financial barriers to the exercise of victims' rights: for example, certain forms of victim-initiated prosecution, such as the *action directe* or *Privatklage*, occur at the expense and risk of the victim. A best practice in this regard is the EU Directive on the rights, support and protection of victims of crime, which contains standards to protect victims from further victimisation and distress, to receive appropriate support throughout proceedings and have access to justice, and to have appropriate access to compensation.[63]

The Recommendation calls for psychological support for victims and, as relevant, to their families.[64] Best practices for providing journalists and other media actors with psychological support and trauma counselling have already been discussed under Pillar II – Protection. There, the discussion focuses mainly on what media organisations can do in this connection; a corresponding best practice for member States in the context of investigations and prosecutions of the perpetrators of crimes against journalists, would be to support – morally and financially – trauma-counselling and psychological-care initiatives for journalists, other media actors and their families or next-of-kin.

3. Impunity for crimes against journalists and commissions of inquiry

When there is a risk of impunity for the perpetrators of crimes against journalists and other media actors, for instance when investigations and prosecutions do not result in the perpetrators being brought to justice, the Recommendation suggests that "member States may consider establishing special judicial or non-judicial inquiries into specific cases or independent specialised bodies to conduct such inquiries on an ongoing basis".[65] In this connection, the Serbian Commission of Inquiry into Unsolved Murders of Journalists, chaired by journalist Veran Matić, is frequently mentioned.[66] The Commission was set up in 2013 with the backing of the Serbian authorities to investigate the killings of journalists Radislava Dada Vujasinović, Slavko Curuvija and Milan Pantić. A similar Commission of Inquiry has now been set up in Montenegro.[67]

The creation of dedicated Commissions of Inquiry is generally regarded as a good or best practice for countering impunity for crimes against journalists. Such commissions can join law enforcement authorities responsible for investigation and prosecution with parliamentarians, journalists and (other) media actors, in order to ensure thorough and diligent investigation.

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[63] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315, 14.11.2012, p. 57–73.
[64] Guidelines to the Recommendation, para. 23.
[65] Guidelines to the Recommendation, para. 25.
[66] Commission for the Investigation of Murders of Journalists: http://www.osce.org/fom/99008
[67] Commission for Monitoring Investigations of Cases of Attacks on Journalists: http://www.gov.me/en/homepage/cabinet-meetings/134384/Government-of-Montenegro-establishes-commission-to-follow-up-on-cases-of-violence-against-journalists.html

Such commissions could be described as a type of specialised safety mechanism, in other words, "a body with dedicated responsibilities for providing protection and/or addressing impunity, either as a stand-alone entity or as a specialised section or programme within an existing body".[68] Support for the establishment of specialised national safety mechanisms is gathering momentum at the international level. For instance, Mr Frank La Rue, UNESCO Assistant Director General for Communication and Information, recently proposed "that all countries of the world establish a mechanism of information and protection for the safety of journalists" as a response to increased intimidation and violence against journalists.[69]

PILLAR IV: PROMOTION OF INFORMATION, EDUCATION AND AWARENESS-RAISING

1. Translation and dissemination of Council of Europe standards into domestic languages

The importance of translating the Recommendation and disseminating it as widely as possible are of central importance in Pillar IV. A best practice would therefore be to ensure that the Recommendation and key judgments of the European Court of Human Rights on which it is based are translated and disseminated as widely as possible.[70] This could perhaps be done under the Court's case-law translation programme. The translation of Fact Sheets prepared by the Court's Press Unit are usually financed by individual Member States.[71] A best practice would be to continue to commission the translation of the fact sheets that address themes which are relevant to the Recommendation's focuses, e.g. Protection of journalistic sources, New technologies, Hate speech, Terrorism, etc. It could also be useful to commission the translation of a selection of the Court's Case-law guides and/or Case-law research reports (e.g. Positive obligations under Article 10) – a practice that already exists in respect of a few of the Council of Europe's Member States' national languages.

2. Designated international days

The Guidelines to the Recommendation are alert to the awareness-raising and publicity potential of designated international days such as World Press Freedom Day and the International Day to End Impunity for Crimes against Journalists. There is similar potential around International Human Rights Day on 10 December and the annual Global Media and Information Literacy Week, both of which have scope for awareness-raising focuses on safety and protection issues, gender-specific issues and digital security (and literacy) issues.

