



How to protect journalists and other media actors?



Council of Europe DGI(2020)11

Implementation Guide
to Recommendation CM/Rec(2016)4
on the Protection of journalism
and safety of journalists
and other media actors

How to protect journalists and other media actors?

Implementation Guide
to selected topics under the Protection
and Prosecution pillars of the Guidelines
of Recommendation CM/Rec(2016)4
on the protection of journalism and safety
of journalists and other media actors

DGI(2020)11

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Contents

INTRODUCTION AND METHODOLOGY	5
ANALYSIS OF SELECTED AREAS OF THE PROTECTION PILLAR OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	7
A. Early-warning, rapid response mechanisms and protection measures to ensure the safety of journalists (paragraphs 8-10 of the Guidelines)	7
B. Training on the protection of journalists (paragraph 12 of the Guidelines)	19
C. Discriminatory or arbitrary application of legislation or sanctions to silence journalists and other media actors (paragraph 13 of the Guidelines)	24
D. Role of journalists and other media actors covering demonstrations and other events (paragraph 14 of the Guidelines).	35
E. Hostility and undermining the integrity of journalists by public authorities (paragraph 15 of the Guidelines)	40
ANALYSIS OF SELECTED AREAS OF THE PROSECUTION PILLAR OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	45
A. Requirements for an effective investigation and operational requirements to stem impunity (paragraphs 17-22 and 24-25 of the Guidelines)	45
B. Remedies available to journalists and their next of kin (paragraph 23 of the Guidelines)	61
APPENDIX	
SELF-ASSESSMENT TOOL FOR MEMBER STATES ON SELECTED TOPICS REGARDING THE PROTECTION OF JOURNALISM AND SAFETY OF JOURNALISTS AND OTHER MEDIA ACTORS – UNDER THE PROTECTION AND PROSECUTION PILLARS OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	65

Introduction and Methodology

Attacks against journalists and other media actors constitute particularly serious violations of human rights because they target not only individuals, but deprive others of their right to receive information, thus restricting public debate, which is at the heart of pluralist democracy. In response to the alarming and unacceptable level of threats to journalists and media actors in Europe, and given the damaging effect on the functioning of democratic society, in April 2016, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors (hereinafter – Recommendation CM/Rec(2016)4, the Recommendation).¹ The Recommendation is the sole international instrument which provides exhaustive guidelines to member States to act in the areas of prevention, protection, prosecution, promotion of information, education and awareness rising with a view to ensuring the effective protection of journalism and safety of journalists and other media actors.

Notwithstanding this important standard, the situation in the area of safety of journalists unfortunately is further degrading. By the end of 2019, the Council of Europe's Platform to promote the protection of journalism and safety of journalists (the Platform), had registered a total of 652 alerts, with year-on-year rises of incidents, with the exception of 2017. Overall, nearly half of all alerts were marked as 'category 1' covering the most severe and damaging violations of media freedom, such as murder and direct threats to life, physical assaults, the use of violence, prolonged arbitrary detention or imprisonment and arbitrary closure of a media outlet, with a total of 26 journalists killed in Council of Europe member States. The relentless targeting of journalists and other media actors demonstrates the urgent need for redoubled action for the prevention, protection and prosecution of such killings.

While the Council of Europe is continuously working on the implementation of Recommendation CM/Rec(2016)4 by supporting national authorities through cooperation assistance activities and by providing responses to challenges to media freedom and safety of journalists, a more strategic and systematic implementation of the Recommendation is required. The Council of Europe Steering Committee on Media and Information Society (CDMSI) has thus developed an Implementation strategy for Recommendation CM/Rec(2016)4 which foresees, as one of its key pillars, the present Implementation guide.

1. The European Court of Human Rights has repeatedly recognised that individuals, civil society organisations, whistle-blowers and academics, in addition to professional journalists and media, can all make valuable contributions to public debate, thereby playing a role similar or equivalent to that traditionally played by the institutionalised media and professional journalists.

This document aims to assist member States in the implementation of selected areas of the protection and prosecution pillars of the Guidelines contained in the Appendix to the Recommendation and to provide guidance to other stakeholders such as journalists and other media actors.² As an ultimate outcome, the Guide is intended to support member States in devising, based on Council of Europe Recommendation CM/Rec2016(4) and existing practices of Council of Europe member States and other jurisdictions, dedicated national action plans on the safety of journalists, setting a comprehensive and effective programme of activity, with urgency-based priorities and adequate resources for their implementation.

The priority areas have been identified in consultation with civil society and journalists' associations through a questionnaire, taking into account the priorities set by various bodies/departments of the Council of Europe which work in the area of safety of journalists and the protection of journalism.

For each priority area identified in the Protection and Prosecution pillars of the Recommendation, the Implementation guide:

- ▶ **Establishes indicators** in order to generate baseline information against which progress in the implementation of the Recommendation can be assessed;
- ▶ **Provides background information**, including references to the case-law of the European Court of Human Rights and to other sources;
- ▶ **Highlights valuable practices in the area**³ which have emerged so far, taking into account both the input of journalists and journalist associations, as well as the contributions of member States;⁴
- ▶ **Makes suggestions to state authorities** on possible ways to implement the Recommendation, including in cooperation with other relevant stakeholders;
- ▶ **Offers a self-assessment tool for member States** in the form of a questionnaire to help them review the state of implementation of the Recommendation in their respective jurisdictions (see Appendix).

2. The Guidelines provide guidance to member States on how to fulfil their obligation to effectively protect journalism, the safety of journalists and other media actors.

3. Valuable practices included in this Implementation guide do not purport to be complete, nor have their effects and functioning been tested or observed first-handedly by the Council of Europe Secretariat.

4. Member States' valuable practices were communicated to the Secretariat of the Media and Internet Division of the Council of Europe through questionnaires in 2016 and in 2019.

Analysis of selected areas of the Protection pillar of the Guidelines of Recommendation CM/Rec(2016)4

A. EARLY-WARNING, RAPID RESPONSE MECHANISMS AND PROTECTION MEASURES TO ENSURE THE SAFETY OF JOURNALISTS (PARAGRAPHS 8-10 OF THE GUIDELINES)

8. Legislation criminalising violence against journalists should be backed up by law enforcement machinery and redress mechanisms for victims (and their families) that are effective in practice. Clear and adequate provision should be made for effective injunctive and precautionary forms of interim protection for those who face threats of violence.

9. 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. To achieve this, member States should take appropriate preventive operational measures, such as providing police protection, especially when it is requested by journalists or other media actors, or voluntary evacuation to a safe place. Those measures should be effective and timely and should be designed with consideration for gender-specific dangers faced by female journalists and other female media actors.

10. Member States should encourage the establishment of, and support the operation of, early-warning and rapid-response mechanisms, such as hotlines, online platforms or 24-hour emergency contact points, by media organisations or civil society, to ensure that journalists and other media actors have immediate access to protective measures when they are threatened. If established and run by the State, such mechanisms should be subject to meaningful civil society oversight and guarantee protection for whistle-blowers and sources who wish to remain anonymous. Member States are urged to wholeheartedly support and co-operate with the Council of Europe's platform to promote the protection of journalism and the safety of journalists and thereby help to strengthen the capacity of Council of Europe bodies to warn of and respond effectively to threats and violence against journalists and other media actors.

A. INDICATORS

Risks	Measures to avert/remedy the risks
<p>Threats of violence</p> <p>Real and immediate risk to the life or physical integrity of journalists, whistleblowers and other media actors</p>	<ul style="list-style-type: none"> ▶ Injunctive/precautionary forms of interim protection are in place. ▶ Early-warning and rapid-response mechanisms such as hotlines or online platforms are available. ▶ Effective cooperation with the Platform to promote the protection of journalism and the safety of journalists is organized and ensured. ▶ Protection of life from real and immediate risk is ensured by means of: <ul style="list-style-type: none"> – effective and timely provision of police protection, with due regard for gender-specific dangers faced by female journalists and other media actors; – availability of schemes providing for relocation, safe houses or shelter; – putting in place comprehensive national protection mechanisms, where appropriate. ▶ Financial support for safety trainings designed specifically for female journalists and female media actors is ensured. ▶ Other measures aimed at protection are put in place as appropriate.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Statistics

The Study “Journalists under pressure”⁵ highlights that out of 1,000 journalists and other news providers questioned for the study, over a third believe that there are no effective means by which they can report threats. Of those who had experienced unwarranted threats and interference,⁶ 57% did not report it to the police and of those who did report it, 23% were not satisfied with the police’s response.⁷ Not being aware of any mechanisms in place was the main reason cited by journalists for not reporting experiences of unwarranted interference. Such lack of awareness was compounded by the fact that journalists lacked trust in the mechanisms

5. Study “Journalists Under Pressure – Unwarranted interference, fear and self-censorship in Europe”, Marilyn Clark and Anna Grech, 2017, Council of Europe.

6. The study defines unwarranted interference as “acts and or threats to a journalist’s physical and/or moral integrity that interfere with journalistic activities ... [that] may take the form of actual violence or any form of undue pressure (physical, psychological, economic or legal) and may emanate from state or public officials, other powerful figures, advertisers, owners, editors or others”.

7. Study “Journalists Under Pressure – Unwarranted interference, fear and self-censorship in Europe”, Marilyn Clark and Anna Grech, 2017, Council of Europe, page 9.

that did exist and feared retaliation as a result. A lack of trust in the mechanisms was in some cases also due to unsuccessful attempts at reporting unwarranted interference in the past.⁸

Interim protection

The objective of injunctive/precautionary forms of interim protection is to offer a fast legal remedy to protect journalists and other media actors from acts of violence, by prohibiting, restraining or prescribing certain behaviour of the perpetrator. Taking inspiration from Article 53 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter – the Istanbul Convention), for an injunctive and precautionary form of interim protection to be effective, it should offer immediate protection and be available without lengthy court proceedings or undue financial or administrative burdens on the victim. Furthermore, these orders should be issued on an ex parte basis with immediate effect and should be available irrespective of, or in addition to, other legal proceedings. Finally, effective, proportionate and dissuasive sanctions should be foreseen for any breach of such orders.

Early warning/rapid response mechanisms

Hotlines (direct 24/7 telephone lines) are among the most common forms of early warning /rapid response mechanism that enables immediate, secure communication in cases of emergency.

Cooperation with the Council of Europe Platform to promote the protection of journalism and safety of journalists

The Council of Europe's Platform to Promote the Protection of Journalism and the Safety of Journalists (hereinafter – the Platform) is an early warning/rapid response mechanism, as well as a tool for enhancing the response capacity of Council of Europe bodies and for improving co-operation and co-ordination with other international organisations. The Platform allows its contributing partners (civil society and journalist associations) to post alerts, subject to their own verification processes and standards. When the circumstances permit, the Council of Europe and the member State which is directly referred to in the alert posted on the Platform, may post reports on action taken by their respective organs and institutions in response to that alert. The Platform also helps the Council of Europe to identify trends and propose adequate policy responses in the field of media freedom.

Protection of life from real and immediate risk

Journalists and other media actors whose lives or physical integrity are at a real and immediate risk should have immediate access to law enforcement authorities (hereinafter – LEAs) and/or to a special protection/safety mechanisms.

8. Ibid., page 37.

Effective and timely provision of police protection

Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention) protects the right to life and encompasses, among others, a positive obligation of the authorities to take steps to preserve life in case of an imminent risk. This positive obligation means that the state must take preventive operational measures to protect the life of individuals within its jurisdiction, when it knows or ought to have known that there is a real and immediate risk to the life of an individual or individuals due the criminal acts of a third party.

In assessing the authorities' knowledge of any such risk to life, the European Court of Human Rights (hereinafter – ECHR, the Court) may take into account the extent to which bodies of the state, such as prosecutors, should have been aware of the vulnerable position of journalists vis-à-vis those in power (e.g., because of the elevated number of deaths or bodily injuries suffered by journalists in that country). For instance, in *Dink v Turkey*⁹ the Court found that the security forces could be considered to have been informed of the intense hostility towards Mr Dink from extreme nationalists because of his newspaper articles on Turkish-Armenian relations and of a real and imminent threat of his assassination, but have failed to take reasonable measures to protect his life.¹⁰ Accordingly, it found a violation of Articles 2 and 10 of the Convention.

Appropriate preventive operational measures would encompass an individual risk assessment to identify specific protection needs, police protection and/or voluntary evacuation to a safe place. Protection programmes run by the police should go hand-in-hand with a speedy investigation of the threats received/acts of violence perpetrated. They should be conceived as temporary measures to ensure journalists' and other media actors' physical safety during the time needed to bring the perpetrators to justice via court proceedings.

In line with Principle 17 of Recommendation CM/Rec(2016)4, systematic, gender-sensitive approach is required also in relation to preventive operational measures to prevent and combat these specific dangers, such as gender-based threats, (sexual) aggression and violence. In this connection, Article 19 of the Istanbul Convention requires that victims be provided with information on the different types of support services and legal measures available in cases of violence against women. This includes information on where to get what type of help, provided in a timely manner, meaning at a time when it is useful for the victims.

Schemes providing for relocation, safe houses or shelter

Journalists' organisations and other NGOs have developed a range of schemes for relocation of journalists and other media actors and their family members facing real and immediate risk to shelters and other safe locations. Mostly funded

9. *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, 14 September 2010.

10. See also report on "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism", Philip Leach, page 11.

by journalists for journalists, these schemes importantly complement protection measures offered by state.

Comprehensive national protection mechanisms

As concerns the set-up of a specialised safety/protection mechanism for journalists and other media actors, this has proved to be effective only where the problem of attacks or threats has reached a certain degree of seriousness.¹¹ The worsening of the media environment in many Council of Europe member States, as exemplified by the staggering increase of killings and violence registered on the Platform, would warrant that many member States consider the possibility of establishing such mechanism.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Early warning/rapid response mechanisms

■ The International Committee of the Red Cross (ICRC) hotline for journalists on dangerous assignments,¹² the Press SOS hotline of Reporters Without Borders (RSF)¹³ and the press freedom hotline of the Committee to Protect Journalists (CPJ)¹⁴ are among time-tested early warning/rapid response mechanisms.

■ The European Centre for Press and Media Freedom (ECPMF), in partnership with the European Federation of Journalists (EFJ), created in March 2016 an Alarm Centre for Female Journalists Under Threat.¹⁵

■ In the Netherlands, a hotline enabling journalists to report acts of aggression and violence has been set up.

11. Discussion Paper “Supporting Freedom of Expression: A practical Guide to Developing Specialised Safety Mechanisms”, April 2016, UNESCO and Centre for Law and Democracy, Toby Mendel, page 20.

12. The ICRC has a [24-hour hotline](#) that may be used when a journalist on assignment disappears, is captured, arrested or detained. It operates in the areas where the ICRC conducts humanitarian activities. The ICRC may be alerted by the journalist’s family, editor, national press organisation or a regional/international press association. Its recognised role as a neutral intermediary enables it to carry out a range of operations, including obtaining information, passing information to the family, requesting permission to visit the journalists (accompanied by a doctor) and repatriating the journalist.

13. Reporters Without Borders maintain a [24/7 press SOS hotline](#) in cooperation with American Express. The hotline can be alerted by journalists in trouble, their families, employers or professional organisations. An RSF representative will provide the journalist with advice or relevant contacts or will alert local or consular authorities.

14. The CPJ provides a secured [on-line platform](#) on which journalists and other media actors can report press freedom violations, including threats/attacks. It also provides help for journalists under threat, including [links to resources](#) available through other organisations which provide emergency relocation, legal, prison family, medical and trauma support.

15. The [Alarm Centre for Female Journalists Under Threat](#) 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.

■ In Bosnia and Herzegovina, the Free Media Helpline is run under the auspices of the BH Journalists Association.¹⁶

■ In Sweden, under the national Action Plan on Defending free speech,¹⁷ a national helpline and local victim support centres for individuals who are exposed to threats and hatred in connection with their participation in public debate are being set up.

■ In Armenia, the Committee to Protect Freedom of Expression has set up a 24/7 hotline to report cases of violence against journalists. When calls are received, a fast response group goes on the site of the incident, assesses the situation and takes necessary measures.

■ In Pakistan, Worth cyber-harassment helpline for journalists has been launched, which aims to provide legal advice, digital security support, psychological counselling and a referral system to victims.

■ In Western Balkans countries, the Regional Platform for advocating media freedom and journalists' safety (a network of journalist associations and media trade unions) has established a regional System of Early Warning and Prevention (SEWP), which also includes an Online Platform for Immediate Reporting of Attacks on Journalists and Violation of their Rights.¹⁸

■ In Tunisia, with the technical and financial support of the UN OHCHR and UNESCO, a Monitoring Unit within the *Syndicat National des Journalistes* was established in 2017. It aims to: provide journalist victims with legal advice and assistance; engage the national human rights institutions (NHRIs) and inform the OHCHR in case of serious violations; develop a national database on violations of journalists' safety; prepare and publish monthly reports on the safety of journalists; develop safety of journalists' indicators.¹⁹

Cooperation with the Council of Europe Platform to promote the protection of journalism and safety of journalists

■ In France, inter-ministerial informal coordination has been organised to speedily deal with Platform alerts. The Permanent Representation of France to the Council of Europe transmits an alert to the Ministry for European and International affairs (MEAE), which identifies the Ministry competent to deal with it. Within each Ministry,

16. Discussion Paper “Supporting Freedom of Expression: A practical Guide to Developing Specialised Safety Mechanisms”, April 2016, UNESCO and Centre for Law and Democracy, Toby Mendel, page 20.

