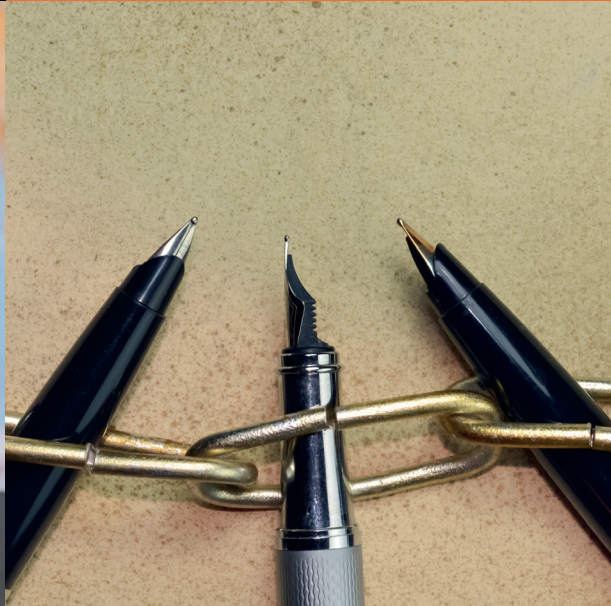




How to protect journalists and other media actors?

Extended



Council of Europe DGI(2023)05

Extended Implementation Guide
to selected topics under Prevention and
Promotion Pillars of the Guidelines of
Recommendation CM/Rec (2016)4 on
the Protection of journalism and safety
of journalists and other media actors

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Council of Europe, F-67075
Strasbourg Cedex,
E-mail: freedomofexpression@coe.int

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Contents

INTRODUCTION AND METHODOLOGY	5
ANALYSIS OF SELECTED AREAS OF THE PREVENTION PILLAR OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	7
A. Legal framework to ensure independence of the media and safeguard media pluralism (paragraph 1 of the Guidelines)	7
B. Legislative framework guarantees public access to information, privacy and data protection, confidentiality and security of communications and protection of journalistic sources and whistle-blowers (paragraph 2 of the Guidelines)	17
C. Legislative framework guarantees effective protection of all journalists and other media actors (paragraph 2 of the Guidelines)	27
D. Implementation of comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear (paragraph 2 of the Guidelines, continued)	33
E. Independent, substantive review of legislative framework (paragraphs 3-5 of the Guidelines)	39
F. Defamation laws include freedom of expression safeguards that conform to European and international human rights standards (paragraph 6 of the Guidelines)	45
G. Clear legal basis for surveillance and interception of communications data that includes safeguards against misuse and abuse (paragraph 7 of the Guidelines)	56
ANALYSIS OF SELECTED AREAS OF THE PROMOTION PILLAR OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	63
A. Raising awareness of safety issues; translation and dissemination of the Recommendation (paragraphs 28 and 29 of the Guidelines)	63
B. Partnerships with civil society (paragraph 30 of the Guidelines)	68
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 PREVENTION AND PROMOTION PILLARS OF THE GUIDELINES OF RECOMMENDATION CM/REC(2016)4	73

Introduction and Methodology

Violence, harassment and threats against journalists and other media actors violate the right to freedom of expression of journalists, lead to self-censorship, and pose serious risks to the right of society as a whole to receive information. If journalists cannot report freely on issues of public interest for fear of reprisals, there can be no informed public debate. This goes to the heart of democracy.

In 2016, in recognition of the rising number of violent attacks and threats to journalists, 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 or the Recommendation).¹ The Recommendation is based on four thematic pillars: (1) the prevention of violence and threats; (2) the protection of journalism and of journalists; (3) the prosecution of those who commit attacks against journalists; and (4) the promotion of information, education and awareness raising on issues concerning the safety of journalists.

In 2020, the Council of Europe issued an Implementation Guide to the Recommendation, focusing on the 'Protection' and 'Prosecution' pillars.² Drawing on the responses of two questionnaires that were circulated to all Council of Europe member states, the guide identifies priority areas for action and shares good practices in each.

The current Extended Implementation Guide complements the 2020 Guide by providing guidance on the implementation of the 'Prevention' and 'Promotion' pillars. The Prevention pillar requires an effective legal framework to safeguard the free exercise of freedom of expression without fear of violence, and its effective implementation. This covers a variety of issues ranging from the constitutional protection of the right to freedom of expression to a practical and effective criminal law framework to protect journalists. The Promotion pillar focuses on measures to

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1. Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors, adopted by the Committee of Ministers on 13 April 2016: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016806415d9. at the 1253rd meeting of the Ministers' Deputies)
 2. June 2020, DGI(2020)11

promote awareness of safety issues, including through media literacy and multi-stakeholder journalism safety partnerships.

The methodology for the current Guide is similar to that employed for the 2020 Guide. It draws on input from member states solicited through a detailed questionnaire, supplemented with desk research.³ For each of the thematic areas identified in the Prevention and Promotion pillars of the Recommendation, the Extended 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**, as identified in questionnaire responses;⁴
- ▶ **Makes suggestions to state authorities** on possible ways to implement the Recommendation;
- ▶ **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)

-
3. Sources are indicated throughout the report as appropriate. Where information draws on primary resources such as legislation or ministerial guidelines, this is indicated. Where information has been provided by member states in their responses to the questionnaire that has been circulated by the Secretariat of the Media and Internet Division of the Council of Europe in 2022, but without indicating further sources, this is also indicated.
 4. Valuable practices included in this Implementation guide do not purport to be complete, nor have their effects and functioning been tested or observed at first-hand by the Council of Europe Secretariat. Member states' valuable practices were communicated to the Secretariat of the Media and Internet Governance Division of the Council of Europe through a questionnaire in 2022 by member states' representatives to the Steering Committee on Media and Information Society (CDMSI).

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

A. LEGAL FRAMEWORK TO ENSURE INDEPENDENCE OF THE MEDIA AND SAFEGUARD MEDIA PLURALISM (PARAGRAPH 1 OF THE GUIDELINES)

1. Member States should, in accordance with their constitutional and legislative traditions, ensure independence of the media and safeguard media pluralism, including the independence and sustainability of public-service media and community media, which are crucial elements of a favourable environment for freedom of expression.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Right to freedom of expression not respected	Effective constitutional protection of the right to freedom of expression
Right to media freedom not respected	Legal protection of media freedom in national legislation or regulatory frameworks
Concentration of media ownership, within and across different media sectors	Legal rules that regulate media ownership, within and across different media sectors
	Legal rules concerning transparency of media ownership
Bias in media support	Legal rules/guarantees for media support measures
No independent public service media	Legal rules/guarantees for independent public service media
Lack of independent media including regional, local, minority, and not-for-profit community media	Legal rules/guarantees promoting independent media including regional, local, minority, and not-for-profit community media
Lack of information as regards state of media independence in the country	Legal requirement for periodic assessment of and reporting on the state of media independence in the country

B. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW AND OTHER RELEVANT SOURCES

The establishment of a legal framework guaranteeing media independence and promoting pluralism is crucial for media freedom. It requires a strong constitutional guarantee, comprehensive primary legislation, and implementing regulations. The European Court of Human Rights has issued judgments setting standards, and the Council of Europe's Committee of Ministers has provided guidance through declarations and recommendations.