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[68] Toby Mendel, 'Supporting Freedom of Expression: A Practical Guide to Developing Specialised Safety Mechanisms', Discussion Paper, Centre for Law and Democracy/UNESCO, April 2016, p. i.
[69] 'UNESCO and CLD: Protecting Against Attacks on Freedom of Expression', UNESCO Communication & Information Sector Press Release, 21 April 2016.
[70] Responses to the CDMSI Questionnaire reveal that such translation practice is not widespread among Member States.
[71] For details, see: 'The Court's case-law translations programme: aims, achievements and remaining challenges', para. 4.

A gender-sensitive approach is one of the main cross-cutting themes of the recommendation.[72] Awareness of the seriousness of the gender-specific dimension of threats to journalism is growing steadily and swiftly. This section first surveys relevant IGO and NGO initiatives, which are very important from the point of view of political agenda-setting and broader societal awareness-raising. The creation of an online clearing-house for all of these initiatives, activities and resources would be a very welcome further development. Drawing partly on those IGO and NGO initiatives, it is possible to identify various best practices relating to specific references in the Recommendation.

1. IGO engagement

Specialised bodies within various intergovernmental organisations are engaging with relevant issues and developing a range of best practices while doing so. An example is the Council of Europe's *Handbook on the implementation of Recommendation CM/Rec(2013)1 of the Committee of Ministers of the Council of Europe on gender equality and media*.[73] The activities of the Council of Europe's Gender Equality Division offer fertile ground for other best practices. Its Combating Gender Stereotypes and Sexism programme, for instance, has focuses on Women in media and Combating sexist hate speech.

Another example is the OSCE Representative on Freedom of the Media (RFOM), who has adopted a Communiqué on the growing safety threat to female journalists online and a set of Recommendations adopted following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists. The OSCE RFOM has also overseen the preparation and publication of an edited collection of essays, *Countering Online Abuse of Female Journalists*. A range of other resources and materials, available in the webfolder, Digital Threats Targeting Female Journalists.

UNESCO is actively engaging with relevant issues as well: from the explicit emphases on the gender dimension in its Plan of Action

2. (International) NGO engagement

International non-governmental organisations are also actively engaged. The Committee to Protect Journalists (CPJ) devoted the 2016 edition of its publication, *Attacks on the Press*, to 'Gender and Media Freedom Worldwide'.

Specialised NGOs, like the US-based Women's Media Center (WMC), also have a number of projects that could perhaps be replicated in Council of Europe Member States. They include the WMC's Speech project, which is dedicated to raising public and media awareness about online harassment and the WMC's Women Under Siege project, which "investigates how rape and other forms of sexualized violence are used as tools in genocide and conflict". The main goal of the WMC is to make women more visible and powerful in the media. It pursues

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[72] Recommendation CM/Rec(2016)4, Preamble, para. 2.
[73] Strasbourg, Council of Europe Publishing, 2015.

this goal through "**media advocacy** campaigns, **media monitoring** for sexism, creating **original content**, **training** women and girls to participate in media, and **promoting** media experienced women experts" (emphasis per original).

3. Empowerment

Other examples of initiatives designed to empower women in a digital or online environment include Take Back The Tech! and The Web We Want. Take Back the Tech! describes itself on its website as "a collaborative campaign to reclaim information and communication technology (ICT) to end violence against women". It "calls on all ICT users – especially women and girls – to take control of technology and strategically use any ICT platform at hand (mobile phones, instant messengers, blogs, websites, digital cameras, email, podcasts and more) for activism against gender-based violence". One of its activities has been involvement in an online mapping initiative, End violence: Women's rights and safety online, coordinated by the Association for Progressive Communications (APC).

After exposing the extent of abusive comments responding to content on its own webpages and the statistical evidence that such comments overwhelmingly targeted female writers ('The dark side of Guardian comments'), *The Guardian* launched its The Web We Want initiative. Katharine Viner, Editor-in-chief of *The Guardian*, describes it as:

> an attempt to imagine what the digital world could and should be: a public space that reflects our humanity, our civility and who we want to be. It asks big questions of all of us: as platform providers, as users and readers, as people who write things online that they would never say in real life.[74]

An example that appears interesting is the US-based volunteer organisation, WHO@ or Working to Halt Online Abuse.[75] This organisation "asserts that online harassment is about power in a community: a power structure that has tended to accept or ignore harassment rather than actively seek to cease it".[76] It also offers voluntary policies for online communities to adopt in order to make "the internet an anti-harassment environment".[77]

4. Safety trainings

Safety trainings, designed specifically for female journalists and female media actors, are an obvious example. Such trainings are provided by different organisations, like the International News Safety Institute and the Institute for War and Peace Reporting. A best practice for Member States would be to (continue to) provide financial support for such trainings.