17. The full title is: [Swedish Action Plan on Defending free speech](#) – measures to protect journalists, elected representatives and artists from exposure to threats and hatred.

18. The SEWP aims to: advocate freedom of expression and integration of EU media freedom standards; prevent violence against journalists and abuses of freedom of expression; introduce a methodology for continuous monitoring of media freedom and journalists' safety and the public availability of information on human rights violations of journalists, editors and other media professionals. Its [Online Platform for Immediate Reporting of Attacks on Journalists and Violation of their Rights](#) enables the reporting of attacks and provides support to journalists. It also contains a database on attacks on journalists since 2014, as well as data on public actions, analyses, advocacy activities of its partners and other media organisations.

19. [Report on the Multi-Stakeholder Consultation on Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#), 2017.

a focal point is designated to respond to such alerts. Within a short delay upon receipt, the focal point transmits the response to the alert back to the MEAE, which in its turn transmits it to the Permanent Representation to the Council of Europe, and then to the Platform.

Protection of life from real and immediate risk

Effective and timely provision of police protection

■ British LEAs have responded to the Court's judgment *Osman v. the UK*²⁰ by putting in place a procedure for thorough risk assessment that must be carried out if an initial assessment of a report points to the existence of a real and immediate threat to a victim.²¹

■ In Italy, within the Ministry of Interior, a Central Bureau of Inter-Forces for Personal Security (UCIS) has been created to ensure that appropriate measures are implemented to secure protection to those who are exposed to potential or actual danger due to their profession or for other reasons (including journalists and other media actors investigating organised crime who face threats of violence).²²

■ EU Directive 2012/29 on "Establishing minimum standards on the rights, support and protection of victims of crime" provides under its Article 22 for a procedure for assessment of individual risk and identifying special protection needs.²³

■ In Sweden, the police authority's crime victim and personal security division (BOPS), which is responsible for providing support to victims, maintains contact with those responsible for security at media houses in the respective regions. BOPS can

20. *Osman v. the United Kingdom* (GC), no. 23452/94, 28 October 1998.

21. The full risk assessment process comprises: receipt of the threat report by the police; provision of information to the victim; assessment of the nature and severity of the threat (including an initial investigation and classification); response to mitigate the threat/risk including devising and initiating a strategy for preventative or disruptive measures; resolution – initiating the agreed strategy leading to the removal or reduction of the threat/risk; monitoring - maintaining an overview of the developing intelligence picture and reassessing the risk management measures.

22. When journalists or other media actors' lives or physical integrity are at immediate risk, UCIS, together with the prefect, carries out an individual risk-assessment in order to identify specific protection needs of the victim. Four different levels of protection exist, depending on the risk level: "extraordinary" (1st), "very high" (2nd), "high" (3rd) and "low" (4th). Protection measures can consist in domicile supervision, dynamic vigilance, voluntary evacuation to safe places, police guards escort with armoured cars, etc. Personal security of those under protection is constantly monitored and a new assessment is issued every six months, in order to confirm the protection level and the need for the protection measures, or to modify and eventually revoke them.

23. According to Article 22 of the *EU Directive 2012/29 on "Establishing minimum standards on the rights, support and protection of victims of crime"*, "Member States shall ensure that victims receive a timely and individual assessment (...) to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. The individual assessment shall, in particular, take into account: (a) the personal characteristics of the victim; (b) the type or nature of the crime; and (c) the circumstances of the crime". The individual assessment must pay particular attention to victims who have suffered considerable harm due to the severity of the crime (including gender-based violence) and victims who have suffered a crime committed with a bias or discriminatory motive which could be related to their personal characteristics.

offer personal protection to those who are threatened and collaborates with other parts of the police when victim support or personal protection is needed. When a democracy violation is reported, the police meets with the person who has made the report. If the threat is considered to be serious, police protection may be provided.

Schemes providing for relocation, safe houses or shelter

■ The IFJ's International Safety Fund (set up in 1992), funded by journalists for journalists, provides timely financial assistance for, among others, emergency travel and accommodation to journalists and their family members at risk.

■ The IFJ provides safe houses in the West and some parts of East Africa and Latin America. IFJ's safe houses are run by reliable members/affiliates which are not informed of the identity of the person staying in the safe house and the persons at risk can stay for a period from three to six months.

■ 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. Journalists can stay there for a limited three-month period.²⁴

■ The International Cities of Refuge Network (ICORN) is an independent organisation of cities and regions offering shelter to those at imminent risk of persecution/under threat as a direct consequence of their creative activities, including journalists. ICORN member cities: arrange for the relocation to/reception in the city; facilitate the acquisition of a legal status; provide the person at risk and his/her family with an appropriate dwelling; provide an appropriate scholarship/grant for his/her period of stay; help with integration in the local community, both socially and artistically; appoint a City of Refuge coordinator to provide support with legal and practical matters.

■ The ECPMF provides journalists who are in danger with temporary accommodation and an allowance for their needs.

Comprehensive national protection mechanisms

■ Colombia's Protection Programme for Journalists and Social Communicators established in 2000, notwithstanding some flaws, has been identified by many as representing a best practice example for protection mechanisms. Its key actor is the National Unit for Protection (UNP), which implements and monitors the physical measures of protection.²⁵

24. CDMSI Workshop on "How to protect journalists and other media actors in Europe: implementing the Council of Europe's standards", Strasbourg, 30 June 2016, *Compilation of Selected Best Practices for the Implementation of Recommendation CM/REC(2016)4 and Proposals for Further Follow-up Activities*, by Patrick Leerssen, Roel Maalderink and Tarlach McGonagle, page 8.

25. Some of Colombia's Protection Programme for Journalists and Social Communicators successful attributes include: civil society and media participation in the mechanism (they refer cases and are closely involved in the risk assessment process); structures of coordination between state institutions, journalists and civil society organisations; independence, including a dedicated budget; taking gender into account, offering specialised assessments for women and by women if necessary; support by a legal framework, public policy and court jurisprudence.

Once the UNP receives a complaint directly from the journalist or through civil society/LEAs, it receives input from three basic structures:

- ▶ The Technical Corps for Information Collecting and Analysis (CTRAI) – an inter-institutional group consisting of members of the UNP and the national police. CTRAI verifies the information it receives and uses a “risk assessment matrix” (weighing threat, risk and vulnerability) to determine a risk assessment score for the journalist;
- ▶ The Preliminary Assessment Group - which reviews information from CTRAI on individual cases, establishes the level of risk and makes recommendations; and
- ▶ The Committee for Risk Assessment and Recommendation of Measures (CERREM) – decides on the allocation of protection measures (including the provision of mobile phones, bulletproof vehicles, emergency evacuation and transfers). Civil society can object to the measures.²⁶

■ In Italy, within the Ministry of Interior, a Coordination centre on the monitoring, analysis and permanent exchange of information on the intimidation of journalists was set up in 2017. In addition to the Minister of Interior who chairs this body, the Coordination Centre includes the head of the police, a high representative of public security, the Secretary General and the President of the National Federation of the Italian Press and high representatives of the national journalist association, with the possible participation of other experts and representatives of civil society.

■ The Coordination centre aims to formulate proposals/strategies on how to prevent and counteract intimidation and violence against journalists, including by adopting specific protection measures. The Centre has set up a dedicated Secretariat with operational capacity, serving as the main gateway between journalists and law enforcement/public security officials. It monitors and analyses data provided by the prefects and the local units of the police on attacks and intimidation of journalists and identifies preventive strategies and specific protective measures to the Coordination Centre. The Coordination centre has decided to convene meetings every trimester.

■ In Mexico, a Federal Protection Mechanism of Human Rights Defenders and Journalists has been set up and a position of a Special Prosecutor for Crimes against Freedom of Expression (FEADLE) has been created. The protection programme provides journalists and activists deemed to be at risk with safe houses, police protection, or a panic button to call for help. However, it lacks funding and personnel to respond in a timely and effective manner to the urgent requests it receives.²⁷

■ In Nepal, a new mechanism is under development to address the need for protection and to combat impunity. The Nepal’s National Human Rights Commission (NHRC), an independent and autonomous constitutional body with a mandate to investigate human rights abuses, will administer the mechanism. Representatives

26. See “Defending Journalism: How National Mechanisms Can Protect Journalists and Address the Issue of Impunity – A comparative analysis of practices in seven countries”, International Media Support, 2017, pp. 104-105.

27. “Defending Journalism: How national mechanisms can protect journalists and address the issue of Impunity, a comparative analysis of practices in seven countries”, International Media Support, 2017, page 39.

of the Federation of Nepalese Journalists, the Nepal Bar Association and the NGOs Federation will be part of the system, including participation in its oversight committee and response teams. The mechanism is intended to implement both proactive and reactive measures to prevent attacks and violence against those exercising their right to free expression and to ensure the prosecution of suspects and justice for the victims.²⁸

Other measures aimed at protection

■ In Sweden, in the context of the Action Plan on “Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threats and hatred”²⁹ the Government has:

- ▶ Commissioned the Swedish Crime Victim Compensation and Support Authority to produce a training and information resource on support for journalists (as well as politicians and artists) who are exposed to threats and hatred. The resource is intended for government agencies and organisations that need better tools to support these categories of victims, but also for private individuals who are exposed to threats and hatred in the public debate.
- ▶ Commissioned Linnæus University to build a knowledge centre and a service offering advice and support to journalists and editorial offices, including freelancers, small offices and smaller production companies.

D. SUGGESTIONS FOR IMPLEMENTATION

Interim protection

■ Ensure that injunctive/precautionary forms of interim protection provide fast legal remedies to protect journalists and other media actors from acts of violence, by prohibiting, restraining or prescribing certain behaviour of the perpetrator. Injunctive and precautionary forms of interim protection should offer immediate protection and be available without lengthy court proceedings or undue financial or administrative burden on the victim. They should be issued on an *ex parte* basis with immediate effect and should be available irrespective of, or in addition to, other legal proceedings. Effective, proportionate and dissuasive sanctions should be foreseen for any breach of such orders.

Early warning/rapid response mechanisms

■ Set up and/or encourage the set-up of 24/7 hotlines or 24-hour emergency contact points providing advice to journalists facing threats. If run by the state, meaningful civil society oversight and confidentiality or anonymity of the victim should be ensured.

28. CDMSI Workshop on “How to protect journalists and other media actors in Europe: implementing the Council of Europe’s standards”, Strasbourg, 30 June 2016, *Compilation of Selected Best Practices for the Implementation of Recommendation CM/REC(2016)4 and Proposals for Further Follow-up Activities*, by Patrick Leerssen, Roel Maalderink and Tarlach McGonagle, page 41.

29. For further details please see: [Swedish Action Plan on Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threats and hatred](#).

■ In addition to hotlines or emergency contact points, other early warning and rapid response mechanisms should be set-up with a view to giving visibility to threats to/attacks on journalists and other media actors, ensuring public awareness and dissuading potential perpetrators. Such early warning/rapid response mechanisms could take inspiration from the Council of Europe Platform to promote the protection of journalism and safety of journalists.

Cooperation with the Council of Europe Platform to promote the protection of journalism and safety of journalists

■ At a minimum, states should ensure prompt and substantive responses to Platform alerts that concern them.

■ To this end, identifying clear contact points responsible for ensuring swift and quality responses to alerts and developing a clear coordination mechanism among all relevant state authorities is highly desirable.

Protection of life from real and immediate risk

Effective and timely provision of police protection

■ Ensure timely access to law enforcement authorities encompassing an individual risk assessment to identify specific protection needs. Upon receipt of a threat report, LEAs should systematically carry out assessment of the imminence of the risk, the seriousness of the situation and the risk of repeated violence, in order to manage the risk, devise a security plan and provide when needed protection to journalists and other media actors.

■ Adequate information on available types of help and organisations providing such help should be given to the victim in a timely manner. This could include, for example, providing not just the name of a support service organisation, but handing out a leaflet that contains its contact details, opening hours and information on the exact services it offers.³⁰

Comprehensive national protection mechanisms

■ Where it is warranted, set-up at the national level a protection/safety mechanism with capacity to provide physical protection to journalists at risk, with the participation of both LEAs and members of civil society and the media. It should serve especially journalists working on high risk matters such as corruption and organised crime and cover cases of attacks and attempted attacks, as well as credible threats. The mechanism should be autonomous, function in a transparent manner and have a dedicated budget and sufficient funding to function effectively. The mechanism should also be backed by policy and legislation in order to be resilient to changes in the political agenda. It should analyse and adapt to the evolution of the risks present

30. "Adequate information" refers to information that sufficiently fills the victim's need for information; "timely manner" means at a time when it is useful for the victims. For further details please see the [Explanatory report to the Istanbul Convention](#) regarding Article 19, page 78.

in the country and must be present and active in rural areas. The protection/safety mechanism, should in particular:

- ▶ Upon receipt of a threats report from journalists, provide for systematic assessment of the imminence of the risk, the seriousness of the situation and of the risk of repeated violence, in order to manage the risk, devise a security plan and provide when needed protection to journalists and other media actors.
- ▶ Ensure that victims are provided with information about different types of support services and legal measures available to them (including non-judicial avenues of redress), enabling them to take fully informed decisions.
- ▶ Where the need for protection has been found, provide for supply of material measures of protection, including mobile telephones and bulletproof vests, as well as establishment of safe havens and emergency evacuation or relocation to safe parts of the country or other countries through a protection programme and police protection.³¹ Arrangements to ensure the individual's livelihood and appropriate medical and psychological care should also be ensured.
- ▶ Include an exit strategy elaborating when support to journalist should cease.

■ Develop and implement measures for building trust in the mechanism by journalists and by all the stakeholders involved in each other, as a precondition for its effective functioning.

■ The set-up of a protection mechanism must go hand in hand with prevention and enhanced measures for investigation and prosecution of attacks. To this end, member States may identify existing structures or programmes within government institutions that protect other at-risk sectors of society and extend their mandate to cover the safety of journalists and other media actors.³²

Other measures aimed at protection

■ Set up safety funds supported by private donations to fund the costs of relocation to safety.

■ If police protection is provided, ensure that relevant personnel is trained in human rights standards. Where possible, special units should be tasked.

■ Provide financial support for safety trainings designed specifically for female journalists and female media actors.

31. Report of the Office of the United Nations High Commissioner for Human Rights on "The Safety of Journalists", A/HRC/24/23, 1 July 2013, para. 63.

32. "Defending Journalism: How National Mechanisms Can Protect Journalists and Address the Issue of Impunity - A comparative analysis of practices in seven countries", International Media Support, 2017, page 52.

B. TRAINING ON THE PROTECTION OF JOURNALISTS (PARAGRAPH 12 OF THE GUIDELINES)

12. Member States are urged to develop protocols and training programmes for all State authorities who are responsible for fulfilling State obligations concerning the protection of journalists and other media actors. Those protocols should be adapted to the nature and mandate of the State agency personnel in question, for example, judges, prosecutors, police officers, military personnel, prison wardens, immigration officials and other State authorities, as appropriate. The protocols and training programmes should be used to ensure that the personnel of all State agencies are fully aware of the relevant State obligations under international human rights law and humanitarian law and the actual implications of those obligations for each agency. The protocols and training programmes should be informed by an appreciation of the important role played by journalists and other media actors in a democratic society and of gender-specific issues.

A. INDICATORS

Risks	Measures to avert/remedy the risks
<p>State authorities responsible for tasks concerning the protection of journalists and other media actors are not duly informed about of their relevant human rights obligations and the specificities of the media sector.</p>	<ul style="list-style-type: none"> ▶ Training for judges, prosecutors, LEAs is provided on a regular basis and encompasses, among others, their obligations under international human rights and humanitarian law, the important role played by journalists and other media actors in a democratic society, specific aspects of investigating attacks on journalists and of examination of such cases by courts, special protection needs of journalists and other media actors, including gender-specific issues. ▶ NHRIs and journalists' associations are involved, where appropriate, in the development of training programmes and in the provision of training to judges, prosecutors, LEAs.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Aim of the training

In the context of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity,³³ training of law enforcement, judicial and other public officials

33. The UN Plan of Action on the Safety of Journalists and the Issue of Impunity is a UN-wide plan to work toward a free and safe environment for journalists and media workers, including social media producers of public interest journalism, with a view to strengthen peace, democracy, and development worldwide. It covers both conflict and non-conflict situations. Spearheaded by the Intergovernmental Council of UNESCO's International Programme for the Development of Communication (IPDC) and endorsed in 2012 by the UN Chief Executives Board, the highest-level coordinator mechanisms of the UN system, the UN Plan provides an overarching framework for co-operation between all relevant stakeholders, including UN bodies, national authorities, media actors and national, regional, and international organisations.

responsible for fulfilling state obligations concerning the protection of journalists and other media actors has been identified as one of the key actions³⁴ to strengthen the implementation of the Plan and as one of the national indicators to measure progress in the implementation. The aim of such training is to raise awareness of relevant authorities on the scale and urgency of the problem, change their outlook and significantly improve the nature and quality of the support provided to victims. Training should be adapted to the mandate of public officials and reflect both regional standards (notably, Council of Europe standards and in particular Recommendation CM/Rec(2016)4),³⁵ and other international human rights standards.³⁶

Training programmes for state authorities and agents

Principle 16 of Recommendation CM/Rec(2016)4 stresses that in the course of their work, journalists and other media actors often face specific risks and discrimination on different grounds (gender, gender identity, sexual orientation, race, colour, language, religion, political or other opinion, etc). Moreover, the pursuit of particular stories and coverage of certain sensitive issues³⁷ can also expose journalists and other media actors to threats, attacks, abuse and harassment by state and/or non-state actors (including terrorist or criminal groups). These vulnerabilities should be taken into account when affording preventive or protective measures, at the investigation phase and also when devising specific protocols and training programmes for state agents. The protocols and training programmes for law enforcement agencies, for instance, should stress that investigations opened in cases of violence/threats against a journalist must take into due account evidence showing a link to the journalist's professional activities. More generally, training of relevant state agents should take into account the important role played by journalists and other media actors in a democratic society in line with the Court's jurisprudence³⁸ and gender-specific issues.