Constitutional and legal guarantees of media freedom and editorial independence

Article 10 of the European Convention on Human Rights, which protects the right to freedom of expression, is the ultimate reference text. The European Court of Human Rights has emphasized that freedom of expression applies “not only ... [to] ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also ... those that offend, shock or disturb” and it has highlighted the “the essential role of a free press in ensuring the proper functioning of a democratic society”.⁵ The Court has furthermore emphasized the editorial freedom of media to decide on the form of their reporting,⁶ and that the media cannot be prevented from publishing on issues of public interest – and in particular, on current affairs issues – unless there is a strong public interest to the contrary.⁷

The Committee of Ministers has adopted several recommendations and declarations emphasising the importance of media freedom and editorial independence of the media. Among many others, these include Recommendation CM/Rec(2022)11 on principles for media and communication governance;⁸ Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age;⁹ Recommendation CM/Rec(2011)7 on a new notion of media;¹⁰ the 2007 Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis;¹¹ and the 2004 Declaration on freedom of political debate in the media.¹²

Media pluralism, transparency of ownership, and avoiding concentration of ownership

Media pluralism is a vital part of the right to freedom of expression and the public's right to be informed.¹³ This has been affirmed by the European Court of Human Rights in several cases. For example, in *Çetin and Others v. Turkey*, which concerned a ban on the circulation of a newspaper in a region of Turkey, the Court held that:

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5. *Pedersen and Baadsgaard v. Denmark* (GC), no. 49017/99, 17 December 2004, par. 71.
 6. *Oberschlick v. Austria (Plenary)*, no. 11662/85, 23 May 1991, par. 57.
 7. *Stoll v Switzerland* (GC), no. 69698/01, 10 December 2007, par. 131.
 8. Adopted on 6 April 2022 at the 1431st meeting of the Ministers' Deputies.
 9. Adopted on 17 March 2022 at the 1429th meeting of the Ministers' Deputies.
 10. Adopted on 21 September 2011 at the 1121st meeting of the Ministers' Deputies.
 11. Adopted on 26 September 2007 at the 1005th meeting of the Ministers' Deputies.
 12. Adopted on 12 February 2004 at the 872nd meeting of the Ministers' Deputies.
 13. Article 11(2) of the EU Charter of Fundamental Rights explicitly protects media pluralism.

"[C]itizens must be permitted to receive a variety of messages ... [W]hat sets democratic society apart is this plurality of ideas and information."¹⁴

This requires more than 'just' ensuring that there are many media outlets. The Court has emphasized that "it is not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audio-visual market. It is necessary in addition to allow effective access to the market so as to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in (...) society."¹⁵

The Court has emphasized that the State is the "ultimate guarantor" of media pluralism¹⁶ and that States have an "obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism."¹⁷ In a 2022 judgment, the Grand Chamber of the Court emphasized that States must "adapt the existing regulatory frameworks, particularly with regard to media ownership, and adopt any regulatory and financial measures called for in order to guarantee media transparency and structural pluralism as well as diversity of the content distributed."¹⁸

The Committee of Ministers has provided detailed guidance to states on how best to implement these standards. Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership¹⁹ recommends a number of measures, including by regular market monitoring, ensuring effective competition, preventing individual actors from building up disproportionate market power, and taking steps to promote quality journalism and the availability of diverse media content. The Recommendation also emphasizes the importance of public service media and minority, regional, local, and not-for-profit community media: "Such independent media give a voice to communities and individuals on topics relevant to their needs and interests, and are thus instrumental in creating public exposure for issues that may not be represented in the mainstream media and in facilitating inclusive and participatory processes of dialogue within and across communities and at regional and local levels." Transparency of ownership is key and Recommendation (2018)1 therefore also recommends several steps to in this regard, including the disclosure of ultimate beneficiary owners.

Public support measures for media, especially independent media including regional, local, minority, and not-for-profit community media

Recommendation (2018)¹²⁰ recommends positive measures to enhance the quantity and quality of media coverage of issues that are of interest and relevance to groups which are underrepresented in the media. Support measures can be

14. *Çetin and Others v. Turkey*, nos. 40153/98 and 40160/98, 13 February 2003, par. 64.

15. *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, no. 38433/09, 7 June 2012, par. 130.

16. *Informationsverein Lentia v. Austria*, no(s). 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, 24 November 1993.

17. *Centro Europa 7 S.r.l. and Di Stefano v. Italy*, no. 38433/09, 7 June 2012, par.134.

18. *NIT S.R.L. v. Moldova*, no. 28470/12, 5 April 2022, par. 186.

19. Adopted on 7 March 2018 at the 1309th meeting of the Ministers' Deputies.

20. *Ibid.*

financial, such as through advertising and subsidies, as well as non-financial. States must take great care to avoid any bias, or even the appearance of bias in allocating support, and the following principles should be followed:

- ▶ Support should be based on clear, precise, equitable, objective and transparent criteria, and be administered transparently and in a non-discriminatory manner by an independent body;
- ▶ The editorial and operational autonomy of the media should be respected;
- ▶ There should be annual reports on the use of public funds to support media.

Recommendation CM/Rec(2022)4 on promoting a favourable environment for quality journalism in the digital age²¹ recommends a number of steps that states can take to support quality journalism:

- ▶ Carry out a needs assessment;
- ▶ Provide targeted support for specific types of journalism;
- ▶ Fund the provision of local news in the public interest;
- ▶ Develop viewpoint-neutral tax policies that support media innovation;
- ▶ Allow media to operate as non-profits and benefit from appropriate tax advantages.

The Committee of Experts on Increasing Resilience of Media (MSI-RES) was established in 2021 to produce, by the end of 2023, a study on good practices for sustainable media financing.²²

Public service media

The European Court of Human Rights has held that where a public broadcaster exists, the state must guarantee that it “provides a pluralistic service ... it is indispensable for the proper functioning of democracy that it transmits impartial, independent and balanced news, information and comment and ... provides a forum [where a broad] spectrum of views and opinions can be expressed.”²³

The Court has cited Committee of Ministers Recommendation (1996)10 on the Guarantee of the Independence of Public Service Broadcasting, highlighting in particular that the legal framework for public service broadcasting organisations should protect their editorial independence and institutional autonomy; that rules governing the status and appointment of the governing boards should prevent any risk of political or other interference; and that the regulatory framework should require that news programmes fairly present facts and events and encourage the free formation of opinions.