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[74] Katharine Viner, 'How do we make the Guardian a better place for conversation?', *The Guardian*, 22 April 2016.

[75] However, it should be noted that it is unclear from the organisation's website how active the organisation currently is.

[76] http://www.haltabuse.org/about/about.shtml.

[77] http://www.haltabuse.org/resources/volpol.shtml.

5. Public condemnation

In a number of instances there has been a clear public condemnation, by public figures, journalists and public authorities to threats to female journalists. For instance, the International Federation of Journalists (IFJ) and its Gender Council highlight the importance of eliminating violence against women every year at the International Day for the Elimination of violence against women.[78] Public solidarity – for instance by fellow journalists or the broader public after threats or sexist insults made by public figures – can have similar helpful effects.[79]

The Danish television show, 'Shut up woman', examined the stories of celebrity women (partly journalists) that are being harassed on social media.[80] *The Guardian*'s series, 'The Web We Want', discussed above, could be included in this line of examples, given its aims to try to reveal online abuse and to discover ways to end it and "have better conversations on the web".[81]

6. Training of law enforcement agencies

The importance of training law enforcement agencies in the technical and legal issues involved in gender-related threats and abuse is frequently underscored.[82] The OSCE RFOM, Ms Dunja Mijatović, has for instance stated that "governments must ensure that law enforcement agencies understand the severity of this issue and are equipped with the necessary training and tools to more efficiently investigate and prosecute online threats and abuse".[83]

In this regard, it is noteworthy that the British Crown Prosecution Service has issued guidelines on prosecuting cases for prosecutions involving social media which pay particular attention to tackling gender-related online abuse.[84]

7. Technical solutions

Technical solutions – which are discussed more extensively in the next section, Digital Security - may also be useful for tackling gender-related issues. Technology can be used, for instance, for reporting and mapping (online) threats and/or abuse, or for blocking those responsible for such content. By way of example, the add-on Block Together makes it possible to share your Twitter block list, so others can also keep out the offending (i.e., misogynist) accounts.

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[78] http://www.ifj.org/nc/news-single-view/backpid/238/article/ifj-report-highlights-high-levels-of-gender-discrimination-and-violence-against-women-in-the-media/

[79] See, for example, https://rsf.org/en/news/rsf-supports-journalists-refusal-kneel-government

[80] See: http://www.nordicworld.tv/formats/catalogue/250/format/trailer

[81] https://www.theguardian.com/technology/series/the-web-we-want

[82] See, for instance, the OSCE RFOM's a Communiqué on the growing safety threat to female journalists online and Recommendations adopted following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists.

[83] See: www.osce.org/fom/220411?download=true

[84] http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/index.html

8. Responsibility of media organizations and online intermediaries

As with the protection of journalists and other media actors generally, media organizations and online intermediaries have distinct roles and responsibilities. The OSCE RFOM has stated that media organizations "should work with other media organizations and associations to create support systems, including training and mentorship programmes, for female journalists and media actors".[85]

The OSCE RFOM has also argued that intermediaries:

> must ensure that terms of service, community guidelines, and information about enforcement are proportionate, understandable, and easily available to all users. They can facilitate counter speech by sharing best practices and guidelines on how the Internet community best can facilitate and engage in meaningful discussion with abusers. They can compile data and statistics on reported online abuse to help facilitate more comprehensive research on the online abuse of female journalists and media actors.[86]

DIGITAL SECURITY

The Guidelines to the Recommendation refer to the notion of "digital security" in paragraph 16, but the importance of the notion goes far beyond these explicit references. This is due to the wide appreciation, reflected also in the Recommendation, that the online dimension to issues of protection and safety are increasingly important and increasingly threatened. All of this is unpacked in Principle 38. Furthermore, Principle 18 recognises that: "[o]nline harassment, threats, abuse and violations of digital security tend to target female journalists and other female media actors in particular, which calls for gender-specific responses" (see further, the discussion in the previous section).

1. (Availability of) secure communication tools

The availability of digital security tools is essential for ensuring the confidentiality of journalistic communications and the protection of sources. It can also aid in the protection of journalists against harassment and violence, by enabling them to communicate or act anonymously in certain contexts.[87]

Many online whistleblowing platforms, such as those discussed above in the context of Pillar I – Prevention, benefit from the Globaleaks software. This software provides easy-to-use interfaces and systems for secure communication between journalists and sources. This software is free and open source, thereby enabling an open community of users, volunteers,

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[85] OSCE RFOM Recommendations adopted following the Expert Meeting New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists.