34. See "Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity", [Consultation outcome document](#), 16 August 2017, page 6.

35. For a list of the most relevant Council of Europe instruments providing guidelines on reinforcing and safeguarding the role of journalists, their rights and freedoms, please see the study "[Journalists Under Pressure - Unwarranted interference, fear and self-censorship in Europe](#)", Marilyn Clark and Anna Grech, 2017, Council of Europe, pp. 16-18. The recommendations of the Committee of Ministers are inspired by the Convention, as interpreted in the case-law of the Court.

36. Please see <https://en.unesco.org/themes/safety-journalists/basic-texts>.

37. Such as sensitive political, religious, economic or societal topics, including misuse of power, corruption and criminal activities.

38. The role of the press as "public watchdog" was first emphasised by the Court in [Lingens v. Austria](#) (no. 9815/82, 18 July 1986). In [Bladet Tromsø and Stensaas v. Norway](#) (GC) (no. 21980/93, 20 May 1999), the Court highlighted once again "the essential function the press fulfils in a democratic society", stating that "although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest".

Gender-specific risk factors

In her Communiqué on the growing safety threat to female journalists online, the former OSCE Representative on Freedom of the Media, Ms Dunja Mijatović, has highlighted the growing number of reports of female journalists and bloggers being attacked on social media.³⁹ Reports show that two thirds of women journalists suffer gender-based online attacks and that female journalists and television news presenters receive about three times as much online abuse as their male counterparts.⁴⁰ In a survey conducted among 597 women journalists and media workers by Trollbusters and the International Women's Media Foundation, 90% of respondents indicated that online threats had increased over the past five years.⁴¹

Online attacks present themselves in the form of sexual harassment and intimidation and even threats of rape and sexual violence and target women journalists because they are women. An International Federation of Journalists' Survey⁴² showed that while half of such cases have been reported, the harasser was identified or brought to justice in only 13% of the cases. Accordingly, the former OSCE Representative on Freedom of the Media has called for better training for law enforcement officials in order to improve their understanding of how to investigate threats and other criminal offenses that take place online (and are gendered), highlighting that threats and harassment online that amount to criminal offenses must be prosecuted and treated like offline offenses. Training and guidance should also emphasise that threats to life and physical integrity, including rape threats, should be prioritised for prosecution.⁴³

Off-line, women journalists are significantly more likely than men to experience sexual harassment and/or sexual violence as shown by the Study "Journalists Under Pressure". Article 15 of the Istanbul Convention requires parties to the Convention to provide/strengthen training for those professionals (including public authorities) who deal with victims of violence against women⁴⁴ on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as how to prevent secondary victimisation.

39. Organisation for Security and Co-operation in Europe (OSCE), the Representative on Freedom of the Media, Dunja Mijatović, [Communiqué on the growing safety threat to female journalists online](#), 02/2015.

40. See ["New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists"](#), OSCE, 2016, page 41.

41. It showed, in particular, that two out of three respondents had been threatened or harassed online at least once and that this resulted in self-censorship in 40% of cases.

42. See <https://www.ifj.org/media-centre/news/detail/article/ifj-global-survey-shows-massive-impact-of-online-abuse-on-women-journalists.html>

43. OSCE, the Representative on Freedom of the Media, Dunja Mijatović, [Communiqué on the growing safety threat to female journalists online](#), 02/2015, page 44.

44. Under the Istanbul Convention, these include but are not limited to sexual harassment, sexual violence, including rape, psychological violence, etc.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Training programmes for state authorities and agents

■ In Sweden, the police authority has launched on-line training for police officers who receive reports, in order to increase their ability to deal with hate crimes and crimes against democracy. In addition, the Uppsala University has been commissioned to develop a five-days specialist course for police officers who work on hate crimes and crimes against democracy addressing: freedom of speech, freedom of the press and the fundamental rights and freedoms of journalists, opinion leaders and politicians; how police officers can gain and secure trust among vulnerable groups and individuals; how to improve the investigation of hate crimes and crimes against democracy and stem impunity.

■ Through the UNESCO MOOC programme, training on “The International Legal Framework of Freedom of Expression, Access to Information and Protection of Journalists” has been provided to over 3,000 judges and judicial-sector operators in Latin America.⁴⁵

■ In France, the rights of the press and the respect of journalistic sources is covered both by initial training, as well as by continuous training of judges.

■ In Ukraine, a number of training sessions for LEAs, prosecutors and judges have been organised in the course of 2017 and 2018, including in the context of Council of Europe sponsored events on the rights of journalists, related changes in the criminal and criminal procedural law, the investigation of crimes committed against journalists.

Involvement of NHRIs and journalists’ associations

■ In the Netherlands, in July 2018 an agreement was reached between the national police, the public prosecutor’s office, the Dutch Association of Journalists (NVJ) and the Dutch Society of Chief Editors to counter threats and violence against journalists. Its aim is to improve awareness raising among law enforcement services on the issue of safety of journalists and to offer training and concrete guidelines for law enforcement to better respond to threats against the media. As a result of this agreement, the police and the public prosecutor have committed to give priority to incidents concerning journalists.

■ In Serbia, an agreement on “Cooperation and measures to increase the level of safety of journalists” was signed by the Prosecutor’s office, the Ministry of Interior and journalists and media associations in December 2016. It encompasses training for journalists, media owners, prosecution and law enforcement officials in order to improve their knowledge on the protection of journalists, including international standards.

45. UNESCO series of Massive Open Online Courses for judges and other judicial operators on the international legal framework on freedom of expression, access to information and the safety of journalists

D. SUGGESTIONS FOR IMPLEMENTATION

Training programmes for state authorities and agents

■ The training for police officers, prosecutors, judges and other relevant state authorities and agents should be informed by the case-law of the ECHR and Council of Europe's standards, in particular by Recommendation CM/Rec(2016)4. Specific attention should be given to:

- ▶ raising awareness about the important “public watchdog” role played by journalists and other media actors in a democratic society;
- ▶ the role played by journalists and other media actors in a democratic society by covering public demonstrations, reporting from conflict zones and in times of crisis, including in the state of emergency and ways to prevent any hindrance to such coverage (see Section II (D) of this Implementation Guide);
- ▶ the right of journalists and other media actors not to reveal their confidential sources of information and the necessary procedural safeguards (see Section II (C) of this Implementation Guide);
- ▶ the fact that in the course of their work, journalists and other media actors often face specific risks and discrimination on different grounds and that the pursuit of particular stories can also expose them to threats, attacks, abuse and harassment by state and/or non-state actors, including terrorist or criminal groups (see Sections II(A) and II (E) of this Implementation Guide).
- ▶ the prevention and detection of violence against women, equality between women and men, the needs and rights of victims, as well as how to prevent secondary victimisation;
- ▶ the need to ensure timely access to law enforcement authorities when there is a serious risk/threat of violence/attack against journalists and other media actors, the provision of information on the assistance, support, protection and compensation that victims can obtain as of their first contact with LEAs and the need to issue injunctive/precautionary forms of interim protection when warranted (see Section II(A) of this Implementation Guide);
- ▶ the characteristics of an effective investigation, the need to consider any possible link between the crime and the journalist's professional activities, gender-related issues and a possible link between racist attitudes and the act of violence, the need to exercise restraint in resorting to criminal proceedings/criminal sanctions for press offences, even when territorial integrity/national security are invoked (see Section III (A) of this Implementation Guide);
- ▶ the need to counter discriminatory or arbitrary application of defamation legislation, to prevent abuse of the judicial process and relevant measures, including best practices and to prevent forum shopping in defamation cases (see Section II (C) of this Implementation Guide);
- ▶ improving LEAs' understanding of how to investigate threats and other criminal offenses that take place online, including those that are gendered. Training should highlight that online threats and harassment that amount to criminal offenses must be prosecuted and treated like offline offenses.

Threats to life and physical integrity, including rape threats, should be prioritised for prosecution.

Involvement of NHRIs and journalists' associations

States should explore the potential of cooperation with NHRIs in training judges and prosecutors in order to avoid arbitrary application of restrictive legislation vis-à-vis journalists and other media actors.

C. DISCRIMINATORY OR ARBITRARY APPLICATION OF LEGISLATION OR SANCTIONS TO SILENCE JOURNALISTS AND OTHER MEDIA ACTORS (PARAGRAPH 13 OF THE GUIDELINES)

13. Member States must exercise vigilance to ensure that legislation and sanctions are not applied in a discriminatory or arbitrary fashion against journalists and other media actors. They should also take the necessary legislative and/or other measures to prevent the frivolous, vexatious or malicious use of the law and legal process to intimidate and silence journalists and other media actors.

A. INDICATORS

Risks	Measures to avert/remedy the risks
<p>Legislation and sanctions are applied in a discriminatory or arbitrary manner against journalists and other media actors.</p>	<ul style="list-style-type: none"> ▶ Review of defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws is carried out to ensure that definitions, key terms and concepts are defined with sufficient precision to avoid abuse and that safeguards for the exercise of freedom of expression are in place. ▶ Adherence to the principle of proportionality in applying such laws and sanctions is ensured and due restraint in resorting to criminal proceedings/criminal sanctions for press offences is exercised. ▶ Adequate procedural safeguards and effective remedies against abuse of these laws are in place. ▶ Review of defamation legislation is carried out to ensure that: <ul style="list-style-type: none"> – it does not provide for excessive, disproportionate sanctions and damages awards; – in line with the ECHR case-law, prison sentences may only be envisaged for exceptional situations, notably where other fundamental rights have been seriously impaired; – there is no increased protection for public figures from public scrutiny or criticism;

Risks	Measures to avert/remedy the risks
	<ul style="list-style-type: none"> - heads of state/monarchs are not conferred special protection vis-à-vis the right to report and express opinions about them; - it provides for freedom of expression safeguards that conform to European and international human rights standards, including the availability of truth/public-interest/fair comment defences; - fast-track or low-cost measures and a range of civil remedies as alternatives to damages, such as apologies or correction orders, are available; - it promotes extra-judicial bodies, such as press councils, to provide a proportionate response to defamation. <p>▶ Training of judges in order to avoid arbitrary application of restrictive legislation is provided.</p>
<p>Frivolous, malicious or vexatious use of law and legal process to intimidate and silence journalists and other media actors.</p>	<p>▶ Legislative and/or other measures to prevent abuse of the judicial process are carried out, in particular:</p> <ul style="list-style-type: none"> - measures to prevent forum shopping in defamation cases; - introducing anti-SLAPP legislation; - making available legal aid schemes to journalists in order to ensure that they have a reasonable opportunity to present their cases; - providing training for judges in order to prevent and curb frivolous, malicious or vexatious use of law and legal process.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Statistics

Misuse, abuse or threatened use of different types of legislation to prevent contributions to public debate, including defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws are unfortunately among common means of intimidating and silencing journalists and other media actors reporting on matters of public interest. According to the Council of Europe study “Journalists under Pressure”,⁴⁶ 23% of interviewed journalists claimed to have experienced “judicial intimidation” or “judicial harassment” in the form of arrest, investigation, threat of prosecution or actual prosecution under a number of laws,

46. Study “Journalists Under Pressure - Unwarranted interference, fear and self-censorship in Europe”, Marilyn Clark and Anna Grech, 2017, Council of Europe. This study was conducted among almost 1,000 journalists and other news providers.

including defamation laws, public order laws, anti-terrorism and national security laws. Additionally, certain legal provisions can themselves give rise to a chilling effect on freedom of expression and public debate.

General measures to counter discriminatory or arbitrary application of legislation or sanctions to silence journalists and other media actors

Legislation often used to restrict freedom of expression includes, among others, public order, anti-terrorism, national security, hate speech, blasphemy and memory laws.

In line with the Court's well-established case law, any restrictive measure must be prescribed by law, pursue at least one of the legitimate aims under Article 10(2) of the Convention and it must pass the proportionality test (the interference must be necessary in a democratic society and the measure(s) applied must be proportionate to the aim(s) pursued). In assessing the proportionality, domestic courts must assess all the circumstances of the case on a case-by-case basis, taking into account, among others, the context of the publication, the existence of public interest and the severity of the sanction.

Restraint in resorting to criminal proceedings

The Court has called for restraint in resorting to criminal proceedings, even when the protection of territorial integrity or national security or the prevention of crime or disorder are invoked, in cases where the publication at issue does not incite to violence⁴⁷ or instigate ethnic or other form of hatred (see, for instance, the *Incal* group of cases).⁴⁸ Criticism of governments and publication of information regarded by a country's leaders as endangering national interests should not attract criminal charges for particularly serious offences such as belonging to or assisting a terrorist organisation, attempting to overthrow the government or the constitutional order or disseminating terrorist propaganda. This equally applies in the state of emergency.⁴⁹

In order to prevent misuse/abuse of public order, anti-terrorism and national security laws to silence critical voices and unnecessary or disproportionate interference with freedom of expression, offences under these laws should be clearly defined

47. "Incitement to violence" is interpreted by the Court as advocating recourse to violent actions or bloody revenge, justifying the commission of terrorist acts in pursuit of their supporters' goals and that can be interpreted as likely to encourage violence by instilling deep-seated and irrational hatred towards specified individuals – see *Sürek v. Turkey* (no. 4) [GC], no. 24762/94, 8 July 1999, § 60.

48. In the case of *Incal v. Turkey* (GC) (no. 22678/93, 9 June 1998) and a group of similar cases the Court has found that the applicants' convictions on the account of breach of anti-terrorism law by having made, published or otherwise disseminated statements/publications were in violation of their right to freedom of expression (Article 10) because such statements/publications did not incite to hatred or violence.

49. See, for instance, *Sahin Alpay v. Turkey*, no. 16538/17, 27 February 2001, § 172-184.

and should not be over-broad.⁵⁰ In order to stem abuse/misuse of law, provisions should also be accessible to the person concerned, their consequences foreseeable and their compatibility with the rule of law ensured.⁵¹ Furthermore, adequate procedural safeguards and effective remedies against abuse must be provided.

Protection of journalistic sources

The Court has repeatedly stressed that the protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public about matters of public interest and as a result the vital public-watchdog role of the press may be undermined, and the ability of the press to provide accurate and reliable information may be adversely affected.⁵² Misuse of public order laws, anti-terrorism and national security laws to access journalistic sources, either through surveillance measures or by compelling disclosure (or both, as in *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*),⁵³ is a common example of interference in this sphere.

Disclosure orders placed on journalists have a detrimental impact not only on their sources, whose identity may be revealed, but also on the newspaper against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources. The detrimental impact further extends to the public who have an interest in receiving information imparted through anonymous sources and who are also potential sources themselves. Having regard to the crucial role of press freedom in a democratic society and the potential chilling effect of a disclosure order, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.⁵⁴

Regarding surveillance measures, in *Big Brother Watch and Others v. the United Kingdom*⁵⁵ the Court found that while the operation of a bulk interception regime does not in itself violate the Convention, insufficient oversight of the selection process of surveillance subjects and a lack of adequate safeguards concerning the selection of communications data for examination do not satisfy the “quality of law requirement” and hence were in violation of Article 8. It further held that Article 10 was violated due to missing safeguards for journalistic sources in the operation of the bulk interception regime, and insufficient safeguards in the case of obtaining communications data from Communication Service Providers. According to

50. For instance, in *Gözel and Özer v. Turkey* (nos. 43453/04 and 31098/05, 6 July 2010) the Court found that the wording of section 6(2) of the Turkish anti-terrorism law which sanctioned “anyone who print[ed] or publishe[d] statements or leaflets by terrorist organisations” and contained no obligation for the domestic courts to carry out a textual or contextual examination of the writings could not be reconciled with the right to freedom of expression.

51. *Ürper and Others v Turkey*, nos. 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20 October 2009, §28-29.

52. *Goodwin v. the United Kingdom* (GC), no. 17488/90, 27 March 1996, § 39.

53. *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, no. 39315/06, 22 November 2012.

54. *Goodwin v. the United Kingdom* (GC), no. 17488/90, 27 March 1996, § 39.

55. *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13, 62322/14 and 24960/15, 13 September 2018, § 387.

established case law, searches of confidential journalistic material should be carried out only on the basis of a court order and in compliance with other substantive procedural safeguards, e.g. be subject to review by an independent and impartial body to prevent unnecessary access to information capable of disclosing the sources' identity.

Measures to counter discriminatory or arbitrary application of defamation legislation

Among the journalists interviewed for the study "Journalists Under Pressure" who had experienced judicial intimidation, the most common intimidation was reported under defamation laws.