Recommendation CM/Rec(2018)1 restates the importance of public service media in relation to media pluralism and recommends that states should “guarantee adequate conditions for public service media to continue to play this role in the multimedia landscape, including by providing them with appropriate support

21. Adopted on 17 March 2022 at the 1429th meeting of the Ministers’ Deputies.

22. See <https://www.coe.int/en/web/freedom-expression/msi-res>.

23. *Manole and others v. Moldova*, no. 13936/02, 17 December 2009.

for innovation and the development of digital strategies and new services.” The Parliamentary Assembly has called on states to protect the editorial independence and operational autonomy of public service media and ensure stable, sustainable, transparent and adequate funding.²⁴

The 2022 joint Council of Europe and the European Broadcasting Union Conference on “Public Service Media for Democracy” expressed strong concern about threats to public service media in many countries and recommended that there should be a renewed commitment to media freedom, pluralism, and independent and sustainable public service media; and that the influence of party politics on funding decisions needs to be curtailed. It recommended that existing commitments need to be implemented, in particular by:

- ▶ securing a robust and broad, platform-neutral remit ensuring that public service media can deliver quality impartial content to a wide audience, innovate, adapt to a changing media environment and drive digital transformation;
- ▶ providing stable and adequate funding which is fair, justifiable, transparent, and accountable;
- ▶ ensuring strong editorial and institutional independence;
- ▶ enabling effective governance through supervisory bodies with pluralistic composition and members who are independent and competent, and who can hold public service media to account;
- ▶ ensuring the independence of national regulatory authorities;
- ▶ ensuring the availability, findability, accessibility and prominence of PSM;
- ▶ information and other content online, including on social media.

Online resources:

- ▶ [Council of Europe Human Rights Education for Legal Professionals, Freedom of Expression](#)
- ▶ [Media Pluralism Monitor \(MPM\)](#)
- ▶ [Council of Europe website on public service media](#)
- ▶ [Digest: Council of Europe Standards on Public Service Media](#)
- ▶ [European Broadcasting Union Knowledge Hub on Public Service Media](#)

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

Constitutional and legal guarantees of media freedom and editorial independence

All European countries guarantee the right to freedom of expression, as a matter of constitutional law as well as through their ratification of the European Convention on Human Rights.

24. Parliamentary Assembly Resolution 2317 (2020), Threats to media freedom and journalists’ security in Europe, 28 January 2020.

In some countries, the constitution specifically protects media freedom and aspects thereof. For example:

- ▶ Article 5(2) of Germany's Basic Law provides that "[f]reedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship."
- ▶ The Swedish Constitution consists of four fundamental laws, including the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. These are considered the foundations of democratic society and provide detailed guarantees of media freedom;²⁵
- ▶ Belgium's Constitution provides that "[t]he press is free; censorship can never be introduced; no security can be demanded from authors, publishers or printers ... When the author is known and resident in Belgium, neither the publisher, the printer nor the distributor can be prosecuted."²⁶
- ▶ Article 14 of the Greek Constitution provides that "[t]he press is free. Censorship and all other preventive measures are prohibited. The seizure of newspapers and other publications before or after circulation is prohibited."

In France, media pluralism is an objective with constitutional value.²⁷

The Portuguese Constitution not only protects media freedom, but clarifies that this implies protection not just for media outlets but also for individual journalists. Article 38 stipulates that "[f]reedom of the press implies ... the freedom of expression and creativity on the part of journalists and other employees, as well as the freedom of journalists to participate in the decision of the editorial policy of their media, except when this is of a doctrinal or religious nature".

The editorial independence of the media and of journalists is guaranteed in the legislative frameworks of most European countries. Austrian law expressly recognizes the independence of the public broadcaster and its journalists;²⁸ the Bulgarian Radio and Television Law provides that the independence of media service providers and their activities from political and economic intervention is guaranteed;²⁹ the French Law on the Freedom of the Press of 29 July 1881 guarantees the independence of the media and journalists;³⁰ Latvia's Press Law prohibits interference with the operations of the mass media is prohibited; and Lithuanian law prohibits exerting influence on media, their owners and journalists with the objective of obtaining incorrect or biased reporting.³¹

Some European countries protect journalists from having to publish material that contradicts their values, beliefs, or convictions. For example, in Austria, journalists may refuse to collaborate on the content creation of postings or presentations that

25. See <https://www.riksdagen.se/en/documents-and-laws/docs--laws/laws/>.

26. Article 25.

27. Conseil constitutionnel decision no. 84-181 DC of October 11, 1984

28. Federal Act on the Austrian Broadcasting Corporation; see also Constitutional Court 14.03.2013, VfSlg. 19742; Supreme Administrative Court 22.05.2013, 2012/03/0144

29. Article 5

30. Loi sur la liberté de la presse du 29 juillet 1881

31. <https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/asr>

contradict their beliefs in fundamental issues or the principles of the profession of journalism; Latvia's Press Law similarly empowers journalists to refuse to prepare and publish material if it conflicts with their views; and Georgia's Law on Freedom of Speech protects the right of a journalist "to make editorial decisions based on his/her conscience".³²

Media pluralism, transparency of ownership, and avoiding concentration of ownership

In practice, achieving media pluralism takes more than the introduction of legislation. The countries that score the lowest concentration of ownership and the lowest overall risk to media pluralism in the Media Pluralism Monitor, a media monitoring study conducted annually under the aegis of the European University Institute which covers 32 countries across Europe,³³ feature a combination of legislation and additional measures.

In Germany, the only country scoring a 'low risk' to media pluralism, media pluralism falls under the competence of the federal states (Länder). These have strict regulations covering media ownership and control (within and across different media sectors); transparency of ownership; support measures; the independence of public service media; and the protection of individual journalists. They also promote independent media including regional, local, minority, and not-for-profit community media outlets. Each of the fourteen media authorities is designed as an independent regulatory authority. Broadcasters are required to report ownership information and plans affecting the shareholders' structure; online media entities need to display ownership information in the imprint information on their websites; and print media transparency obligations are stipulated in the respective state press laws. The Commission on Concentration in the Media (KEK) monitors concentration of ownership and maintains a publicly accessible database.

In Portugal, another country with a relatively good score on media pluralism, investors with more than 5% of share capital and other significant sources of finance must be made public; there is support for independent media (especially regional, local, minority, and not-for-profit community media) and public service media; journalists are protected by law against undue influence; and there is periodic review by the Regulatory Entity for Media) regarding the state of media independence in the country.³⁴

Transparency of funding and ownership is crucial, and several countries have recently introduced or strengthened legislation in this regard. In Croatia, the revised Electronic Media Act updated rules on the transparency of state advertising and media ownership, and on media concentration; Estonia amended its media law to and enhance the transparency of media ownership, including beneficial owners; and Portugal extended its already comprehensive legislative framework regulating the transparency of media ownership, requiring on-demand services and video

32. Article 3(2)(d).

33. <https://cmpf.eui.eu/mpm2022-results/>

34. Law 78/2015, of 29 of July, as currently drafted, in accordance with the Press, Television and Radio Laws; Executive Law 23/2015, of 6th February.

sharing platforms to register ownership data with the Regulatory Authority for the Media.³⁵ In the Czech Republic, there is a register of the beneficial owners of undertakings including media.³⁶

In some countries there are publicly accessible registers that detail media ownership and funding, including in some cases income from public sources (through advertising or other forms of support). For example, in Lithuania, a public Information System of Producers and Disseminators of Public Information ('VIRSIŠ') provides data on media owners and funding received by media from public bodies. A valuable academic initiative regarding this topic is the [Euromedia Ownership Monitor](#), which publishes a database with information on ownership and control of the most relevant news media in 15 EU countries.³⁷