[86] Dunja Mijatović, 'A Threat to Free Speech: The Online Abuse of Female Journalists', *Georgetown Journal of International Affairs*, 29 February 2016, available at: http://journal.georgetown.edu/a-threat-to-free-speech-the-online-abuse-of-female-journalists/.

[87] Recommendation CM/Rec(2016)4, para. 16.

and contributors work together to constantly improve the software and documentation. Other best practices in the field of digital technology phone apps such as CameraV and Chatsecure, which allow journalists and whistleblowers to directly transfer text, photos or video in an encrypted, secure and private fashion. In that way, whistleblowers can delete the information on their phones if and when their phones are confiscated as an external back-up of their files will have been made. Another app, EyeWitness, allows one to capture footage with verifiable metadata, such that ensure the images can be used as evidence in legal proceeding, and for safely storing the information remotely in the servers of the EyeWitness organisation. A further, crucial tool for modern journalists is the TOR-network, which enables users to guarantee confidentiality and anonymity for online behaviour.[88]

Member States can contribute to the area of digital security for journalists by taking care not to obstruct private-sector best practices. For instance, they should act with restraint when considering the legal status of those offering methods of secure communication, e.g. regarding intermediary liability for participants in peer-to-peer projects such as the TOR-network.

Similarly, Principle 38 of the Recommendation recalls the need for restraint regarding technical measures such as 'backdoors' and 'State Trojans', which could undermine the security and integrity of communications systems. Trojans are software tools which allow their operators to bypass security measures and gain access to computer systems without the knowledge or the permission of users. State Trojans are Trojans which are developed or used by States for the surveillance of targeted computers. In 2013, participating Ministers at the Council of Europe's Conference of Ministers responsible for Media and Information Society, had invited the Council of Europe to *inter alia*: "examine closely, in the light of the requirements of the European Convention on Human Rights, the question of gathering vast amounts of electronic communications data on individuals by security agencies, the deliberate building of flaws and 'backdoors' in the security system of the Internet or otherwise deliberately weakening encryption systems".[89]

2. Awareness and digital skills

Effective use of digital security technologies requires relevant knowledge and skills on the part of the journalists. Regrettably, the risks and opportunities created by digital technology are often not readily apparent. As noted by the Committee to Protect Journalists (CPJ) in its Journalist Security Guide (section on 'Technology Security'): "[y]ou'll notice it if your wallet is stolen, not so much if your digital secrets are compromised".[90] Similarly, it noted that "[e]ven if you're not an expert on bulletproof vests, you can understand basically what they do and how. Computer security is much harder to comprehend intuitively".[91]

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[88] http://www.cjr.org/behind_the_news/can_we_still_trust_tor.php.

[89] Para. 13(v), Resolution No. 1, 'Internet Freedom', Council of Europe Conference of Ministers responsible for Media and Information Society, 'Freedom of Expression and Democracy in the Digital Age: Opportunities, Rights, Responsibilities', 8 November 2013, Belgrade, Serbia.

[90] https://cpj.org/reports/2012/04/technology-security.php.

[91] *Ibid*.

In light of these facts, the importance of digital security should demand particular attention in the context of awareness-raising efforts. Many NGOs, professional organisations and media actors have already created guides and toolkits intended to educate journalists on this topic. Examples include the: CPJ Security Guide; UNESCO Good Practices on Safety of Journalists; Electronic Frontier Foundation's Surveillance Self-Defense project; First Aid Kit organised by the Digital Defenders Partnership, and Reporters Without Borders' Online Survival Kit.

A best practice for Member States could be the further dissemination of available information on digital security, possibly including translation of such materials, as well as general awareness-raising as to the security risks involved in the use of digital technology.

CONCLUSIONS

As mentioned to the introduction in this report, the present overview and analysis of selected best practices is exploratory rather than comprehensive. Its aim is to provide a useful basis for follow-up scoping and benchmarking. With this aim in mind, the report highlights and comments on good and best practices from Member States' existing practice and NGO and academic reports. The report also points to numerous clearing houses, compendia and portals that have collected relevant materials, resources and best practices.

Any follow-up work on the best practices that should be promoted in the specific context of Recommendation CM/Rec(2016)4 should trawl through these valuable resources.

The final section of this report will now focus on proposals for further follow-activities by the Council of Europe.