Preventing award of disproportionate damages in civil actions

Law and practice allowing for excessive or disproportionate damages in civil actions have been found to produce a chilling effect on freedom of expression and on public debate.

In *Tolstoy Miloslavsky v. the United Kingdom*, the Court held that "under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered" and found a violation of Article 10 having regard to the size of the award of damages, "in conjunction with the lack of adequate and effective safeguards against a disproportionately large award".⁵⁶ In *Independent Newspapers (Ireland) Limited v. Ireland*, the Court found that unreasonably high damages for defamation claims can have a chilling effect on freedom of expression, therefore there must be adequate domestic safeguards so as to avoid disproportionate awards being granted.⁵⁷

The Parliamentary Assembly of the Council of Europe (PACE) in its Resolution 1577(2007) "Towards decriminalisation of defamation" condemned abusive recourse to unreasonably large awards of damages and interest in defamation cases and, echoing the Court's case law, pointed out that this may lead to a violation of Article 10 of the Convention.

The availability of a range of civil remedies as alternatives to damages, such as apologies or correction orders, can help provide a proportionate response to defamation and can enable a person's reputation to be vindicated more promptly. The role of extra-judicial bodies, such as press councils, can also play a valuable role in achieving proportionality and timeliness, as has been noted by the Court.⁵⁸

Abolishment of criminal sanctions for defamation

A chilling effect on freedom of expression can arise not only from any sanction, disproportionate or not, but also from the fear of sanction, even in the event of acquittal. Principle 34 of the Recommendation CM/Rec (2016)4 highlights that criminal sanctions have a greater chilling effect than civil sanctions. While the Court does

56. *Tolstoy Miloslavsky v. the United Kingdom*, no. 18139/91, 13 June 1995, §§ 49, 51.

57. *Independent Newspapers (Ireland) Limited v. Ireland*, no. 28199/15, 15 June 2017, § 104.

58. See for instance *Stoll v. Switzerland* [GC], no.69698/01, 10 December 2007.

not completely rule out the possibility of criminal sanctions for defamation, it attaches great importance to the nature of the sanction imposed in considering the proportionality of interference.⁵⁹

Fear of imprisonment inevitably has chilling effect on the exercise of journalistic freedom of expression. In *Mahmudov and Agazade v. Azerbaijan*,⁶⁰ the Court stated that investigative journalists would be inhibited from reporting on matters of general interest if they run the risk of being sentenced to imprisonment for defamation. Recalling the Parliamentary Assembly's Resolution 1577(2007) "Towards decriminalisation of defamation", the Court has repeatedly urged member States whose legislation still provides for prison sentences for defamation, even if they are not actually imposed, to abolish them without delay.⁶¹ A prison sentence for a press offence will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence.⁶²

Removing enhanced protection for public figures from criticism and public scrutiny

Defamation laws that are overly protective of reputational interests may also have a chilling effect on freedom of expression.

In *Lingens v. Austria* the Court found that the "limits of acceptable criticism are wider as regards public or political figures than as regards a private individual. In a democratic society, the government's actions must be subject to the close scrutiny not only of the legislative authorities but also of the press and public opinion"⁶³ As concerns heads of state, in *Artun and Güvener v. Turkey*, the Court ruled that a state's interest in protecting the head of state "cannot justify conferring on him or her a privilege or special protection vis-à-vis the right to report and express opinions about him or her".⁶⁴ Principles related to criticism aimed at heads of state apply not only to republican heads of state but also to non-elected monarchs.⁶⁵

In Resolution 1577(2007) "Towards decriminalisation of defamation" PACE called on Council of Europe member States to remove from their defamation legislation any increased protection for public figures, in accordance with the Court's case law.

59. See for instance *Radio France and Others v. France*, no. 53984/00, 30 March 2004, § 40; *Lindon, Otchakovsky-Laurens and July v. France* (GC), nos. 21279/02 and 36448/02, 22 October 2007, § 59.

60. *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, 18 December 2008, § 49.

61. See for instance *Mariapori v. Finland*, no.37751/07, 6 July 2010, § 69; *Niskasaari and Others v. Finland*, no. 37520/07, 6 July 2010, § 77; *Saaristo and Others v. Finland*, no. 184/06, 12 October 2010, § 69 and *Ruokanen and Others v. Finland*, no. 45130/06, 6 April 2010, § 50.

62. See for instance *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, 17 December 2004, § 115; *Ruokanen and Others v. Finland*, no. 45130/06, 6 April 2010, § 50.

63. *Lingens v. Austria*, no. 9815/82, 18 July 1986, § 42.

64. *Artun and Güvener v. Turkey*, no. 75510/01, 26 June 2007, § 31.

65. *Stern Taulats and Roura Capellera v. Spain*, nos. 51168/15 and 51186/15, 13 March 2018, § 39.

Countering abuse of law and/or legal process in defamation cases

Principle 36 of Recommendation CM/Rec(2016)4 warns that frivolous⁶⁶, vexatious⁶⁷ or malicious⁶⁸ use of law and legal process, with high legal costs required to fight such lawsuits, can become a means of pressure and harassment of journalists and other media actors and create a chilling effect on freedom of expression.

One such example is forum shopping in defamation cases (also known as “libel tourism”⁶⁹), when the claimant acts with a malicious intent or abuses his/her right to access to court. This phenomenon has been identified by the Council of Europe Committee of Ministers as a major challenge to free expression, access to information and to media pluralism and diversity due to its chilling effect.⁷⁰ In addition, it negatively impacts on other human rights, such as the right to a fair trial (Article 6) and the right to an effective remedy (Article 13).⁷¹

Forum shopping is made possible by the differences between national defamation laws, conflict of law rules, rules on jurisdiction, rules on recognition and enforcement of foreign judgements and, more generally, by globalisation, given that content on the internet becomes instantly accessible in multiple jurisdictions. The Council of Europe Study on “Liability and jurisdictional issues in online defamation cases” identifies 15 good practices in Council of Europe member States to mitigate factors that are conducive to forum shopping in defamation cases.⁷² Rules and standards regarding criminal and civil liability in order to prevent “libel tourism” are also found in the Joint Declaration on freedom of expression and the internet.⁷³

66. A frivolous claim or complaint is one that has no serious purpose or value. Often a “frivolous” claim is one about a matter so trivial or one so meritless on its face that investigation would be disproportionate in terms of time and cost. The implication is that the claim has not been brought in good faith because it is obvious that it has no reasonable prospect of success and/or it is not a reasonable thing to spend time complaining about.

67. A vexatious claim or complaint is one (or a series of many) that is specifically being pursued to simply harass, annoy or cause financial cost to their recipient (https://en.wikipedia.org/wiki/Frivolous_or_vexatious).

68. Malicious use of the law and legal process is initiating a criminal prosecution or civil suit against another party with malice and without probable cause (<https://www.merriam-webster.com/legal/malicious%20prosecution>).

69. “Libel tourism” is a form of forum shopping whereby a complainant files a defamation complaint with the court thought most likely to provide a favourable judgment even when there is no or only a tenuous connection between the legal issue and the jurisdiction.

70. [Declaration by the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation](#), adopted on 4 July 2012, pt. 5.

71. Council of Europe Study on “[Liability and jurisdictional issues in online defamation cases](#)”, DGI(2019)04.

72. Council of Europe Study on “[Liability and jurisdictional issues in online defamation cases](#)”, DGI(2019)04.

73. [Joint Declaration on freedom of expression and the internet](#), adopted on 1 June 2011 by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, point 4.

Ensuring the principle of equality of arms is of crucial importance in tackling misuse and abuse of law and legal process. Procedural safeguards enabling defendants to effectively counter frivolous, vexatious and malicious lawsuits may include truth, public-interest and/or fair comment defences.⁷⁴ As harassment arising from abuse of law and legal process can prove particularly acute for journalists and other media actors who do not benefit from the same legal protection or financial and institutional backing as those offered by large media organisations, states are required to take appropriate measures to ensure that each side is afforded a reasonable opportunity to present his or her case.⁷⁵

An additional response to such vexatious forms of litigation is anti-SLAPP⁷⁶ legislation that provides remedies to the defendant to counter frivolous, vexatious or malicious lawsuits. Most commonly, it allows for bringing a motion to strike a case brought against him/her because it involves speech on a matter of public concern. The plaintiff then has the burden of showing a probability that they will prevail in the suit - meaning they must show that they have evidence that can result in a verdict in their favour.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Measures to counter discriminatory or arbitrary application of defamation legislation

Comprehensive legal reforms introducing different types on measures

■ In England and Wales, the [2013 Defamation Act](#) aims to curb vexatious use of defamation lawsuits, notably by introducing a “serious harm threshold”. The Act provides that “a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”. This concept is intended “to raise the bar” as to what the courts will consider as a viable libel complaint. There is also potential for trivial cases to be struck out on the basis that they are in abuse of process because so little is at stake. In *Jameel v. Dow Jones & Co* it was established that there needs to be a real and substantial tort. The Act also targets “libel tourism” by tightening the test for claims involving those with little connection to England and Wales being brought before the courts. It also provides for a single-publication rule to prevent repeated claims against a publisher about the same material, meaning

74. For an overview of defences typical for defamation cases, please see “Freedom of Expression and Defamation - A Study of the case law of the European Court of Human Rights” by Tarlach McGonagle, Council of Europe, pp. 43-45 and 51.

75. Paragraph 36 of the Principles section of Recommendation CM/Rec(2016)4.

76. SLAPP is an acronym for Strategic Lawsuit Against Public Participation. According to the [Public Participation Project](#) based in the United States, such lawsuits target those who speak in the public interest with a purpose of silencing and harassing them. “SLAPP filers don’t go to court to seek justice. Rather, SLAPPS are intended to intimidate those who disagree with them or their activities by draining the target’s financial resources. While SLAPP lawsuits often do not lead to a final judgment against the defendant, they do have a grave chilling effect on the journalist or other media actor.”

that the limitation period for a defamation action must be calculated only from the date of the first publication.

■ In Iceland, further to the [Iceland's Modern Media Initiative](#) (IMMI), the Prime Minister has appointed a committee on legislative reform in the field of freedom of expression, media and information. The committee is tasked with reviewing and improving existing bills, including those on defamation, information law, hate speech, data storage, and the responsibility of host providers and evaluate which legislative changes may be desirable in the field of freedom of expression, media and information. The Committee has already finalised bills and/or amendments in order to, among others: remove criminal liability for defamation, replacing it with civil liability in the form of damages/compensation; introduce a number of defences to exclude liability in certain cases; remove increased protection for the reputation of public figures; impose stricter requirements for hate speech to be considered punishable; protect whistle-blowers; strengthen the right of the public to access information; protect journalists from defamation proceedings and shifting liability to the employer.

Removing enhanced protection for public figures from criticism and public scrutiny

■ In Serbia, further to two judgments by the ECHR (*Lepojić v. Serbia*⁷⁷ and *Filipović v. Serbia*⁷⁸), the Supreme Court adopted in 2008 a legal opinion stating that criticism of public personalities is more acceptable than that of private persons.

Countering abuse of law and/or legal process in defamation cases

■ In the UK, the Government has issued a [Guidance Note on Vexatious Litigants](#), explaining when a claim can be considered vexatious and describing possible civil, as well as criminal law remedies.

■ Under French law, a defendant in defamation proceedings is provided with the truth-defence. Also, under the jurisprudence of the Court of Cassation, defendants in defamation cases can argue a legitimate aim pursued and general public interest of the publication, good faith, the absence of animosity or personal attack and the seriousness of the inquiry.

■ In the USA, an example of anti-SLAPP law is the [State of Oregon's anti-SLAPP statute](#). Under this statute, a defendant's motion to dismiss the case is granted if the defendant meets the initial burden of making a *prima facie* showing that the claim arises out of a statement, document or conduct involving the exercise of the right of free speech in connection with a public issue or an issue of public interest. If this requirement is met, the burden shifts to the plaintiff who will need to demonstrate that there is a probability that he/she/it will prevail on the claim, by presenting substantial evidence to support a *prima facie* case. If the plaintiff meets this burden, the court shall deny the defendant's motion.

77. *Lepojić v. Serbia*, no. 13909/05, 6 November 2007.

78. *Filipović v. Serbia*, no. 27935/05, 20 November 2007.

■ In the EU, a proposal for a directive to counter vexatious lawsuits/SLAPP litigation has been presented by six members of Parliament, encompassing, among others: the possibility for investigative journalists and independent media to request that vexatious lawsuits in the EU be expediently dismissed and claim compensation; the establishment of punitive fines on firms pursuing these practices when recourse is made to jurisdictions outside the EU; the setting up of a SLAPP fund to support investigative journalists and independent media that choose to resist malicious attempts to silence them and to assist in the recovery of funds due to them; the setting-up of an EU register that names and shames firms that pursue these abusive practices.

D. SUGGESTIONS FOR IMPLEMENTATION

General measures to counter discriminatory or arbitrary application of legislation or sanctions to silence journalists and other media actors

■ Review and elimination of overbroad definitions in defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws. To avoid abuse, key terms and concepts must be defined with sufficient precision.

■ Restraint, in line with the ECHR case-law, in resorting to criminal proceedings/criminal sanctions for press offences (under public order, anti-terrorism, national security and other laws), even when territorial integrity/national security are invoked.

■ Putting in place adequate procedural safeguards and effective remedies against abuse of these laws.

Protection of journalist sources

■ Introduce safeguards for journalistic sources, such as the guarantee of review of disclosure decisions by an independent and impartial body to prevent unnecessary access to information capable of disclosing the sources' identity. The review body must be in a position to weigh the potential risks and respective interests prior to any disclosure. Its decision should be governed by clear criteria, including whether less intrusive measures would suffice.

Measures to counter discriminatory or arbitrary application of defamation legislation

■ Review of domestic defamation legislation to ensure that:

- ▶ awards of damages are not disproportionately large and there are adequate and effective domestic safeguards against too large awards;
- ▶ they do not, except for exceptional circumstances and in line with relevant ECHR case law, provide for prison sentences;
- ▶ there is no increased protection for public figures. In particular, heads of state/monarchs are not conferred a privilege or special protection vis-à-vis the right to report and express opinions about him/her;

- ▶ freedom of expression safeguards that conform to European and international human rights standards, including truth/public-interest/fair comment defences are provided either in the law or in judicial practice;
- ▶ a range of civil remedies is available as an alternative to damages in appropriate cases, such as apologies or correction orders; fast-track or low-cost measures are available;
- ▶ extra-judicial bodies, such as press councils, are promoted with a view to providing a proportionate response to defamation.

Countering abuse of law and/or legal process in defamation cases

■ Adoption of legislative and/or other measures to prevent, with due respect to the independence of justice, the abuse of the judicial process and to prevent “libel tourism”, in particular:

- ▶ courts and tribunals should have jurisdiction over a case only if there is a strong connection between the case and the jurisdiction they belong to;
- ▶ courts and tribunals should seek to identify and recognise foreign declaratory judgements that are aimed at preventing or stopping abuse of legal procedure or any other action by the claimant that could be qualified as forum shopping;
- ▶ courts and tribunals should generally refuse, on the basis of the public order exception, to recognise or enforce foreign judgments that grant manifestly disproportionate damages awards that were rendered in breach of due process of law or as the result of an abuse of rights;
- ▶ courts should consistently apply the *res judicata* exception when asked to recognise and enforce a foreign judgment that is irreconcilable with another decision from another state’s court on a case involving the same cause of action and between the same parties;
- ▶ specific and reasonably short limitation periods for defamation actions should be set out clearly in national law;
- ▶ a single publication rule should apply and determine the starting date of the limitation period for defamation cases;
- ▶ courts and tribunals should lift limitation periods upon request by one of the parties, provided that objective and clearly defined conditions, as set out in relevant legislation, are met;
- ▶ where the burden of proof is on the defendant, available defences should not impede the reversal of the onus of proof on the claimant or to make such reversal unreasonably difficult;
- ▶ courts and tribunals should deliver judgments *in absentia* only when proper servicing of international proceedings is effectively guaranteed;
- ▶ the amount of damages granted by court in defamation proceedings should be strictly proportionate to the harm suffered by the claimant;
- ▶ punitive damages, where available under the member States’ legal framework, are only allowed if strict and clearly defined conditions are met;
- ▶ appeals solely based on the amount of damages should be allowed;

- ▶ courts should rely on the prohibition of abuse of rights to address the cases of manifest forum shopping;
- ▶ where applicable, courts should scrutinise under the forum *non conveniens* doctrine the relevant factual elements of the case, while identifying the forum best placed to hear it;
- ▶ the proximity (strong connections) principle should apply in determining the law applicable to a defamation case.

■ Development of anti-SLAPP legislation to allow defendants in defamation cases to bring a motion to strike a case brought against him/her because it involves speech on a matter of public concern.

■ Introducing legal aid schemes for journalists in order to ensure that they have a reasonable opportunity to present their cases.

■ Exploring NHRIs role in training judges and prosecutors in order to avoid arbitrary application of restrictive legislation vis-à-vis journalists and other media actors.