In Denmark and Sweden, the largest media outlets in these countries are owned and run by foundations whose purpose is to ensure the viability of the media without dependence on shareholders or public funds. This has important practical implications: "Denmark has not experienced problems with political affiliated businessowners who have taken control over central media outlets and used it for direct or indirect political influence. This is due to the large public service sector and to the tradition of foundation ownership."³⁸ Academics have commented, with regard to the Swedish model, that "upholding the 4th estate is an important basis for the foundations' strategic decisions, and not profitability per se; profitability is instead seen as a means to produce journalistic content."³⁹

Public support measures for media

Several states provide support to the media, in different forms:

- ▶ In Portugal, Executive Law 23/2015 guarantees public support for regional and local news media, depending on their levels of development and readership;
- ▶ In 2021, the Luxembourg Parliament approved a support scheme for digital and emerging media, the amount of support calculated according to the number of journalists;⁴⁰
- ▶ In Denmark, public subsidies are determined by the number of journalists employed; the diversity of readership; and the amount of political and cultural content created.⁴¹

35. As reported to the EU Commission Rule of Law Report 2022.

36. Information provided in response to the questionnaire circulated by the CDMSI secretariat.

37. It also provides a media literacy workshop focused on ownership issues, aimed at secondary schoolchildren: <https://media-ownership.eu/media-literacy-resources/>.

38. Monitoring Media Pluralism in Europe, Country Report Denmark: <https://cadmus.eui.eu/bitstream/handle/1814/74686/MPM2022-Denmark-EN.pdf?sequence=1&isAllowed=y>.

39. Leona Achtenhagen, Stefan Melesko & Mart Ots, "Upholding the 4th estate – exploring the corporate governance of the media ownership form of business foundations," (2018) 20(2) International Journal of Media Management 129, p. 146, as quoted in Safety of journalists and the fighting of corruption in the EU, EU Parliament Policy Department for Citizens' Rights and Constitutional Affairs, July 2020.

40. IFJ: Luxembourg: New aid scheme with subsidies for newsrooms' journalists approved, 20 July 2021.

41. Law on Media Subsidies (Mediestøtte), Lov nr 1604, 26/12/2013.

Ensuring an absence of bias is crucial. In 2021, the Austrian government announced a reflection process given concerns about high spending on state advertising, the fairness and transparency of its allocation, and political influence in the process.⁴²

Public service media

The independence of public service media is paramount to their ability to fulfil their function. The most effective way to ensure independence is by anchoring this in legislation, allocating long-term funding, and establishing a governing structure that protects the broadcaster from political interference. The Media Pluralism Monitor ranks Germany highest in this relation because of its robust funding allocations for public service media, determined by an independent body; fair and transparent appointment procedures for the directors and management of the broadcasters with only one-third of supervisory board members being political appointees; and an absence of attempts by politicians to influence the public broadcasters.⁴³ Lithuania has a similarly robust score. The Law on Lithuanian National Radio and Television⁴⁴ (LRT) ensures that Council members' terms of office does not coincide with those of appointing institutions and bodies; members may not be members of political parties; and members cannot be dismissed before the end of their term, save on the limited grounds specified in the Law. The LRT's Director General is selected through a public competition and can be dismissed only by a two thirds' majority of the members of the Council. The LRT is financed from a fixed share of tax income.

In Sweden, where the independence of public service media is also closely guarded, the Swedish Radio and Television Act and the Freedom of Expression Act guarantee the independence of public service media from economic and political interests. Appointment procedures protect the independence of the boards and management, and there are no indications or any examples of conflicts concerning appointments or dismissals of managers and board members.⁴⁵ Swedish Parliament decides on the general remit, the organisational framework as well as the allocation of funding for the public service media companies ahead of each new licensing period, based on proposals by a committee of inquiry and a public consultation. The public service media companies are required to annually and publicly report on the fulfilment of the remit's terms and conditions; these reports are assessed by the Broadcasting Commission.⁴⁶

D. SUGGESTIONS FOR IMPLEMENTATION

Constitutional and legal guarantees of media freedom and editorial independence

- ▶ States should implement constitutional protection of the right to freedom of expression as well as of media freedom and its components, such as editorial

42. As reported to the EU Commission Rule of Law Report 2022.

43. As described in the MPM country report for Germany: <https://cmpf.eui.eu/mpm2022-results/>.

44. See <https://www.e-tar.lt/portal/lt/legalAct/TAR.1559303036A8/asr>.

45. As described in the MPM country report for Sweden: <https://cmpf.eui.eu/mpm2022-results/>.

46. As reported to the EU Rule of Law mechanism: https://commission.europa.eu/system/files/2022-07/61_1_194050_coun_chap_sweden_en_0.pdf

freedom of journalists, the right of access to information, the protection of confidential sources of information, and media pluralism.

- ▶ National laws and regulatory frameworks should similarly unequivocally guarantee media freedom and all its component parts, and indicate the detailed parameters for its effective promotion and enforcement as well as the limited circumstances in which it may be restricted.

Media pluralism, transparency of ownership, and avoiding concentration of ownership

- ▶ States should adopt legislation requiring transparency of media ownership, including with regard to the beneficial owners of media companies, and make the resulting register accessible to the public.
- ▶ States should restrict concentration of media ownership including by promoting effective competition and ensuring that no particular individual, company, or consortium of companies can acquire ownership or control of a large percentage of the media market within a sector or across different sectors.
- ▶ States should ensure a regular independent monitoring and evaluation of the state of media pluralism and independence of the media.
- ▶ States should promote the availability, findability and accessibility of the broadest possible diversity of media content.
- ▶ States should develop, in a multi-stakeholder environment, strategies and mechanisms to support professional news media and quality independent and investigative journalism.
- ▶ States should implement a comprehensive regulatory framework for media ownership.

Public support measures for media, especially independent media including regional, local, minority, and not-for-profit community media

- ▶ States should implement support measures and ensure they are based on clear, precise, equitable, and transparent criteria.
- ▶ Support measures should respect the editorial and operational autonomy of the media.
- ▶ Support measures should be administered in a non-discriminatory and transparent manner by an independent body.
- ▶ There should be annual reports on the use of public funds to support media.
- ▶ States should carry out a needs assessment of the financial sustainability of quality journalism.
- ▶ States should provide targeted support for specific types of journalism.
- ▶ States should support the provision of local news in the public interest, and implement other measures to ensure that community and independent media have sufficient resources.
- ▶ States should develop viewpoint-neutral tax policies to support media innovation.

- ▶ States should allow for the operation of media outlets as non-profits and allow appropriate tax benefits.
- ▶ States should support the innovation and the development of digital strategies and new services.

Public service media

- ▶ States should protect the editorial independence and operational autonomy of public service media, including by limiting the influence of the state and ensuring that supervisory and management boards are independent.
- ▶ States should ensure stable, long-term, sustainable, transparent and adequate funding for public service media.

B. LEGISLATIVE FRAMEWORK GUARANTEES PUBLIC ACCESS TO INFORMATION, PRIVACY AND DATA PROTECTION, CONFIDENTIALITY AND SECURITY OF COMMUNICATIONS AND PROTECTION OF JOURNALISTIC SOURCES AND WHISTLE-BLOWERS (PARAGRAPH 2 OF THE GUIDELINES)

2. Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear. Such a framework should reflect the principles set out in this appendix and thereby guarantee public access to information, privacy and data protection, confidentiality and security of communications and protection of journalistic sources and whistle-blowers.