Proposals for further follow-up activities

1. Keep open the invitation to CDMSI Members to contribute to the compilation of selected best practices and update the document (e.g. with references to new national laws, case-law and relevant activities) on a rolling basis, ideally online, with a view to publishing and presenting an expanded and updated version to mark the first anniversary of the adoption of CM/Recommendation (2016)4.

2. Actively encourage not only CDMSI Members, but also other interested parties (e.g. media and journalists' organisations), to contribute to the development of this compilation document, in particular by providing additional examples to the Secretariat.[92]

3. Actively encourage Member States and all other interested parties to seek inspiration in the compilation document and to use it in ways that help to advance activities that pursue the aims of the Recommendation. To this end, the document should be published online under an appropriate Creative Commons licence.

4. When promoting the implementation of the Recommendation, as well as encouraging Member States to adopt or adapt the best practices set out in the compilation document, it is important to also encourage Member States to give effect to particular parts of the Guidelines for which few or no best practices have yet been documented.[93]

5. Devise a follow-up strategy/action plan for the implementation of the Recommendation's Guidelines as soon as possible. The strategy/action plan should be based on identified needs and priorities, for which an exchange of views with the Council of Europe's Task Force on Freedom of Expression and the Media and the Platform's partner organisations, could provide valuable input. The strategy/action plan should in any case envisage continued engagement with these themes at future CDMSI meetings.

6. In the spirit of cooperation called for by the Secretary General during the Council of Europe's Conference, *Freedom of expression: still a precondition for democracy?*, in October 2015,[94] the Council of Europe should place increased structural emphasis on developing training programmes at the national level, focusing on the priority issues dealt with in the Recommendation and tailored to the needs of specific branches of state authorities, e.g. the judiciary, law enforcement officers, etc. In-house synergies in this connection, for example with the European Programme for Human Rights

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[92] Examples could be a (new) law, case-law, procedure, institution or institutional practice, cooperative initiative, training programme, promotional measure, etc. It is important that each example is accompanied by a description of the features that explain why it functions so well and should be regarded as a best practice.

[93] An example is para. 27 of the Guidelines, which states: "Member States should proactively and vigorously pursue the priorities of protecting journalists and other media actors and combating impunity in all relevant regional and international intergovernmental forums and, more generally, in their foreign policy and relations".

[94] This involved "a call for a shift in understanding of 'monitoring' exercises, so that a perception of shame would be replaced by a more constructive relationship centring on the provision of high-level legal expertise, to help certain States to develop their freedom of expression standards in a sustainable manner": Tarlach McGonagle, Conference report, 'Freedom of expression: still a precondition for democracy?', Strasbourg: Council of Europe, 2015, p. 20.

Education for Legal Professionals ([HELP Programme](#)) and existing cooperation activities, should be explored and exploited.

7. The partner organisations involved in running the Platform to promote the protection of journalism and the safety of journalists, as well as other human rights, media and journalists' organisations possessing the requisite legal expertise, should be involved in those training programmes, as relevant.[95]

8. The Bureau of the CDMSI should actively encourage Member States to volunteer to publicly commit to conduct the review of national laws and practice, as envisaged under the first pillar of the Guidelines. If (at least) five States would show leadership in this regard, very important momentum would be created and these *primeurs* would help to develop best practices for the review and reporting processes. Explanations of methodologies used and the discussion of practical and coordination challenges faced during the process would benefit other States greatly when they set about conducting the reviews in their own countries.

9. Endeavour to (help Member States to) secure funding via the Council of Europe's [Human Rights Trust Fund](#) for specific projects designed to ensure implementation of the Recommendation's Guidelines.

10. Make efforts to ensure that the Recommendation and key judgments of the European Court of Human Rights on which it is based are translated and disseminated as widely as possible.[96] This could perhaps be done under the Court's [case-law translation programme](#). The translation of [Fact Sheets](#) prepared by the Court's Press Unit are usually financed by individual Member States,[97] who should be encouraged to continue this practice for the fact sheets that address themes which are relevant to the Recommendation's focuses.

11. Develop a training manual or manuals specifically for the Recommendation, which could create consistency across training programmes and events at the national level.

12. Encourage Member States to make funding available for the development and acquisition of technological self-protection or digital security tools, as well as training programmes on how to use them.

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[95] In this connection, Mr Gutiérrez's pro-active offer for the European Federation of Journalists to share its expertise in relevant ways, made during the CDMSI Workshop on 30 June, is to be welcomed.

[96] Responses to the CDMSI Questionnaire reveal that such translation practice is not widespread among Member States.

[97] For details, see: '[The Court's case-law translations programme: aims, achievements and remaining challenges](#)', para. 4.