D. ROLE OF JOURNALISTS AND OTHER MEDIA ACTORS COVERING DEMONSTRATIONS AND OTHER EVENTS (PARAGRAPH 14 OF THE GUIDELINES).

14. Member States should take into account the specific nature and democratic value of the role played by journalists and other media actors in particular contexts, such as in times of crisis, during election periods, at public demonstrations and in conflict zones. In these contexts, in particular, it is important for law enforcement authorities to respect the role of journalists and other media actors covering demonstrations and other events. Press or union cards, relevant accreditation and journalistic insignia should be accepted by State authorities as journalistic credentials, and where it is not possible for journalists or other media actors to produce professional documentation, every possible effort should be made by State authorities to ascertain their status. Dialogue between State authorities and journalists' organisations is moreover encouraged in order to avoid friction or clashes between police and members of the media.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Law enforcement authorities hinder the work of journalists and other media actors, in particular, during public demonstrations and other events.	▶ Press or union cards, relevant accreditation and journalistic insignia are accepted by state authorities as journalistic credentials. Where professional documentation cannot be provided, every possible effort is made by state authorities to ascertain journalistic status.

Risks	Measures to avert/remedy the risks
	<ul style="list-style-type: none"> <li data-bbox="422 214 1028 305">▶ Guidelines are issued to military and the police prohibiting harassment, intimidation or physical attacks on journalists.⁷⁹ <li data-bbox="422 316 1028 438">▶ Effective channels of communication exist between journalists' organisations and security forces concerning coverage of street protests, demonstrations and public events.⁸⁰

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Prevention of / hindrance to media coverage of demonstrations and other events

In *Pentikäinen v. Finland*, the Court underlined the crucial role of the media in providing information on the authorities' handling of public demonstrations and the containment of disorder. Stressing the "watchdog" function of the media, the court stated that any attempt to remove journalists from the scene of demonstrations must be subject to strict scrutiny.

According to the Court's approach, any such situations should be seen in the light of the circumstances of every particular case. The elements to be taken into account by national courts include (a) whether the authorities had deliberately prevented or hindered the media from covering the demonstration/event in an attempt to conceal from the public gaze the actions of the police/other public bodies; (b) whether obeying the authorities' orders would have completely prevented media representatives from performing their professional duties. The Court, nonetheless, also stated that journalists must obey lawful orders of the police and cannot claim immunity from criminal liability for the sole reason that the offence was committed during the performance of their journalistic functions.⁸¹

In *Selmani and others v. FYROM*,⁸² a case concerning removal from the Parliament's press gallery, the Court emphasised that the above findings apply even more so when journalists report on the behaviour of elected representatives in Parliament and on the manner in which authorities handle disorder that occur during parliamentary sessions.

Given journalists' crucial role in relaying information to the public and holding authorities to account, particularly in sensitive contexts, it is imperative that state authorities do not interfere with their coverage of events that have important implications for the functioning of democratic systems. It follows that journalists and other media actors are entitled to photograph/film demonstrations, including police handling of disorder and that their equipment must not be seized.

79. *Journalists' Safety Indicators: National Level*, 28 July 2015, UNESCO, page 10.

80. *Journalists' Safety Indicators: National Level*, 28 July 2015, UNESCO, page 10.

81. *Pentikäinen v. Finland* (GC), no. 11882/10, 20 October 2015, §§ 89, 91.

82. *Selmani and others v. FYROM*, no. 67259/14, 9 February 2017, § 75.

LEAs must be attentive to journalistic insignia and credentials. Moreover, a lack thereof should not be used as a pretext for undue restrictions on journalistic activities. Where journalists and other media actors are not able to produce documentation showing their status, the authorities should endeavour to verify it by other means, for instance, by consulting credible media organisations and journalists' professional organisations that can confirm the journalist's status. Coordinated training/dialogue between media and the police is important in order to understand each other's responsibilities and constraints and therefore ensure trust and good working relationships.

Protection of journalists from police violence

The former Council of Europe Commissioner of Human Rights Nils Muiznieks has highlighted that police violence against journalists, in particular when covering demonstrations, is among the most widespread threats to media freedom. For instance, in 2013 more than half of all the cases of injured journalists involved injury caused by the police.⁸³ The 2018 Mapping of Media Freedom special report by Index of Censorship also highlights that members of law enforcement are accountable for more than half of the incidents against the media during protests reported in the first seven months of 2018 in Europe.⁸⁴ This demonstrates an urgent need for improvements in police handling of media covering demonstrations.

The case of *Najafli v. Azerbaijan*⁸⁵ concerned a journalist beaten by the police while covering an unauthorised demonstration. Although the journalist was not wearing a blue vest identifying him as a member of the press, he was wearing a journalistic badge and had repeatedly stated he was a journalist. The Court not only found a violation of Article 3 on the account of ill-treatment, but also a violation of Article 10 of the Convention. The Court stated that the use of excessive force to journalists while they are performing their professional duties, seriously hampers their exercise of the right to receive and impart information, irrespective of whether there had been any intention on the part of the police to interfere with journalistic activity.

Principle 22 of the Recommendation CM/Rec (2016)4 contains detailed provisions regarding policing operations, including the policing of public demonstrations.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Prevention of / hindrance to media coverage of demonstrations and other events

■ In the UK, the "Public Order Authorised Professional Practice" (APP) is used for all public order command and tactical advisor training. The APP is based on the

83. See [statement](#) delivered by the Council of Europe Commissioner for Human Rights Nils Muiznieks at the Seminar on protection of journalists at the ECHR in November 2014.

84. [Demonising the Media: Threats to journalists in Europe](#), Index on Censorship, Special report, November 2019, page 8.

85. *Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012.

premise that the public has the right to access information about police activity and that the media is central to making this happen. It contains guidance on public order communication, including sections on media relations, developing media plans and media engagement (e.g., facilitating access to a suitable viewing point and advice to staff).

A video highlighting the role and status of journalists, the possibility to advise them on where to report from and stressing “unsafe” areas has also been included in the public order training curriculum.

■ In the Netherlands, the ‘Pocket book order and safety’ (*Zakboek openbare orde en veiligheid*) – a book containing advice for mayors and their staff – states that journalists should only be forbidden to enter dangerous areas in crisis situations if this complies with the principles of proportionality and subsidiarity. In the case of acute emergency situations, journalists should be enabled to enter these dangerous areas, where possible under (police) escort.⁸⁶

■ France is also working on a training course for the police aimed at facilitating mutual understanding between journalists and the police and ensuring journalists’ safety during public demonstrations.

■ In Ukraine, training involving nearly 150 police officers from different regions of the country has been organised and conducted, including on proper interaction of the police with the media in connection with public events.

■ In the UK, an agreement between several journalists’ unions and the country’s police forces has been entered into,⁸⁷ providing guidelines that:

- (a) allow and assist the media to carry out their reporting responsibilities from the scene of incidents, provided that the media do not interfere with police activity;
- (b) recognise rights of members of the media in situations of potential frictions;
- (c) agree rules for the police on respecting press cards as forms of media identification.⁸⁸

Protection of journalists from police violence

■ The Dutch Association of Journalists (*NVJ*) and Dutch national police have agreed to meet every three months to discuss collaboration between the press and the police, in particular in relation to incidents involving journalists during riots and the rights of journalists in public spaces. They have further agreed on the best courses of action to take during protests and other incidents. Under this agreement, journalists are advised to contact the operational commander of the police unit on

86. See “Securing a favourable environment for journalists in the Netherlands”, Geert Lokhorst and Leon Trapman, edited by Tarlach McGonagle, 13 April 2018, page 61.

87. *Guidelines for MPS [Metropolitan Police Service] staff on dealing with media reporters, press photographers and television crews.*

88. OSCE “*Safety of Journalists Guidebook*”, William Horsley, 2012, page 37.

site so that the police can be on the alert for possible incidents between journalists and protestors.⁸⁹

Furthermore, in the context of the 2018 agreement between the national police, the public prosecutor's office, the Dutch Association of Journalists (NVJ) and the Dutch Society of Chief Editors "to counter threats and violence against journalists", journalists have agreed to systematically report any security-related incidents and file complaints with law enforcement authorities.

■ In Sweden, Stockholm Police has established a development center which is responsible for offences that threaten human rights. It meets on a regular basis with organisations representing journalists (and also politicians and artists) to exchange experience and to improve operational collaboration. Furthermore, an industry association representing a number of large Swedish media organisations has set up a consultation forum between the heads of security of these organisations and police representatives working on crime victims and personal safety. Meetings in the past took place twice a year and can currently be convened at short notice, if necessary.

■ During demonstrations and other public events France provides for a 24/7 police emergency line (SICOP) for journalists in difficulty.

D. SUGGESTIONS FOR IMPLEMENTATION

Prevention of / hindrance to media coverage of demonstrations and other events

■ Where journalists and other media actors are not able to provide documentation showing their status, the authorities should endeavour to verify it by other means, for instance, by consulting credible media organisations and journalists' professional organisations that can confirm that status.

■ Regular meetings and working groups should be organised gathering journalists, media actors, representatives of police forces and prosecutors. Meetings should also be organised ahead of major events such as elections, protests, big sports events, etc.

■ As concerns demonstrations, it is advisable that: non-mandatory briefing with journalists takes place ahead of such events; a safe communication perimeter is established, where the media can be present and receive information from an advantageous location.⁹⁰

■ LEAs and the media should designate focal points in order to ensure smooth communication.

■ Guidelines should be developed/agreed between police and media reporters, especially concerning media coverage of demonstrations, crime scenes and major events. Such guidelines should set out the rights of members of the media in situations of potential frictions, outline steps to promote practical co-operation and rules

89. See "Securing a favourable environment for journalists in the Netherlands", Geert Lokhorst and Leon Trapman, edited by Tarlach McGonagle, 13 April 2018, page 62.

90. "Freedom of Expression and Public Order: Fostering the Relationship Between Security Forces and Journalists", UNESCO, 2018, page 12.

for the police on respecting press cards as forms of media identification⁹¹, including a requirement that where journalists and other media actors are not able to produce documentation showing their status, it should be verified by other means.

Protection of journalists from police violence

■ Guidelines should be issued and training provided to the military and the police prohibiting harassment, intimidation or physical attacks on journalists.

■ Where the Court has ruled against the state, finding that there has been abuse of force by law enforcement officers, NHRIs should be implicated in devising, assessing and implementing specific action plans aimed at stemming such abuse of force.

E. HOSTILITY AND UNDERMINING THE INTEGRITY OF JOURNALISTS BY PUBLIC AUTHORITIES (PARAGRAPH 15 OF THE GUIDELINES)

15. State officials and public figures should not undermine or attack the integrity of journalists and other media actors, for example on the basis of their gender or ethnic identity, or by accusing them of disseminating propaganda, and thereby jeopardise their safety. Nor should they require, coerce or pressurise, by way of violence, threats, financial penalties or inducements or other measures, journalists and other media actors to derogate from accepted journalistic standards and professional ethics by engaging in the dissemination of propaganda or disinformation. State officials and public figures should publicly and unequivocally condemn all instances of threats and violence against journalists and other media actors, irrespective of the source of those threats and acts of violence.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Hostility and undermining the integrity of journalists by public authorities	<ul style="list-style-type: none"> ▶ The government takes a clear public position regarding the important role of journalists in society and the need to ensure their full protection from violations. ▶ State officials and public figures refrain from undermining or attacking the integrity of journalists and other media actors. ▶ State officials and public figures refrain from coercing/inducing/pressuring journalists into abandoning professional standards and disseminating propaganda. ▶ State officials publicly condemn all instances of threats and violence against journalists and other media actors.

91. OSCE “Safety of Journalists Guidebook”, William Horsley, 2012, page 37.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Statistics on psychological violence against journalists

A vast number of journalists report experiencing psychological violence from public authorities. From all respondents interviewed for the study “Journalists under pressure”, 43% claimed to have been intimidated by political groups. Such intimidation may take various forms, whether it is judicial harassment,⁹² verbal attacks and threats of reprisals for unfavourable reporting or through other more indirect means. These include coercion or pressure, by way of violence, threats, financial penalties or inducements to derogate from accepted journalistic standards and professional ethics and to engage in the dissemination of propaganda or disinformation. Alerts on the Council of Europe Platform to promote the protection of journalism and safety of journalists provide numerous examples of such instances.

Self-restraint and condemnation of all attacks on journalists by public authorities

The United Nations High Commissioner for Human Rights has stressed that unequivocal political commitment must be expressed by governments to ensure that journalists can carry out their work safely. In this regard, a clear public position should be taken at the highest levels of government regarding the important role of journalists in society and the need to ensure their full protection from violations of their rights.⁹³

The OSCE the Representative on Freedom of the Media further highlighted that any threat to and intimidation of journalists (whether originating from state or non-state actors) must be met with a strong public condemnation by political and public figures, in order for the public to recognise that this behaviour is not accepted and will not be tolerated.⁹⁴

The Inter-American Court of Human Rights in its case-law has gone as far as stating that state officials should consider the swift and energetic condemnation of attacks on journalists and media workers as an aspect of their duty to punish those responsible, but also as an aspect of their duty to prevent.⁹⁵

92. Fear and experience of arrest, investigation, threat of and actual prosecution through the arbitrary use of different types of laws.

93. “The safety of journalists”, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/24/23, 01/07/2013, page 50.

94. OSCE the Representative on Freedom of the Media, Dunja Mijatović, [Communiqué on the growing safety threat to female journalists online](#), 02/2015.

95. The Inter-American Court of Human Rights, *Rios et al. v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of 28 January 2009, Series C no. 194, paragraph 148.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Condemnation of all attacks on journalists and other media actors by the authorities

■ In Belgium, in 2018 the Prime Minister reprimanded his spokesperson who had attempted to intimidate journalists from addressing questions to a visiting dignitary.

■ In Northern Ireland, in April 2019 representatives of the main political parties, the Prime Minister and the Secretary of State issued public statements deploring the death of journalist Lyra McKee in the context of a suspected terrorist incident.

■ In Montenegro, the President, the Prime Minister and other representatives publicly condemned the brutal attack on the journalist Olivera Lakić, describing it as an attack on democracy.

Comprehensive national action plans and campaigns

■ In Sweden, the Government has issued an Action Plan on “Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threats and hatred”. The Action Plan aims to safeguard politically elected representatives, journalists and artists due to the central role they play in democracy and their “exposure to threats and hatred” by: gaining deeper knowledge of the scale of the phenomenon; providing basic support for all those exposed; devising specific measures for, among others, journalists and editorial offices; and ensuring international cooperation for the protection of journalists and artists.

■ In the UK, in November 2018 the Foreign Secretary launched a campaign to deliver international action on media freedom and protection for journalists. The campaign aims to promote: stronger protection of journalists, a reduction in the number of attacks and the easing of state restrictions on freedom of the media and freedom of expression; to mobilise a global spotlight on media freedom and increase the costs to governments and others abusing media freedom; and to host an international conference bringing together government ministers and officials, the diplomatic community, international agencies, civil society organisations, NGO’s, academics and journalists to debate the issues and deliver concerted action.

■ In the Slovak Republic, the Ministry of Culture has set up a Temporary Working Group for Legal Protection of Journalists in order to strengthen the protection of journalists and to prepare legislative proposals aimed, among others, at addressing the protection of journalistic sources, the protection of journalists from unjustified prosecution for defamation.

International cooperation initiatives

■ At the Global Conference for Media Freedom (London, 10-11 July 2019), organised under the UK campaign to deliver international action on media freedom and protection for journalists, the following initiatives were launched:

- ▶ The set-up, with other governments, of a **new Global Media Defence Fund**, to be administered by UNESCO and to help fund legal advice for journalists

and safety training for those operating in conflict zones to take forward the UN Plan of Action on the Safety of Journalists.

- ▶ The set-up of an **international task force** to help governments deliver their commitments on media freedom, including by developing national action plans. Every year at the UN General Assembly, progress of the task force will be reviewed.
- ▶ The set-up of an independent **high-level panel of legal experts** to advise countries on how to strengthen the legal protection of journalists. Its aim is to examine legal and policy initiatives that states can adopt and to issue recommendations. Amongst the possible recommendations/areas of action, the following were referred to:
 - The possible institution of a sanction regime issued by state authorities against states that violate media freedom;
 - Visas for persecuted journalists;
 - International investigation teams to be deployed in serious crimes committed against journalists;
 - promoting best practice and model legislation to protect a vibrant free press and supporting governments to repeal legislation that is outdated or restricts media freedom;
 - proposing legal and other initiatives that can be taken by governments to ensure existing international obligations relating to media freedom are enforced;
 - advising on any new international commitments by governments that would help to prevent and reverse media abuses.
- ▶ The creation of a **contact group** of likeminded countries that would operate as a rapid response mechanism, helping foreign ministers and ambassadors to react with one voice when abuses of media freedom take place.
- ▶ The signing of the **Global Pledge on media freedom** pledging to work together as a coalition and a commitment to:
 - speak out and take action together on cases where journalists and media organisations are at risk, through a *Media Freedom Coalition*. States would commit to speaking out and issuing sanctions for violations of media freedom;
 - shine a light on violations and abuses of media freedom, bringing them to the attention of the global public and working towards accountability;
 - stand together to intervene at the highest level with the governments of countries where media freedom is at risk and to show solidarity/support with countries that work to build media freedom. In this connection, support governments that create national frameworks and action plans to implement the UN Plan of Action on the Safety of Journalists;
 - harness the power of diplomatic networks, through a new *Media Freedom Contact Group*;
 - meet annually to renew commitments and to address emerging threats and opportunities.