A. INDICATORS

Risks	Measures to avert/remedy the risks
No or insufficient public access to information for journalists and other media workers.	National legislative framework sufficiently guarantees public access to information for journalists and other media workers
No or ineffective protection of personal privacy and personal data protection for journalists and other media workers	National legislative framework effectively protects personal privacy and personal data protection for journalists and other media workers
No or ineffective protection of confidentiality and security of communications of journalists and other media workers	National legislative framework effectively protects confidentiality and security of communications of journalists and other media workers
No or ineffective protection of confidentiality of journalistic sources of information	National legislative framework effectively protects confidentiality of journalistic sources of information
No or ineffective protection of whistle-blowers	National legislative framework effectively protects whistle-blowers

B. EUROPEAN COURT OF HUMAN RIGHTS CASELAW AND OTHER RELEVANT SOURCES

Public access to information

The European Court of Human Rights has held that under the European Convention on Human Rights, a right of access to information arises when disclosure has been ordered by a court, but the court order has not been complied with; or when access to information is essential for the exercise of a Convention right. In its 2016 Grand Chamber judgment in *Magyar Helsinki Bizottság v. Hungary*, the Court held that for Article 10 to apply the purpose of the request must be in relation to the requestors' journalistic work; the information sought must meet a public interest test; and the person seeking access to information must do so with a view to informing the public.⁴⁷

The right of access to official documents is also guaranteed as a 'standalone' right through the Council of Europe Convention on Access to Official Documents (referred to as the Tromsø Convention).⁴⁸ This is the first binding international legal instrument to recognise a general right of access to official documents held by public authorities, subject to a narrow set of limitations to protect certain interests such as national security, defence or privacy.

In addition to the Tromsø Convention and the Court's case law, there is significant guidance from the Council of Europe on the right of access to information. Recommendation CM/Rec(2002)2 on Access to Official Documents provides that "[m]ember states should guarantee the right of everyone to have access, on request, to official documents held by public authorities ... Member states may limit the right of access to official documents [but] [l]imitations should be set down precisely in law, be necessary in a democratic society and be proportionate to [a legitimate aim]."⁴⁹

The European Court of Human Rights has also held that a journalist may not be convicted merely for possessing or publishing information in breach of official secrets legislation. In *Dammann v. Switzerland*,⁵⁰ the Court held that the criminal conviction of a journalist to whom confidential information had been 'leaked' was a violation of the right to freedom of expression.

Protection of journalistic sources

The European Court of Human Rights has held that "[p]rotection of journalistic sources is one of the basic conditions for press freedom. ... Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. 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 be adversely affected."⁵¹ The Court has explained that this is because

47. no. 18030/11, 8 November 2016.

48. CETS No. 205.

49. Adopted by the Committee of Ministers on 21 February 2002 at the 784th meeting of the Ministers' Deputies.

50. no 77551/01, 25 July 2006.

51. *Goodwin v. UK*, no. 17488/90, 27 March 1996.

“[o]rders to disclose sources potentially have a detrimental impact, not only on the source, whose identity may be revealed, but also on the newspaper ... and on members of the public, who have an interest in receiving information imparted through anonymous sources.”⁵²

Searches are a particular threat to journalistic sources, described by the Court as “a more drastic measure than an order to divulge a source’s identity, since investigators who raid a journalist’s workplace have access to all the documentation held by the journalist.”⁵³

While the right of a journalist to protect their sources is not an absolute right, it may be limited only when “justified by an overriding requirement in the public interest” and with “legal procedural safeguards ... [f]irst and foremost ... review by a judge or other independent and impartial decision-making body.”⁵⁴ The European Court of Human Rights has held furthermore that “the decision to be taken should be governed by clear criteria, including whether a less intrusive measure can suffice to serve the overriding public interests established. It should be open to the judge or other authority to refuse to make a disclosure order or to make a limited or qualified order so as to protect sources from being revealed.”⁵⁵

Committee of Ministers Recommendation CM/Rec(2000)7 on the right of journalists not to disclose their sources of information provides that “[t]he disclosure of information identifying a source should not be deemed necessary unless it can be convincingly established that (i) reasonable alternative measures to the disclosure do not exist or have been exhausted by the persons or public authorities that seek the disclosure, and (ii) the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure”. The Recommendation emphasizes that journalists should never be forced to disclose their confidential sources in defamation proceedings.

Whistle-blowers

The Court has held that, under certain conditions, employees may disclose such information even if they thereby breach an obligation of confidence to their employers, and that they should not be dismissed or suffer other reprisals as a result.⁵⁶ The following principles can be discerned from the Court’s case law on the protection of whistle-blowers, as set out in the key cases of *Bucur and Toma v. Romania*,⁵⁷ *Guja v. Moldova*,⁵⁸ and *Halet v. Luxembourg*:⁵⁹

(1) Disclosure should be made, insofar as possible, to the person’s superior or other competent authority or body. It is only where this is clearly impracticable or likely to be ineffective that the information could be disclosed to the public, including via the media.

52. *Big Brother Watch and others v. UK*, nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, par. 443.

53. *Big Brother Watch and others v. UK*, nos. 58170/13, 62322/14 and 24960/15, 25 May 2021.

54. *Big Brother Watch and others v. UK*, nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, par. 444.

55. *Big Brother Watch and others v. UK*, nos. 58170/13, 62322/14 and 24960/15, 25 May 2021, par. 445.

56. *Guja v. Moldova* (GC), no. 14277/04, 12 February 2008.

57. 40238/02, 8 January 2013.

58. no. 14277/04, 12 February 2008.

59. no. 21884/18, 14 February 2023.

(2) Whistle-blowers should take steps to verify, insofar as is possible, that the information they seek to disclose is authentic before making it public.

(3) The motive behind the actions of a whistle-blower is an important factor; disclosure should not be motivated by personal gain, personal grievances or some other ulterior motive.

(4) There should be a public interest in the disclosed information. This extends to information concerning practices or conduct which, although legal, are reprehensible, as well as information relating to the functioning of public authorities in a democratic society.

(5) The detriment caused to the employer should be weighed against the public interest.

(6) If a whistle-blower releases information outside of these 'protected' circumstances, any sanction that is imposed should not be disproportionate.

Committee of Ministers Recommendation CM/Rec(2014)7 on the protection of whistleblowers⁶⁰ emphasizes that "disclosures to the public, for example to a journalist" can be appropriate where there are no safe alternative routes for reporting such concerns or when the wrongdoing is ongoing or covered up. This can be "essential for accountability and transparency in a democracy".⁶¹

Privacy and data protection

Article 8 of the European Convention on Human Rights protects the right to respect for private life. Privacy and the right to freedom of expression have a complicated relationship. On the one hand, privacy is a necessary precondition for the exercise of freedom of expression: for example, journalists need to be able to protect their confidential sources of information. On the other hand, the exercise of the right to freedom of expression can impact on the right to privacy, for example when the media publish private photographs or other information.