■ In its [report](#) on “Protecting human rights defenders in Council of Europe member States”, the PACE expresses openness to take the initiative to (a) foster international cooperation between national parliaments in exchanging information on good practices concerning promotion of the activities of human rights defenders and on abuses against them and (b) establish a network of parliamentarians, who would be supportive of human rights defenders’ work, would condemn any reprisals against them and bring the situation of defenders in other countries to the attention of their own parliaments.

D. SUGGESTIONS FOR IMPLEMENTATION

Condemnation of all attacks on journalists and other media actors by public authorities

■ When state officials and public figures undermine or attack the integrity of journalists and other media actors, it is important that such verbal attacks or threats are exposed and mediatised in order to hold them to account.

■ When state officials and public figures undermine or attack the integrity of journalists and other media actors, the attacks must be condemned by other public figures, including through seeking public apologies to journalists and reviewing any adverse action taken (e.g., not granting accreditation).

■ Parliaments should adopt codes of conduct for MPs requiring, among others, that they:

- ▶ Refrain from undermining or attacking the integrity of journalists and other media actors;
- ▶ Refrain from coercing/inducing/pressurising journalists into abandoning professional standards and disseminating propaganda;
- ▶ Condemn all instances of threats and violence against journalists and other media actors.

Comprehensive action plans and campaigns

■ A clear public position should be taken at the highest levels of government regarding the important role of journalists in society, for instance, through adoption of a national action plan to protect journalists and other media actors.

International cooperation

■ Governments, parliaments and other public authorities should engage in international cooperation with a view to exchange good practices for the protection of media freedom, prevention and reversion of abuses against the media.

Analysis of selected areas of the Prosecution pillar of the Guidelines of Recommendation CM/Rec(2016)4

A. REQUIREMENTS FOR AN EFFECTIVE INVESTIGATION AND OPERATIONAL REQUIREMENTS TO STEM IMPUNITY (PARAGRAPHS 17-22 AND 24-25 OF THE GUIDELINES)

Prosecution

17. It is imperative that everyone involved in killings of, attacks on and ill-treatment of journalists and other media actors be brought to justice. Investigations into such crimes and the prosecution of those responsible for them must therefore meet a number of general requirements. When those responsible for such crimes are not brought to justice, a culture of impunity can arise, which calls for particular courses of action.

General requirements

18. Investigations into killings, attacks and ill-treatment must be effective and therefore respect the essential requirements of adequacy, thoroughness, impartiality and independence, promptness and public scrutiny.

19. Investigations must be effective in the sense that they are capable of leading to the establishment of the facts as well as the identification and eventually, if appropriate, punishment of those responsible. The authorities must take every reasonable step to collect all the evidence concerning the incident. The conclusions of the investigation must be based on thorough, objective and impartial analysis of all the relevant elements, including the establishment of 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. State authorities are also obliged to investigate the existence of a possible link between racist attitudes and an act of violence. The relevance of gender-related issues should also be investigated.

20. For an investigation to be effective, the persons responsible for, and who are carrying out, the investigation must be independent and impartial, in law and in practice. Any person or institution implicated in any way with a case must be excluded from any role in investigating it. Moreover, 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. Investigations must be effective in order to maintain public confidence in the authorities' maintenance of the rule of law, to prevent any appearance of collusion in or tolerance of unlawful acts and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. Investigations should also be subject to public oversight, and in all cases the victim's next of kin must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests.

21. Member States have an obligation to take all necessary steps to bring the perpetrators of crimes against journalists and other media actors to justice, whether they are State actors or not. Investigations and prosecutions should consider all of the different – actual and potential – roles in these crimes, such as authors, instigators, perpetrators and accomplices, and the criminal liability that arises from each of those roles.

22. Member States are obliged to ensure the integrity of court proceedings; they must guarantee the independence and impartiality of the judiciary. They must also ensure the safety of judges, prosecutors, lawyers and witnesses involved in prosecutions for crimes against journalists and other media actors.

Impunity

24. When prosecutions for crimes against journalists and other media actors are not initiated or are obstructed in different ways, unacceptable delays to the administration of justice are created and give rise to impunity for those responsible for the crimes. Therefore, when a State agent has been charged with crimes involving ill-treatment, it is of the utmost importance that criminal proceedings and sentencing are not time-barred. In order to maintain public trust in the justice system, measures such as the granting of an amnesty or pardon should not be envisaged or accepted without convincing reasons. The law should provide for additional or aggravated penalties to be applicable to public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for crimes against journalists or other media actors on account of their work or contribution to public debate.

25. When investigations and prosecutions do not result in bringing to justice the perpetrators of killings of journalists or other media actors, or other serious crimes against them, 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. The latter may have special authority and involve participation or leadership by respected media and/or civil society figures, with the aim of advancing the process of fact-finding, without prejudice to the responsibility of the State prosecuting and investigating authorities to bring the perpetrators to justice.

A. INDICATORS

Specific risks	Measures to avert/remedy risks
<p>Persons involved in killings of, attacks on and ill-treatment of journalists and other media actors are not brought to justice, leading to a culture of impunity.</p>	<ul style="list-style-type: none"> ▶ Investigations are effective (capable of leading to the establishment of the facts, the identification and, if appropriate, punishment of those responsible) and respect the essential requirements of: <ul style="list-style-type: none"> – adequacy; – independence; – thoroughness; – promptness; – openness to public scrutiny/accessibility to the victims or their families. ▶ Practical/operational requirements to stem impunity are put in place: <ul style="list-style-type: none"> – specialised investigation units with expertise in international human rights are established; – independence and impartiality of the judiciary is ensured; – the safety of judges, prosecutors, lawyers and witnesses is safeguarded; – legislation is reviewed with a view to introduce aggravated penalties, removal of limitation periods for the prosecution of and limiting amnesties and pardons for crimes involving ill-treatment by state agents, crimes against freedom of expression and for obstruction of justice. ▶ Where investigations and prosecutions do not result in bringing to justice the perpetrators, special judicial or non-judicial inquiries / inquiries by independent specialised bodies are carried out.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Statistics on impunity

Since the adoption of the UN Plan of Action, impunity rates in journalists' killings across the world have hovered around 90%,⁹⁶ the same rate applies to OSCE countries.⁹⁷ In Council of Europe member States, impunity also remains extremely

96. Report on the Multi-Stakeholder Consultation on Strengthening the Implementation of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, 16 August 2017, page 16.

97. OSCE "Safety of Journalists Guidebook", William Horsley, 2012, page 19.

preoccupying. The recent annual report of the partners to the Platform⁹⁸ has highlighted that in 2018 26 impunity alerts were published on the Platform, including 17 individual cases of impunity for murders of journalists. In addition, a separate impunity alert on Serbia, published in August 2018, identified 14 more cases of killings, kidnappings and disappearances of Serbian and Albanian journalists between 1988 and 2005 that remain unresolved. The report also highlights the alarming lack of substantial progress in identifying and bringing to justice the instigators or masterminds of recent murders and suspected murders of journalists in the Council of Europe area.⁹⁹

The persistence of intimidation, threats and violence against journalists and other media actors, coupled with the failure to bring to justice the perpetrators of such offences have a chilling effect on freedom of expression and on public debate. States must combat impunity to ensure justice for the victims, deter the commission of future human rights violations and, more generally, in order to uphold public trust in the justice system.

Obligation to carry out an effective investigation

Council of Europe member States have a procedural obligation to carry out an effective investigation where there are allegations of breach of the Convention rights. Such obligation exists, in particular, under Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) and Article 10 (right to freedom of expression) of the Convention.

Under Article 2, the state must guarantee the safety and physical integrity of everyone within its jurisdiction. This entails not only the negative obligation to refrain from the intentional and unlawful taking of life, but also the positive obligation to take appropriate steps to protect the lives of those within its jurisdiction. Under the procedural limb of this positive obligation, state must carry out effective, independent and prompt investigations into alleged unlawful killings, either by state or non-state actors, with a view to prosecuting the perpetrators of such crimes and bringing them to justice. The purpose of such investigation is to secure effective implementation of the domestic laws which protect the right to life and, in the cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility.

It is a well-established position of the European Court of Human Rights that failure by the State to ensure an effective investigation into the murder/attack on the

98. "Democracy at risk: threats and attacks against media freedom in Europe", 2019 Annual Report by the Partner Organisations to the Council of Europe Platform to promote the protection of journalism and safety of journalists.

99. Including those of Jamal Khashoggi in Turkey and Ján Kuciak and his fiancée Martina Kušnírová in Slovakia in 2018; of Daphne Caruana Galizia in Malta in 2017; and of Pavel Sheremet in Ukraine in 2016. The Platform's partner organisations also question thoroughness of the investigations into the murder of Viktoria Marinova (2018, Bulgaria) and the death of Maksim Borodin (2018, the Russian Federation), which the police have declared a suicide.

physical integrity of a person constitutes in itself a violation of the right to life.¹⁰⁰ The Inter-American Court of Human Rights (IACHR) follows the same approach.¹⁰¹

The procedural obligation to carry out an effective investigation may arise even where the victim has not died of the attack on his/her life and disappearance cases.¹⁰² Where investigation has led to the institution of proceedings in the national courts, this obligation will also extend to the trial stage. In *Oneriyildiz v. Turkey*¹⁰³, the Court stated that the proceedings as a whole, including the trial stage, must satisfy the requirements of the positive obligation to protect lives through the law. Hence, national courts must treat the case with appropriate seriousness, giving it careful scrutiny and imposing a deterrent sentence where appropriate.¹⁰⁴

Under Article 3, states have a procedural obligation to carry out an effective investigation into credible claims of ill-treatment and into cases where the authorities have reasonable grounds to suspect that such ill-treatment has occurred. The Court has held that in case of intimidation and violence against the media and its representatives, the state is under a positive obligation to undertake effective investigations and take protective measures also under Article 10.¹⁰⁵

The Guidelines on eradicating impunity for serious human rights violations issued by the Council of Europe Committee of Ministers set out norms and standards for, among others, effective, timely and independent investigations.¹⁰⁶

Independence of the investigation

As specified by the Court in *Najafli v Azerbaijan*,¹⁰⁷ the investigation must be independent from those implicated in the events. If there are allegations against the police, there should not be institutional or hierarchical connections between the investigators and the officer against whom a complaint has been filed and there should be practical independence.¹⁰⁸ This also means that the investigation should not rely entirely on the evidence produced by police officers allegedly implicated in the death,¹⁰⁹ nor should the investigation be led by their colleagues and those employed by the same authority.¹¹⁰ In furtherance of this aim European Committee for the Prevention of torture and inhuman or degrading treatment or punishment (CPT) has strongly encouraged the creation of an independent investigative body,

100. See, for instance, *Gongadze v. Ukraine*, no. 34056/02, 8 November 2005, § 164.

101. See, for instance, *Carvajal v. Colombia*, 13 March 2018.

102. See, for instance, *Cyprus v. Turkey* (GC), no. 25781/94, 12 May 2014, § 132.

103. See, for instance, *Oneriyildiz v. Turkey* (GC), no. 48939/99, 30 November 2004, § 95-96.

104. "Law of the European Convention on Human Rights", Harris, O'Boyle & Warbrick, 2009, page 218.

105. See *Ozgur Gundem v. Turkey*, no. 23144/93, 16 March 2000, § 42-46

106. *Guidelines and reference texts on eradicating impunity for serious human rights violations*, H/Inf(2011)7, adopted on 30 March 2011 at the 1110th meeting of the Ministers' Deputies.

107. *Najafli v Azerbaijan*, no. 2594/07, 2 October 2012, § 52.

108. See *Enukidze and Girgvliani v. Georgia*, no. 25091/07, 26 April 2011, § 243.

109. See *Ergi v. Turkey*, no. 23818/94, 28 July 1998, § 82-86.

110. See *Ramsahai v. the Netherlands* (GC), no. 52391/99, 15 May 2007.

separate from the police, for complaints suggesting criminal or disciplinary culpability of police agents where Articles 2 or 3 of the Convention are engaged.¹¹¹

Adequacy of the investigation

The investigation must be adequate in the sense that it must be capable of leading to the identification and punishment of those responsible. In addition, as concerns in particular cases involving the police, the military or other public bodies, the investigation must shed light on the cause and circumstances of the death, as to whether any use of force was justified under Article 2.¹¹² This is an obligation of means: authorities must take reasonable steps to secure all the relevant evidence concerning the incident including, among others, eyewitness testimony, forensic evidence and, where appropriate, an autopsy providing a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person(s) responsible will risk falling short of this standard.¹¹³ The investigation may be considered as inadequate where investigators fail to consider the possibility of state officials' (such as members of the security forces) implication in attacks.¹¹⁴ Furthermore, as specified in *Mazepa and others v. Russia*,¹¹⁵ in the context of contract killings, an investigation cannot be considered adequate if genuine efforts have not been made to identify the person(s) who had commissioned the killing.

Thoroughness of the investigation

The investigation should be comprehensive in scope and address all of the relevant background circumstances, including any racist, gender-based or other discriminatory motivation, any political motivation and possible link between the violence and the exercise of journalistic activities by the victim.¹¹⁶ It should also be capable of identifying any systematic failures that had led to the violation. This requires taking all reasonable steps to secure evidence, such as identifying and interviewing the alleged victims, suspects and eyewitnesses; examination of the scene of the alleged violation for material evidence and the gathering of forensic and medical evidence by competent specialists. The evidence should be assessed in a thorough, consistent and objective manner.¹¹⁷ As indicated in the [2012 Joint Declaration on](#)

111. See the CPT Standards – “Substantive” sections of the CPT’s general reports, CPT/Inf/E (2002) 1 – Rev. 2006, Chapter IX., § 38 and the [Opinion of the Council of Europe Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police](#), CommDH(2009)4, 12 March 2009, § 32.

112. See *Nachova v. Bulgaria* (GC), nos. 43577/98, 43579/98, 6 July 2005, §113.

113. *Hugh Jordan v. the UK*, no. 24746/94, 4 May 2001, § 107.

114. *Yasa v. Turkey*, no. 22495/93, 2 September 1998, § 107.

115. *Mazepa and others v. Russia*, no. 15086/07, 17 July 2018, § 75.

116. *Adali v. Turkey*, no. 38187/97, 31 March 2005.

117. [Guidelines and reference texts on eradicating impunity for serious human rights violations](#), H/Inf(2011)7, adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies, page 12.

crimes against freedom of expression,¹¹⁸ where there is some evidence that the crime at issue may be a crime against freedom of expression, the investigation should be conducted with the presumption that it so, until proven otherwise and relevant lines of inquiry related to the victim's expressive activities have been exhausted.

Promptness of the investigation

Investigations must be prompt in order to secure quality evidence. Any delay in investigating and in trying threats or violent crimes towards journalists and other media actors gives a sign that such crimes are assigned low priority. This in turn leads to a sense of impunity among perpetrators and helps perpetuate the acceptance of such violence.

The authorities must act of their own motion, once the matter has come to their attention and should not require the initiative of the next of kin to instigate an investigation. The fact that the victim does not wish to lodge an official complaint, later withdraws such complaint or decides to discontinue the proceedings does not absolve the authorities from their obligation to carry out an effective investigation.¹¹⁹

Public scrutiny over the investigation /accessibility to the victims or their families

The Recommendation CM/Rec(2016)4 highlights the importance of involving victims in the investigation process. Article 13 of the Convention imposes, without prejudice to any other remedy available under the domestic system, including the payment of compensation where appropriate, an obligation on states to carry out a thorough and effective investigation in which the complainant has effective access to the investigatory procedure.¹²⁰ The victim or the next of kin should in practice be able to receive information on the investigation, including having access to the case file, and to present evidence.¹²¹ The next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his/her legitimate interests.¹²²

Public scrutiny is required to ensure accountability and maintain public confidence in the justice system. In this connection, it may be sufficient for the investigation to be carried out in private, provided that the report is made public. In some cases,

118. [Joint declaration on crimes against freedom of expression](#) by the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, presented on 25 June 2012.

119. *Yasa v. Turkey*, no. 22495/93, 2 September 1998, § 100.

120. *Yasa v. Turkey*, no. 22495/93, 2 September 1998, § 112-115.

121. See, for instance, *Huseynova v. Azerbaijan*, no. 10653/10, 13 April 2017.

122. See, for instance, *Hugh Jordan v. the UK*, no. 24746/94, 4 May 2001, § 109 and *Adali v. Turkey*, no. 38187/97, 31 March 2005.

accountability to the public may require that the investigation be conducted in public.¹²³

Other practical/operational requirements to stem impunity

Specialised investigation units with expertise in international human rights and other prosecutorial arrangements tailored to the investigation of crimes committed against the physical/moral integrity of journalists

The establishment of specific units within the police, as well as in the prosecutor's office, with specific expertise in human rights and the safety of journalists can improve the effectiveness and impartiality of investigations. Such specialised units should be trained in line with the suggestions made in section II(B)(d) of this Implementation Guide. Conflict of interest rules must nevertheless apply also in relation to these specific units/arrangements. Should a member of that specific unit/police force be implicated in a specific case, it would need to be referred to another police body, including, whether available, an independent investigative body for complaints against the police.

An independent and impartial judiciary

Article 6 § 1 of the Convention requires a tribunal falling within its scope to be “independent” and “impartial”. The principles applicable when determining whether a tribunal can be considered “independent and impartial” apply equally to professional judges, lay judges and jurors.¹²⁴ Compliance with the requirement of independence is assessed, in particular, on the basis of statutory criteria.¹²⁵

In determining whether a body can be considered to be “independent”, the Court has had regard to the following criteria: (a) the manner of appointment of its members and (b) the duration of their term of office; (c) the existence of guarantees against outside pressures; (d) whether the body presents an appearance of independence.¹²⁶ Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways.¹²⁷

The safety of judges, prosecutors, lawyers and witnesses

In order to eradicate impunity, the judiciary and prosecutors, as well as lawyers and witnesses must be able to conduct/participate in the investigation free from fear and from political or other pressure.

While Article 6 of the Convention does not explicitly require the interests of witnesses to be taken into consideration, their life, liberty or security of person may be at stake, as with interests coming generally within the ambit of Article 8 of the Convention. States should organise their criminal proceedings so that those interests are not unjustifiably impaired. The principles of a fair trial therefore require

123. See, for instance, *Paul and Audrey Edwards v. the UK*, no. 46477/99, 14 March 2002, § 83.

124. *Holm v. Sweden*, 14191/88, 25 November 1993, § 30.

125. *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, 14 April 2015, § 221.

126. *Findlay v. the United Kingdom*, no. 22107/93, 25 February 1997, § 73.

127. *Kyprianou v. Cyprus* [GC], no. 73797/01, 15 December 2005, § 118; *Micallef v. Malta* [GC], no. 17056/06, 15 October 2009, § 93.

that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify.¹²⁸

Introduction of aggravated penalties, removal of limitation periods for the prosecution of and limiting amnesties and pardons for certain categories of crimes

In order to effectively tackle impunity, parallel legal reforms may be needed, including introduction of aggravated penalties, removal of limitation periods for the prosecution of and strictly limiting amnesties and pardons for certain categories of crimes. The Guidelines on eradicating impunity for serious human rights violations¹²⁹ clarify that states should provide a mechanism involving criminal and disciplinary measures in order to sanction behaviour and practice within state authorities which lead to impunity for serious human rights violations. The Recommendation CM/Rec(2016)4 calls for aggravated penalties in relation to public officials who, by neglect, complicity or design act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for these crimes. The Joint Declaration on crimes against freedom of expression, goes beyond this and requires that, taking into account their serious nature, crimes against freedom of expression should be recognised in criminal law, either explicitly as a separate category or as an aggravated circumstance leading to heavier penalties.¹³⁰ The UNESCO Resolution on “Condemnation of Violence Against Journalists”¹³¹ calls for removal of any statute of limitations for crimes perpetrated to prevent the exercise of freedom of expression or with the purpose of obstruction of justice.

Statistics collection and other measures needed to stem impunity

For documenting and assessing the scale and severity of the impunity problem, as well as for informing any strategies and responses to it, concrete quantitative and qualitative disaggregated data on threats, attacks or violence against journalists is essential.

In this vein, indicator 16.10.1 of the UN Sustainable Development Goal 16.10 encourages member States to collect data on the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists and associated media personnel (and other categories). The UN Human Rights Council has further recommended establishing or enhancing information-gathering and

128. *Doorson v. the Netherlands*, no. 20524/92, 26 March 1996, § 70; *Van Mechelen and Others v. the Netherlands*, nos. 21363/93, 21364/93, 21427/93, 22056/93, 23 April 1997, § 53.

129. *Guidelines and reference texts on eradicating impunity for serious human rights violations*, H/Inf(2011)7, adopted by the Committee of Ministers on 30 March 2011 at the 1110th meeting of the Ministers’ Deputies.

130. The *Joint Declaration on Crimes Against Freedom of Expression* between the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, presented on 25 June 2012.

131. UNESCO Resolution on “Condemnation of Violence Against Journalists”, no. 29/29, 1997.

monitoring mechanisms, such as databases, to permit the collecting, analysis and reporting of concrete quantitative and qualitative disaggregated data on threats, attacks or violence against journalists.¹³² This data should be disaggregated also on the basis of gender in order to assess the prevalence of gender-specific threats and attacks and, given the prevalence of gender-based attacks against female journalists online, should encompass online abuse.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

Independent and effective investigation

■ In the Netherlands, in cases involving the lethal use of force by police officers, the independence of the investigation is ensured through the specialised State Criminal Investigation Department, which carries out such investigations instead of local police. The Department must be informed immediately about the use of force and the local public prosecutor has to be informed as soon as possible. At later stages of the investigation and prosecution, if there is a strong connection between the local prosecutor and the police officers under investigation, the Chief public prosecutor may appoint a different public prosecutor. The final decision to prosecute lies with the Chief public prosecutor and not the local public prosecutor.¹³³

■ In the Czech Republic, if a claim against a police officer is brought alleging the commission of a crime, a separate entity (General Inspection of Security Forces) is responsible for its investigation.

■ As concerns independent bodies responsible for investigating criminal complaints filed against law enforcement agents:

- ▶ In the UK, the [Independent Office for Police Conduct](#) investigates complaints against police forces, the National Crime Agency, British Transport Police and Ministry of Defense Police.
- ▶ In Iceland, an independent and impartial executive committee (the Icelandic Police Monitoring Committee) receives complaints on alleged criminal conduct by police officers (as well as complaints to working methods). It investigates, in particular, cases of death or serious bodily harm in relation to police work. If the prosecutor or other government agencies or institutions receive any such complaints, they must forward them to the committee without delay.
- ▶ In Bulgaria, the Ministry of Interior has an independent body responsible for investigating corruption, abuse of power and other unlawful acts by policemen.

■ In Ukraine, a Council on the protection of journalistic activity and freedom of speech has been set up, in order to closely monitor the performance of investigations

132. See UN Human Rights Council's [Resolution on "The safety of journalists"](#), no. A/HRC/39/L.7, adopted at the 39th session, 10–28 September 2018, page 4.

133. ["Securing a favourable environment for journalists in the Netherlands"](#), Geert Lokhorst and Leon Trapman, edited by Tarlach McGonagle, 13 April 2018, pp. 70 and 73.

of offenses committed against journalists. Its composition includes law enforcement personnel and representatives of the media community.¹³⁴

■ The British Crown Prosecution service has issued “[Guidelines on prosecuting cases involving communications sent via social media](#)”. These Guidelines pay particular attention to tackling gendered online abuse, including violence against women via social media.

Other practical/operational requirements to stem impunity

Specialised investigation units with expertise in international human rights or other arrangements tailored to the investigation of crimes committed against the physical/moral integrity of journalists

■ In the Netherlands, the Dutch Association of Journalists cooperates with the national Public Prosecution Service (PPS) in connection with journalists’ formal complaints of threats and intimidation. The “Agreement of the Steering Group on aggression and violence against journalists” concluded by the prosecution service, the police and journalist organisations in the Netherlands provides that the public prosecution service and the police will actively develop policies to ensure the prioritisation of the detection of and prosecution for aggression and violence against journalists by the police and the public prosecution service, through issuing guidelines and organising trainings. The agreement also stresses the need to ensure the quality of the investigations and police reports and requires that the public prosecution service applies higher penalties in such cases.

■ In Kosovo, the Police Serious Crimes Unit has been designated as responsible for the investigation of crimes against journalists and coordinators have been appointed at courts - an initiative credited with speeding up the successful prosecution of cases that had been pending for four years.¹³⁵

■ In Colombia, the Public Prosecutor’s Office has a special sub-unit that conducts investigations into crimes committed against journalists.

■ In Ukraine, the Criminal code provides for specific offenses that criminalise different types of attacks against journalists and interference with their journalistic activity. The Office of the Prosecutor General and the national police have developed methodological guidance in relation to criminal investigations of such crimes. Furthermore, around 750 police investigators have been trained on effective prosecution of offenses against journalists and some degree of specialised expertise has been developed in every region and district.

■ In Serbia, the Public Prosecution Office issued in 2015 an instruction giving high priority to criminal offences committed against persons performing work in the area of information and requiring collection of statistics on such cases. It is also in the process of issuing a new mandatory instruction providing guidelines on how to proceed in

134. See [Assessment of Certain Provisions of the Criminal Code of Ukraine concerning offenses Against Media Professionals](#) by Darian Pavli, Council of Europe consultant, October 2017.

135. Western Balkans Regional Platform for Advocating Media Freedom and Journalists’ Safety, ‘[KOSOVO Indicators on level of media freedom and journalists’ safety 2018](#)’, Petrit Çollaku.

relation to crimes against journalists, also envisaging high priority for these cases. Serbia has also set up a Standing Working Group on Journalist Safety, which aims to ensure rapid and efficient communication between the Public Prosecutor's Office, the Ministry of Interior and journalists' associations when journalists are threatened or attacked. Contact points were established within their administrations to ensure faster reporting and resolution of such cases.

■ In Montenegro, in 2018 the Supreme prosecutor issued a mandatory instruction to all prosecutors to intensify work on cases of violence against journalists and requested monthly reports on achieved results.

■ In Mexico, the Special prosecutor for crimes against freedom of expression has the authority to direct, coordinate and supervise investigations and, where appropriate, the prosecution of crimes committed against journalists.¹³⁶ It has however convicted perpetrators in very few murder cases of journalists. Journalists and civil society have found that the office is slow to exercise its authority, partly because too much onus is given to first ascertaining whether the crime is connected to the victim's work as a journalist, rather than proceeding with an investigation and then determining whether this is the case.¹³⁷

■ In Sweden, the Action Plan on "Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threats and hatred" lists a number of actions aimed at strengthening the investigation/prosecution of crimes committed against journalists, notably:

- ▶ Offences that threaten fundamental rights and freedoms and the free formation of opinion are investigated by the Swedish police authority's democracy and hate crime units where these exist;
- ▶ When there is suspicion that crime has been committed with the intent of influencing the free formation of opinion, the Swedish police authority must pay special attention to whether such threats or harassment can lead to refraining by a journalist (or an elected representative or artist) from "operating in the public sphere";
- ▶ A web-based internal training programme is being developed for all police officers who might deal with human rights offences (including for those who register reports), in order to increase their skills and knowledge;
- ▶ The Government intends to monitor the Swedish police authority's work in this area and to require reporting on the measures taken;
- ▶ The Chief Public Prosecutor has submitted to the Government a survey and analysis of how courts assess the penal value of offences against elected representatives. The survey indicates the need for the Swedish police authority and the Swedish prosecution authority to strengthen the procedures for

136. Report of the Office of the United Nations High Commissioner for Human Rights on "The safety of journalists", A/HRC/24/23, 01/07/2013, page 8.

137. "Defending Journalism: How national mechanisms can protect Journalists and address the issue of Impunity, a comparative analysis of practices in seven countries", International Media Support, 2017, page 40.

receiving victims and registering reports, in order to speed up investigations and legal proceedings. This work is also likely to have an impact on journalists.

- ▶ The Swedish prosecution authority has been commissioned to report on the measures that have been taken to strengthen the authority's ability to intervene against threats and violations on the internet.

■ In Estonia, to deal with cases of threats and harassment on the internet, a specialised court for online harassment has been set-up and specific expertise has been provided to judges and law enforcement officials.

Special judicial or non-judicial inquiries/inquiries by independent specialised bodies

■ In Serbia, the Commission for the Investigation of murders of journalists was founded in 2013 to reopen unsolved cases of journalists killed (cases of Curuvija, Pantic, and Vujasinovic) and to raise awareness on threats and safety issues. The Commission is composed of representatives of the journalistic community, the Ministry of internal affairs and from Serbia's national security body – the Security Information Agency (BIA). It oversees mixed investigative teams of police inspectors and representatives of security services for every murder case. It also helps track/report attacks on journalists. The Commission helps collect evidence and provides other assistance to the investigation, operating at the investigation stage, but not at the trial stage. Its work has led to criminal charges being brought against four suspects in the 1999 murder of Slavko Curuvija, founder and editor of Serbia's first private daily newspaper.¹³⁸

■ In Montenegro, an independent commission has been set up involving government officials from the police and the public prosecutor, as well as representatives of media organisations. It monitors the activities of the competent authorities in the investigation of old and recent threats and violence (including murders) against journalists and their property.

■ In Ukraine, a multi-stakeholder group comprising representatives of NGOs and LEAs has been set-up by the President's Administration.

■ In the USA, when the police had failed to fully investigate the murder of a California-based journalist, a group of local journalists and editors **joined efforts and carried out their own investigation**. They uncovered and made public evidence that the police had not pursued and the killers were convicted as a result.

Aggravated penalties for public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for the crimes

■ In Ukraine, the penal code criminalises the conduct of judges who knowingly deliver unjust verdict, judgment, ruling or order by judge (or judges), including for the purpose of impeding the lawful professional activity of a journalist.

138. "Defending Journalism: How national mechanisms can protect journalists and address the issue of impunity, a comparative analysis of practices in seven countries", International Media Support, 2017, page 40.

■ The Ukrainian, Serbian, Georgian, Swedish, French and Armenian penal codes provide for specific offences in relation to the breach of freedom of expression and/or are devoted to the protection of journalists, providing for higher sanctions than in normal situations:

- ▶ The Ukrainian penal code criminalises “impeding lawful professional activity of journalists”, “threats or violence against journalist”, “intentional destruction or damage to property of a journalist”, “infringement on the life of a journalist”, “taking journalist hostage”;
- ▶ The Georgian penal code criminalises the “encroachment upon freedom of speech” and “unlawful interference with journalists’ profession”;
- ▶ The Serbian penal code criminalises “endangering the safety of a media professional or their next of kin”, “violation of freedom of speech and public appearance” and the “prevention of printing and distribution of printed material and broadcasting of programs”. Furthermore, the Serbian penal code includes provisions that treat certain crimes against journalists (such as murder) as aggravated offenses;
- ▶ The Swedish penal code criminalises “illegal coercion or illegal threat with the intent of influencing the shaping of public opinion or of encroaching on freedom of action within a political organisation or a trade or industrial association and thereby endangers freedom of speech, assembly or association”;
- ▶ The French penal code criminalises “interference with the exercise of freedom of expression in a concerted manner and with threats” and “hindrance, in a concerted manner and by means of beatings, violence, assault, destruction or degradation, to the exercise of freedom of expression”.
- ▶ The Armenian penal code also criminalises hindering journalistic work or forcing journalists to disseminate or not to disseminate information. The sanction is increased if the offence is committed by a public official abusing his/her position. If the acts are committed with violence or threats against journalists or their next of kin, it is punished with imprisonment.

Statistics collection and other measures needed to stem impunity

■ In Germany, crimes committed for political reasons are recorded by the criminal police Reporting service. Since 1 January 2016, politically motivated crimes directed against the media have recorded as a separate category.

■ In Serbia, pursuant to the instruction issued by the public prosecutor, since 1 January 2016 prosecutorial offices have been keeping statistics of criminal offenses committed against persons who perform work in the public interest in the area of information, as well as in relation to attacks on media web pages. Separate records are kept for each filed criminal charge and include data about the journalist/media actor, the criminal offense, the investigations opened and court decisions rendered.

■ In Ukraine, the Prosecutor General’s Office publishes statistical information on registered criminal offenses committed against journalists and the results of the pre-trial investigations. Verdicts, including in cases of threats, assault and murder of journalists, are published on the website of the Unified State Register of Court Decisions.

D. SUGGESTIONS FOR IMPLEMENTATION

Independent and effective investigation

■ Systematic internal inquiries into the quality of performance in the investigation of crimes committed against journalists should be undertaken, with the involvement of media representatives/other stakeholders.

■ The setting up of a specialised prosecutor office competent for prosecuting attacks against the physical integrity of journalists and other media actors may be advisable, depending on the severity of the problem. As an alternative, it may be advisable to ensure that prosecution of such crimes is led by the chief prosecutor, rather than a local prosecutor.

■ The creation of an independent investigative body for criminal or disciplinary complaints against police agents where Articles 2 or 3 of the Convention are engaged, in order to ensure the independence of investigation, should be considered.

Other practical/operational requirements to stem impunity

■ The set-up of specialised investigation units with expertise in international human rights, trained on the safety of journalists and other media actors is advisable (see suggestions for implementation concerning training for LEAs in section II(B)(d) of this Implementation Guide).

■ Specific protocols/methodological guidance should be developed in relation to criminal investigations and prosecution of crimes committed against journalists and other media actors to ensure that investigations and prosecutions into suspected attacks against journalists are conducted effectively, promptly, thoroughly, independently and impartially. These protocols should, among others:

- ▶ Stress the importance of any such investigation/prosecution properly taking into account any evidence of a link with journalists' professional activities, any link with racist attitudes and gender-specific dimensions;
- ▶ Stress that in the context of contract killings, investigation/prosecution cannot be considered adequate if genuine efforts have not been made to identify the person(s) who had commissioned the killing;
- ▶ Ensure that the authorities act of their own motion, once the matter has come to their attention and that the initiative of the next of kin to instigate an investigation is not required;
- ▶ Ensure that the victim or the next of kin are able to receive information on the investigation/prosecution and present evidence;
- ▶ Ensure that the investigative procedures are gender sensitive so that women journalists are not dissuaded from reporting offline or online attacks against them and are provided with adequate support, including psychosocial support;
- ▶ The right of journalists and other media actors not to reveal their confidential sources of information;
- ▶ Provide guidance on how to investigate threats and other criminal offenses against journalists and other media actors that take place online (including

those that are gendered), highlighting that threats and harassment online that amount to criminal offenses must be persecuted and treated like offline offenses and that threats to life and physical integrity, including rape threats, should be prioritised for prosecution.