When privacy and freedom of expression clash the Court applies a set of criteria:⁶²

(1) Whether the publication contributed to a debate on a matter of general interest;

(2) Whether the person concerned was a public figure;

(3) Whether the person concerned courted publicity or the issue has already been reported on;

(4) How the information was obtained, and its veracity;

(5) The content, form and consequences of the publication; and

(6) in cases where a sanction has been imposed the severity of that sanction.

The right to protection of one's personal data is an important aspect of the right to respect for private life under Article 8 of the Convention. It is also protected under

60. Adopted on 30 April 2014.

61. *Ibid.*

62. As crystallised in *Axel Springer AG v. Germany*, no. 39954/08, 7 February 2012.

the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (the Data Protection Convention), which has been ratified by all Council of Europe member states. 'Personal data' is "any information relating to an identified or identifiable individual": for example one's name, IP address, or CCTV footage.⁶³

Key to all data protection law are the so-called 'data protection principles', as set out in Articles 4-11 of the Data Protection Convention:

- (1) Lawfulness, fairness, and transparency of processing
- (2) Data should only be processed for a clear and specific purpose, or clearly connected purposes;
- (3) Processing must be limited to that which is necessary to achieve the purpose;
- (4) Inaccurate data should be deleted or updated;
- (5) Data should be deleted when it is no longer required for its purpose;
- (6) Data be processed in a way that ensures security;
- (7) Those who hold, process and control personal data should demonstrate compliance with data protection principles.

There is an important exception to the data protection principles for journalists. In the case of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, the European Court of Human Rights held that this exception "is intended to allow journalists to access, collect and process data in order to ensure that they are able to perform their journalistic activities".⁶⁴ However, it does not mean that journalists are at liberty to publish personal data; this is still subject to a public interest test.⁶⁵

Confidentiality and security of communications

The right of journalists to have the confidentiality of their communications protected is an important component of their right to respect for private life (which has been interpreted to apply to a journalist's workplace) as well as their right to freedom of expression. In the case of *Big Brother Watch and Others v. the United Kingdom*,⁶⁶ the Grand Chamber of the Court distinguished between two scenarios: (1) where the surveillance of journalists' communications is aimed at or likely to uncover confidential sources of information; and (2) where the interception of communications is not aimed at or highly likely to result in the interception of confidential sources of information, but there is nevertheless a risk that this might happen because of the nature of a journalist's work. In the first scenario, the Court held that the same principles that underly the protection of sources should apply.⁶⁷ In the second scenario, the Court has noted the power of modern surveillance technologies and required that safeguards be in place, including oversight by a judge or other independent body.⁶⁸

63. Article 2 Convention 108; *Amann v. Switzerland*, no. 27798/95, 16 February 2000.

64. no. 931/13, 27 June 2017, par. 175.

65. *Ibid.* paras. 167-196. See also Article 85 of the General Data Protection Regulation.

66. *Big Brother Watch and others v. UK*, nos. 58170/13, 62322/14 and 24960/15, 25 May 2021.

67. *Big Brother Watch and others v. UK*, par. 448.

68. *Big Brother Watch and others v. UK*, par. 450.

Committee of Ministers Recommendation CM/Rec(2000) 7 on the right of journalists not to disclose their sources of information states that interception, surveillance, and search and seizure should not be ordered when their purpose is to circumvent the right of journalists not to disclose information identifying a source.

Handbooks and resources:

- ▶ [Council of Europe Website on Access to Official Documents](#)
- ▶ [Handbook on European data protection law](#), EU Fundamental Rights Agency
- ▶ [Handbook on Protection of Whistleblowers](#), Council of Europe
- ▶ [Factsheet on Protection of journalistic sources](#), European Court of Human Rights
- ▶ [Council of Europe recommendations, declarations, resolutions on data protection](#)
- ▶ [Data Protection Convention \(Convention 108\) Committee opinions](#)

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

Public access to information

Access to information is guaranteed in nearly all European countries, including constitutionally.⁶⁹ However, a constitutional guarantee on its own is not sufficient; implementing legislation is required to specify the extent of the limitations on access, the procedure by which access can be obtained, the fees to be charged (if any), possibilities to appeal any denial of access, and the establishment of an independent body to supervise the implementation of legislation. The earliest laws in the world were adopted in Sweden and in Finland, and since the late 1990s and 2000s there has been strong recognition of the importance of the right of access to information with many countries adopting new laws or strengthening existing ones.

The NGOs, Access Info and the Centre for Law and Democracy, have developed a Right to Information (RTI) Rating instrument which measures the strength of the legal framework for the right to access information held by public authorities based on 61 discrete indicators. Each of these considers a particular feature of a strong legal regime for access to information, divided into seven main categories: right of access, scope, requesting procedure, exceptions and refusals, appeals, sanctions and protections, and promotional measures.⁷⁰ Endorsed by intergovernmental organisations including UNESCO, the RTI Ratings tool scores the Finnish and Swedish access to information laws highly, as well as the access to information laws in Slovenia, Croatia, Serbia, and Albania.

But not all countries that have strong legislation on paper have been able to translate this into effective practice on the ground. A 2022 report by the OECD identified the UK as setting good practice in this regard, with effective internal, external,

69. For example, see Article 23 of the Albanian Constitution; Article 32 of the Belgian Constitution; Article 38 of the Croatian Constitution; Article 5A of the Greek Constitution; Article 267 of the Portuguese Constitution.

70. <https://www.rti-rating.org/>

and judicial appeals processes in place.⁷¹ The report also identifies good practices concerning oversight in Denmark, where the Parliamentary Ombudsman has a mandate for maladministration with a specific focus on access to information, and Finland, where the Parliamentary Ombudsman and the Chancellor of Justice both have wide-ranging powers.⁷² In 2021, the Swedish government established an independent inquiry to investigate whether the country's access to information laws and mechanisms were functioning, especially in light of the Covid 19 pandemic. The inquiry identified some examples of direct and indirect restrictions, but was overall positive and concluded that the system continued to work well.⁷³

Lithuania's Law on the Provision of Information to the Public provides for speedy fulfilment of access to information requests made by journalists.⁷⁴

Privacy and data protection

Because of the influence of European Union data protection law, which has been recently updated and which sets high standards for the protection of personal data, there is a relatively strong and uniform protection of data protection principles across European countries.⁷⁵ This includes protection for journalism. The Court of Justice of the European Union has defined "journalistic activities" broadly, as including "disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them." This includes video journalism as well as material produced by bloggers and citizen journalists, not just 'professional' journalists.⁷⁶

Valuable country practices include the following:

- ▶ The Swedish Data Protection Act states explicitly that "[n]either the GDPR nor this Act shall ... infringe upon the Freedom of the Press Act or the Freedom of Expression Act";
- ▶ The journalistic exemption provided under the Dutch General Data Protection Regulation Implementation Act has been successfully relied on in several cases;⁷⁷
- ▶ In Bulgaria, the Commission for Personal Data Protection has issued several rulings emphasizing the important role that media play in a democratic society and that freedom to disseminate information is essential to democracy.⁷⁸

Protection of journalistic sources

In some European countries, the protection of sources is a constitutional principle.⁷⁹ This includes the Swedish Freedom of the Press Act, which has constitutional status and stipulates that anyone who is a journalistic source has a fundamental

71. OECD, *The Protection and Promotion of Civic Space*, p. 133.

72. OECD, *The Protection and Promotion of Civic Space*, p. 136.

73. Swedish Government (2022), *The principle of openness under COVID-19-pandemic*.

74. Article 6.

75. Regulation (EU) 2016/679 (usually referred to as General Data Protection Regulation, GDPR for short).

76. See for example *Tietosuoja-valtuutettu v. Satakunnan Markkinapörssi Oy, Satamedia Oy*, Case C-73/07; *Sergejs Buivids intervenser: Datu valsts inspekcija*, Case C-345/17.