Special judicial or non-judicial inquiries/ inquiries by independent specialised bodies

■ States should explore the possibility of establishing a specialised safety mechanism (e.g., a dedicated commission of inquiry) responsible for addressing impunity issues, either as a stand-alone entity or as a specialised section or programme within an existing body. Such mechanisms can assist law enforcement authorities responsible for investigation and prosecution, together with parliamentarians, journalists and other media actors, in order to ensure thorough and diligent investigation.

■ States should explore the possibility of entrusting NHRIs with non-judicial investigations into cases of human rights violations to facilitate fact-finding, without prejudice to the state's prosecuting and investigating authorities mandated to bring the perpetrators to justice.

Aggravated penalties for public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for the crimes

■ Consider conducting legal reforms to ensure:

- ▶ Removal of limitation periods for the prosecution of violent crimes committed against journalists and other media actors;
- ▶ That amnesties and pardons for such crimes are provided only in exceptional cases;
- ▶ Introducing aggravated penalties in relation to public officials who, by neglect, complicity or design, act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for these crimes;
- ▶ Taking into account their serious nature, recognising crimes against freedom of expression either as a separate category of crimes or as an aggravated circumstance leading to heavier penalties.

Statistics collection and other measures needed to stem impunity

■ Reliable disaggregated statistics should be recorded by state authorities on the number of complaints reported, investigations opened, prosecutions and convictions related to threats, attacks against and killings of journalists and other media actors. This data should, among others, be disaggregated according to gender, with a view to documenting the scale and severity of the problem, including the extent of impunity in order to inform strategies for responding to it.

B. REMEDIES AVAILABLE TO JOURNALISTS AND THEIR NEXT OF KIN (PARAGRAPH 23 OF THE GUIDELINES)

23. Member States must ensure that effective and appropriate remedies are available to victims and, as relevant, to their families, including legal remedies, financial compensation, medical and psychological treatment, relocation and shelter. Remedies should take due account of cultural, ethnic, religious gender-related and other aspects. An ongoing or pending criminal prosecution should not preclude victims from seeking civil remedies.

A. INDICATORS

Specific risks	Measures to avert/remedy risks
Insufficient remedies available for journalists and other media actors and or their families.	<ul style="list-style-type: none">▶ Effective and appropriate remedies are available, including:<ul style="list-style-type: none">– legal redress;– financial compensation;– medical and psychological treatment, relocation and shelter;– the victim’s next of kin can be involved in the procedure.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

Where attacks on journalists and other media actors have been committed, states should take steps to mitigate their impact, including by providing services such as free medical aid, psychological support and legal services, as well as assistance in relocating journalists and their families. States may also wish to establish/contribute to funds or other mechanisms that provide support to families of journalists who have been killed, including financial support, education grants and medical¹³⁹ and psychological treatment. The Joint Declaration on Crimes against Freedom of Expression¹⁴⁰ clarifies that if a conviction is handed down for a crime against freedom of expression, an adequate remedy should be provided to the victims, without the need for them to pursue independent legal action, including financial compensation and a range of other measures to rehabilitate the victims.

139. Report of the Office of the United Nations High Commissioner for Human Rights on “The safety of journalists”, A/HRC/24/23, 01/07/2013, para. 66.

140. The Joint Declaration on Crimes against freedom of expression between the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, presented on 25 June 2012, para. 5.

C. VALUABLE PRACTICES AND INITIATIVES WHICH PROVIDE GUIDANCE IN THIS AREA

■ Under the EU Directive 2012/29 on “Establishing minimum standards on the rights, support and protection of victims of crime”:

- ▶ member states should consider developing ‘one-stop shops’ that address victims’ multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation (see the preamble);
- ▶ Article 4 provides that from their first contact with a competent authority, victims should be informed of (a) the type of support they can obtain and from whom, including, access to medical support, any specialist support, including psychological support, and alternative accommodation; (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures; (c) how and under what conditions they can obtain protection, including protection measures; (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice; (e) how and under what conditions they can access compensation;
- ▶ Article 8 provides that victims should have access to confidential victim support services, as well as specialist support services, free of charge before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim. Such access is not dependent on the victim/family member having brought a formal complaint;
- ▶ Article 9 provides that victim support services shall as a minimum provide: (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial; (b) information about or direct referral to any relevant specialist support services in place; (c) emotional/ psychological support; (d) advice relating to financial and practical issues arising from the crime; (e) advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation. Specialist support services shall provide: (a) shelters or other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

■ In Ukraine, the law on “State support of the mass media and social protection of journalists” guarantees financial assistance by the state to the journalist and to his/her family in the case of injury or death as a result of an attack.

■ In Sweden, if an offender cannot pay damages to the victim/victim’s family and the latter do not have insurance that fully covers the damage or injury sustained, they may be entitled to receive financial compensation from the state, known as

criminal injuries compensation. Compensation for the loss of maintenance is payable to family members who, under the law, are entitled to maintenance from the deceased or are dependent on him in some other way for their support if maintenance was being paid at the time of death or if it can be assumed that maintenance would have been paid shortly after.

D. SUGGESTIONS FOR IMPLEMENTATION

■ EU Member States should transpose, if they haven't already, the EU Directive on "Establishing minimum standards 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. Non-EU states may take inspiration from this Directive.

■ Access to adequate, state-provided aid must be ensured as of the earliest stages of a criminal investigation.

■ Strengthening witness protection in cases relating to attacks on journalists (see Section III (A) of this Implementation Guide).

Appendix

Self-Assessment tool for member States on selected topics regarding the protection of journalism and safety of journalists and other media actors – under the Protection and Prosecution pillars of the Guidelines of Recommendation CM/Rec(2016)4

Question	State reply
POLITICAL COMMITMENT/STRATEGY	
Has the Government expressed (e.g. through a declaration or other document/statement) political commitment on the issue of safety of journalists and other media actors, highlighting the important role of journalists in a democratic society?	
Has the Government developed and adopted a dedicated national action plan/strategy on the safety of journalists, setting a comprehensive and effective programme of activity, with urgency-based priorities and adequate resources for their implementation?	
PROTECTION	
Early-warning, rapid response mechanisms and protection measures to ensure the safety of journalists (paragraphs 8-10 of the Recommendation)	
Are there any interim protective measures available to journalists and other media actors in case of threats of violence? If so:	
▶ What are the procedures in place to apply for such injunctive and precautionary forms of interim protection?	
▶ Are there any fees levied against the applicant?	
▶ What is the delay between the issue of the order and when it takes effect?	
▶ What legal sanctions (criminal/ other) can be imposed in case of breach of these orders?	

Question	State reply
▶ Can interim protective measures be obtained by the alleged victim regardless of whether s/he chooses to bring legal proceedings?	
▶ Are there any practical examples of interim protection orders issued to protect journalists and other media actors?	
Have hotlines, online platforms or 24-hour emergency contact points been established to ensure that journalists and other media actors have immediate access to protective measures when they are threatened? If so:	
▶ Are these run by media organisations, civil society or the State?	
▶ Do they operate round the clock?	
▶ If they are run by the State:	
– Is meaningful civil society oversight ensured?	
– Is confidentiality or anonymity of the victim ensured?	
▶ What is the annual number of calls made by journalists and other media actors?	
Have the authorities designed any coordination mechanism in order to reply swiftly to alerts on the Council of Europe Platform which concern the member State? If so, how does this coordination mechanism function?	

Question	State reply
<p>In cases in which journalists or other media actors' lives or physical integrity are at real and immediate risk, must law enforcement authorities carry out an individual risk assessment in order to identify specific protection needs of victims? Is this provided by statute? If so:</p>	
<p>▶ How does it function?</p>	
<p>In the case of a real and immediate risk to the life or physical integrity of journalists and other media actors, what type of police protection is provided? Under which provisions?</p>	
<p>▶ Is voluntary evacuation to a safe place provided and, if so, under what provisions and procedure, i.e.:</p>	
<p>– which authority issues the decision?</p>	
<p>– what is the delay between the issue of the order and when it becomes operational?</p>	
<p>– has voluntary evacuation ever been used for journalists and other media actors?</p>	
<p>▶ Do these measures have a gender sensitive perspective (taking into consideration the gender-specific dangers faced by female journalists and other female media actors)?</p>	

Question	State reply
Has any comprehensive national protection mechanism for journalists and other media actors ¹⁴¹ been set up in your State? If so, how does it function:	
▶ Who are the beneficiaries?	
▶ Is an assessment of the lethality of the risk carried out?	
▶ What kind of protection measures can it provide?	
If police protection is provided to journalists and other media actors at risk of violence, is the relevant personnel trained in human rights standards and on gender-specific violence?	
Training on the protection of journalists (paragraph 12 of the Guidelines)	
Have any protocols or training programmes been developed for state authorities, such as judges, prosecutors, law enforcement officials touching on the safety of journalists and other media actors? If so: [Please provide a separate answer for each category: judges, prosecutors, law enforcement officials]	
▶ How many such professionals have been trained per year?	

141. National protection/safety mechanisms have been set up by a few non-Council of Europe States with a capacity to provide physical protection and with the participation of both law enforcement authorities and members of civil society and the media (e.g., the Colombian and Mexican examples are provided in the Implementation Guide). These mechanisms generally serve journalists working on high risk matters such as corruption and organised crime and cover cases of attacks and attempted attacks, as well as credible threats. The mechanism should ideally, upon receipt of a threats report from journalists, carry out an assessment of the lethality of the risk, the seriousness of the situation in order to devise a security plan and provide when needed protection to journalists and other media actors. It should ensure that victims are provided with information on the different types of support services and legal measures available to them. Following any determination that an individual needs protection, the mechanism should be able to provide material measures of protection and an exit strategy providing when support to journalist should cease should also be envisaged.

Question	State reply
<ul style="list-style-type: none"> ▶ Does such training include awareness-raising on the important role played by journalists and other media actors in a democratic society? 	
<ul style="list-style-type: none"> ▶ Does the training bring attention to a potential link between violence/threats against journalists and other media actors and journalists' professional activities, to be taken into account during investigation? 	
<ul style="list-style-type: none"> ▶ Does it address the role of journalists and other media actors when covering public demonstrations, reporting from conflict zones or during the state of emergency? 	
<ul style="list-style-type: none"> ▶ Does it highlight that threats and harassment online that amount to criminal offenses must be persecuted and treated like offline offenses? 	
<ul style="list-style-type: none"> - In this case, does it explain how to investigate threats and other criminal offenses that take place online? 	
<ul style="list-style-type: none"> - Does it stress that threats to life and physical integrity, including rape threats, should be prioritised for prosecution? 	
<ul style="list-style-type: none"> ▶ Does the training provided to judges focus also on prevention of arbitrary application of restrictive legislation such as defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory? 	

Question	State reply
Discriminatory or arbitrary application of legislation or sanctions to silence journalists and other media actors (paragraph 13 of the Guidelines)	
Are there legislative and/or other measures to prevent abuse of law and legal process (i.e. frivolous, vexatious or malicious use of the judicial process) to intimidate and silence journalists and other media actors?	
▶ Are there any rules and standards in place regarding criminal and civil liability in order to prevent libel tourism?	
▶ Is there anti-SLAPP legislation in force?	
▶ Are legal aid schemes available to journalists in order to ensure that they have a reasonable opportunity to present their case?	
Has any review of defamation, anti-terrorism, national security, public order, hate speech, blasphemy and memory laws been carried out to ensure that key terms and concepts are defined with sufficient precision to avoid abuse and that these laws have freedom of expression safeguards?	
If review of defamation legislation has been carried out, has it looked at and addressed the following issues:	
▶ Are the sanctions provided under the law are proportionate?	
▶ Are prison sentences are provided for as a sanction? And if yes, is their application represent and exceptional measure only where human rights are seriously impaired?	

Question	State reply
<ul style="list-style-type: none"> ▶ Do defamation laws provide for increased protection for public figures and for heads of State/monarchs? 	
<ul style="list-style-type: none"> ▶ Does legislation contain freedom of expression safeguards, including truth/public-interest/fair comment defences? 	
<ul style="list-style-type: none"> ▶ Is a range of civil remedies (such as apologies or correction orders) available as alternatives to damages? Are fast-track or low-cost measures available? 	
<ul style="list-style-type: none"> ▶ Are extra-judicial bodies, such as press councils, encouraged to provide a proportionate response to defamation? 	
The role of journalists and other media actors covering demonstrations and other events (paragraph 14 of the Guidelines)	
<p>Are there established channels of communication between journalists' organisations, security forces and prosecutors in order to ensure understanding and good working relations? If so:</p>	
<ul style="list-style-type: none"> ▶ How regular is communication via these channels? Are dedicated meetings / exchanges organised ahead of major events such as elections, protests, sports matches? 	
<ul style="list-style-type: none"> ▶ Have focal points been designated in order to ensure smooth communication between law enforcement, the media and prosecutors? 	

Question	State reply
<p>► Are there any guidelines in place for law enforcement officials, setting out the rights of members of the media in situations of potential frictions (such as demonstrations) and providing rules on media identification? and,</p>	
<p>– If so, do these guidelines specify that where journalists and other media actors are not able to provide documentation showing their status, law enforcement authorities should endeavour to verify it by other means?</p>	
<p>Hostility and undermining of journalists by public authorities (paragraph 15 of the Guidelines)</p>	
<p>Do State officials publicly condemn all instances of threats and violence against journalists and other media actors, and if so, what examples can be given thereof?</p>	
<p>PROSECUTION AND IMPUNITY</p>	
<p>Requirements for an effective investigation and operational requirements to stem impunity (paragraphs 17-22 and 24 of the Guidelines)</p>	
<p>Have any specific arrangements been made, including the setting up of a specialised prosecutor's office, for the prosecution of attacks against the physical integrity of journalists and other media actors or other crimes against freedom of expression?</p>	
<p>Are investigations into threats/violence against journalists carried out by specialised, designated units of law enforcement authorities established for this purpose? If so, have they been trained in international human rights norms and safeguards?</p>	

Question	State reply
<p>Have specific protocols / methodological guidance for law enforcement / prosecutors been developed in relation to criminal investigations of crimes committed against journalists to ensure that investigations into such crimes are conducted effectively, promptly, thoroughly, independently and impartially?</p>	
<p>▶ If so, what does such protocols/ methodological guidance prescribe to law enforcement and prosecutors?</p>	
<p>How does the State ensure the independence and impartiality of investigation authorities, i.e. that any official or institution implicated in any way with the case is excluded from the investigation?</p>	
<p>▶ Are there independent police complaints bodies?</p>	
<p>▶ How do they function?</p>	
<p>Does the State collect statistics on the number of:</p> <ul style="list-style-type: none"> - complaints reported, - investigations opened, - prosecutions, - and convictions <p>related to, threats, attacks against and killings of journalists and other media actors?</p>	
<p>▶ If so, is such data disaggregated also on the basis gender?</p>	
<p>Are there any examples of successful prosecutions for violence and intimidation of journalists against the full chain of actors, including instigators/ masterminds and perpetrators?</p>	

Question	State reply
Are crimes committed by State agents against journalists or other media actors involving ill-treatment time-barred?	
Does your legal system provide for aggravated penalties in relation to public officials who, by neglect, complicity or design act in a way that prevents or obstructs the investigation, prosecution or punishment of those responsible for these crimes?	
Does your legal system recognise crimes against freedom of expression either as a separate category of crimes or as an aggravated circumstance leading to heavier penalties?	
Does your legal system provide that amnesties and pardons for attacks / killings of journalists and other media actors should be applied only on an exceptional basis?	
Remedies available to journalists and next of kin (paragraph 23 of the Guidelines)	
What are the types of services/ remedies/support offered by the State to journalists and other media actors (and, where applicable, their families) who have been victims of violence, before, during and after the criminal proceedings?	
Has the State introduced measures to support and compensate families of murdered journalists? If so, are these measures ensured in the budget?	

Question	State reply
Inquiries into impunity by independent specialised bodies (paragraph 25 of the Guidelines)	
<p>Are there any non-judicial mechanisms such as parliamentary or other public inquiries, ombudspersons and or independent commissions to complement judicial remedies in cases of killings of, attacks on and ill-treatment of journalists and other media actors? If so:</p>	
<p>▶ What type of inquiries do they carry out and what kind of remedies can they issue?</p>	
<p>▶ Do they involve the participation of media and or civil society?</p>	
<p>▶ How many such inquiries have been carried out?</p>	

Violence against journalists is on the rise across Council of Europe member States – attacks are getting more severe and include, in some cases, murders and car bombs, as well as other forms of physical violence and threats. The present Implementation guide aims to provide member States with concrete responses to the question what can and should be done to protect journalists and other media actors.

It does so by providing more context to the Committee of Ministers Recommendation on the Protection of journalism and the safety of journalists and other media actors, including references to the case law of the European Court of Human Rights and to other sources. More importantly, it showcases concrete valuable practices in the area and makes suggestions for implementation of the Recommendation, with a view to removing the issue of safety and impunity from the realm of mere theory and projecting it into actionable measures. A self-assessment tool offered by the Implementation guide is intended to help member States objectively review the state of implementation of the Recommendation in their respective jurisdictions.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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