77. As reported in the Chronicle GDPR case law May 2018 – May 2020 in the Netherlands, 24 September 2020.

78. As reported to the Secretariat of the Media and Internet Governance Division.

79. See, for example, Article 16 of the Macedonian Constitution; Article 38 of the Portuguese Constitution.

right to anonymity; this may be restricted only in limited circumstances such as a breach of national security.⁸⁰

In other countries, the protection of sources is legislated at the level of non-constitutional legislation. Some protect journalists' confidential sources of information as an absolute privilege. For example, in Georgia, the Law on Freedom of Speech and Expression provides that "[t]he source of a professional secret shall enjoy absolute protection and no one shall be entitled to demand its disclosure. No person shall be required to disclose the source of confidential information during court proceedings on the restriction of the right to freedom of speech and expression."⁸¹

In other countries the privilege may be overridden when there is a sufficiently weighty public interest justifying it. This is the case in Belgium, where the Act on Protection of Sources provides that journalists and editorial staff can only be forced by a judge to disclose information sources if these are of a nature to prevent crimes that pose a serious threat to the physical integrity of one or more persons, and if (1) the information is of crucial importance for preventing such crimes; and (2) the information cannot be obtained by any other means. The same conditions apply to investigative measures (searches, seizures, telephone tapping, etc.) taken with respect to journalistic sources.⁸²

Other valuable practices include Lithuania, Moldova, and Romania, where journalists may be compelled to reveal the identity of their sources only by court order, when necessary for vitally important or otherwise significant public interests, and when other means to obtain information are unavailable or have already been exhausted.⁸³

In some countries, journalists are protected from being compelled to appear as witnesses in criminal proceedings.⁸⁴ In other countries the privilege against being called to testify is protected unless there is an overriding public interest.⁸⁵

Confidentiality and security of communications

In some countries, the confidentiality and security of communications is constitutionally protected.⁸⁶ In a number of countries, violating the confidentiality and security of communications is a criminal offence. For example, Section 144 of Latvia's Criminal Law provides imprisonment or a fine for "intentionally violat[ing] the confidentiality of personal correspondence, ... unlawful interception of publicly unavailable data transmissions or signals in telecommunications networks, as well as unlawful

80. §4. This principle of anonymity was first recognized in the original 1766 freedom of the press law and has existed in Swedish law since. See also The Fundamental Law on Freedom of Expression.

81. Law of Georgia on Freedom of Speech and Expression, Article 11(1)

82. Act of 7 April 2005 on the Protection of Journalistic Sources

83. Lithuania Law on the Provision of Information to the Public, Article 8; Moldovan Law on freedom of expression and the law on the press, Article 13; Romanian Audiovisual Law No. 504/2002, Article 7.

84. For example, under the criminal procedure codes of Bosnia and Herzegovina, Georgia, Poland, Ukraine.

85. For example, under the Moldovan Code of Criminal Procedure and the German Code of Criminal Procedure; see also Article 102 of the German Fiscal Code.

86. For example, Article 19 of the Greek Constitution provides for the confidentiality of letters and communications.

acquisition of publicly unavailable electromagnetic data from a telecommunications network". Ukraine amended its Criminal Code in 2016 to provide for an enhanced penalty of three to seven years imprisonment for intercepting phone, mail, email or other communications of "statesmen, public figures or journalists".⁸⁷

The criminal procedure codes of all European countries allow for a court or a judge to order the interception of communications. The codes of some countries specifically require that this should not be used to circumvent the right of journalists to protect their sources. For example, the French Code of Criminal Procedure provides that "correspondence with a journalist allowing the identification of a source ... may not be transcribed."⁸⁸

Whistle-blowers

The introduction of the European Union's Whistle-blower Directive has resulted in the strengthening of whistle-blower protection in EU countries.⁸⁹ This Directive, although it provides protection only for the protection of persons reporting breaches of EU, establishes valuable standards:

- ▶ protection applies to workers (including civil servants), persons having self-employed status, shareholders and persons belonging to the administrative, management or supervisory body of an undertaking including non-executive members, volunteers and paid or unpaid trainees, and any persons working under the supervision and direction of contractors, subcontractors and suppliers, including where they report or publicly disclose information on breaches acquired in a work-based relationship which has since ended or where the employment relationship is yet to begin;
- ▶ protection is granted provided that the whistle-blower had reasonable grounds to believe that the information on breaches reported was true at the time of reporting;
- ▶ public disclosures may be made when the issue reported on constitutes an imminent or manifest danger to the public interest, when there is a risk of retaliation, or there is a low prospect of the breach being effectively addressed;
- ▶ a long list of prohibited retaliatory measures is provided, including suspension, lay-off, dismissal or equivalent measures; demotion or withholding of promotion; transfer of duties; reduction in wages; negative performance assessment; or any other negative consequence;
- ▶ practical support must be provided to whistle-blowers including information and advice, legal aid, financial assistance, and support measures including psychological support;
- ▶ there should be effective penalties for those who hinder whistle-blowing.

87. Ukraine Criminal Code, Article 163.

88. Code de procédure pénale, Articles 100, 100-5.

89. Directive (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law, 26 November 2019, Official Journal of the European Union L 305/17.

Many countries specify that whistle-blowing is allowed not only in response to unlawful conduct, but also conduct that is reprehensible and against the public interest – including threats to health and safety, or environmental threats.⁹⁰

D. SUGGESTIONS FOR IMPLEMENTATION

Public access to information

- ▶ The right of everyone to have access, on request, to official documents held by public authorities should be guaranteed, limited only in accordance with law and as necessary in a democratic society to protect a legitimate aim.
- ▶ Access to a document may be refused if the disclosure would or would likely harm a legitimate aim, unless there is an overriding public interest in disclosure.
- ▶ Access to information requests should be processed, and access be granted, in a timely manner.
- ▶ There should be an effective appeals mechanism for denials of access.
- ▶ There should be effective mechanisms for oversight and enforcement, such as through an ombudsman or a commissioner whose decisions should be enforceable in law.
- ▶ Journalists should not be held liable for the publication of information on issues of public interest that has been 'leaked' to them.

Protection of journalistic sources

- ▶ The right of journalists not to disclose information identifying a source should be guaranteed, either as an absolute privilege or as a qualified privilege limited only in accordance with law and as necessary in a democratic society for the prevention or investigation of cases involving national security, serious crime, or serious bodily harm.
- ▶ Disclosure may be ordered only by a judge or another independent body only if the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, and reasonable alternative measures to the disclosure do not exist or have been exhausted.
- ▶ Journalists should not be forced to disclose their confidential sources in defamation cases.

Whistle-blowers

- ▶ States should ensure that whistle-blowers enjoy protection of the law against reprisals for disclosures made in the public interest, provided they have reasonable grounds to believe that the information concerned is true and disclosure is in the public interest.
- ▶ States should ensure that whistle-blowing to the media is allowed when internal reporting is unreliable or ineffective and there is a low prospect of the breach or alleged wrong-doing being effectively addressed.
- ▶ Legal aid and other practical support measures should be available to whistle-blowers

90. For example, the Icelandic Act on Protecting Whistle-blowers; UK Public Interest Disclosure Act 1998.

Privacy, data protection, and the confidentiality and secrecy of communications

- ▶ Data protection law should provide an effective exemption for journalistic activities.
- ▶ Any national law restrictions on freedom of expression for the protection of privacy should incorporate the standards set by the European Court of Human Rights, and in particular allow for the publication of information on issues of public interest?
- ▶ The privacy and data protection rights of journalists should be protected.
- ▶ Surveillance of a journalist’s communications that risks compromising confidential sources of information must be authorised by a judge or other independent body vested with the power to determine whether surveillance is justified by an overriding requirement in the public interest and whether a less intrusive measure might suffice to serve the public interest.

C. LEGISLATIVE FRAMEWORK GUARANTEES EFFECTIVE PROTECTION OF ALL JOURNALISTS AND OTHER MEDIA ACTORS (PARAGRAPH 2 OF THE GUIDELINES)

2. Member States should put in place a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear.

(...)

The legislative framework and its implementation should guarantee effective protection of female journalists and other female media actors from gender-related dangers in the course of their work. Due attention should be paid to the importance of adequate labour and employment laws to protect journalists and other media actors from arbitrary dismissal or reprisals, and from precarious working conditions that may expose them to undue pressures to depart from accepted journalistic ethics and standards.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Lack or insufficient protection of the physical and moral integrity of journalists and other media actors, male and female, online and offline	Legislative framework, including criminal law provisions, that effectively protects the physical and moral integrity of all journalists and other media actors, including against online abuse and attacks
Female journalists and other media actors are not protected against gender-related dangers in the course of their work.	Analysis of gender-related threats and risks faced by female journalists and other media actors in the course of their work and implementation of corresponding protective provisions.

Risks	Measures to avert/remedy the risks
Journalists are vulnerable to threats or undue pressures that that may cause them to depart from accepted journalistic ethics.	Employment laws effectively protect journalists and other media actors from arbitrary dismissal or reprisals.
	Employment laws effectively protect the working conditions of journalists and other media actors, including those who work freelance or are in other forms of precarious work, such as those who are in pseudo self-employment or are employed on a stand-by, temporary, agency, casual, part-time basis.

B. EUROPEAN COURT OF HUMAN RIGHTS CASELAW AND OTHER RELEVANT SOURCES

The European Court of Human Rights has held that Article 2 of the Convention, which protects the right to life, requires states “to take appropriate steps to safeguard the lives of those within its jurisdiction” and imposes “a primary duty on the State to [put] in place effective criminal-law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.”⁹¹ Under Article 10 of the Convention, states must create “a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even irritating or shocking to the latter.”⁹²

The Committee of Ministers has emphasized the duty of states to establish an effective criminal law framework in several recommendations and resolutions, focussing on the need for an effective *implementation* of that framework. The Committee of Ministers has also emphasized that a criminal law framework is not sufficient; threats can also stem from inadequate employment laws and precarious working conditions. In June 2021, the Committee of Ministers adopted a Resolution on the Safety of Journalists in which states commit to, amongst others, “adequately enforce applicable employment laws to better protect journalists and other media actors from arbitrary dismissal or reprisals, and from precarious working conditions that make them more vulnerable to attacks.”⁹³

Other intergovernmental organisations have also urged states to act to improve the safety of journalists. Successive declarations and resolutions have been adopted by the UN General Assembly, UN Security Council, UN Human Rights Council, and by UNESCO’s governing bodies on the need to ensure the safety of journalists and

91. *Gongadze v. Ukraine*, no. 34056/02, 8 November 2005, par. 164. See also, amongst others, *Kılıç v. Turkey*, no. 22492/93, 28 March 2000, par. 62; *Huseynova v. Azerbaijan*, no. 10653/10, 13 April 2017, par. 98.

92. *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010, par. 137.

93. Conference of Ministers for Media and Information Society, Artificial Intelligence – Intelligent Politics: Challenges and opportunities for media and democracy, 10-11 June 2021, Resolution on the safety of journalists.

investigate attacks.⁹⁴ The 2022 Resolution on the Safety of Journalists adopted by the UN Human Rights Council calls upon States “to bring their laws, policies and practices fully into compliance with their obligations and commitments under international human rights law, and to review and where necessary repeal or amend them so that they do not limit the ability of journalists and media workers to perform their work independently and without undue interference”.

The OSCE Representative on Freedom of the Media has recommended, specifically with regard to fighting the abuse of female journalists, that states should review existing harassment laws “to ensure the flexibility inherent in some of those laws, especially in the cases of harassment that is of a sexual and sexist nature;” and that “legal frameworks should be periodically reviewed and monitored to ensure that existing laws are being effectively implemented and equally applicable online.”⁹⁵

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

Criminal law protections

Several European countries have specific provisions in their penal codes criminalising violence against journalists, or violence that aims to silence freedom of expression. Of these, the Ukrainian criminal code is the most specific and elaborate. It includes the following provisions:

- ▶ Article 171 criminalises the interference with professional activities of journalists, defined as including illegal seizure of journalistic materials, illegal denial of access to information, illegal prohibition to cover certain topics or individuals and “any other intended preclusion of a journalist’s lawful professional activity”. The offence extends to exerting any influence on a journalist in order to prevent them from performing their journalistic work.
- ▶ Articles 345-1, 347-1, 348-1 and 349-1 criminalise threats or violence, destruction of property, murder or attempted murder, and hostage taking of a journalist or their family in connection with the journalist’s professional activity.

A formal explanatory note to Ukraine’s Criminal Code explains that “professional activity of a journalist shall mean systematic activity of a person related to the

94. UN General Assembly Resolution 74/157 on the safety of journalists and the issue of impunity, 18 December 2019, UN Doc. A/RES/74/157; UNHRC Resolution on the safety of journalists, 5 October 2018, UN Doc. A/HRC/RES/39/6; UNHRC Resolution on the promotion, protection and enjoyment of human rights on the internet, 17 July 2018, UN Doc. A/HRC/RES/38/7; UN General Assembly Resolution on the safety of journalists and the issue of impunity, 19 December 2017, UN Doc. A/RES/72/175; UNHRC Resolution on the safety of journalists, 29 September 2016, UN Doc. A/HRC/RES/33/2; UN General Assembly Resolution on the safety of journalists and the issue of impunity, 17 December 2015, UN Doc. A/RES/70/162; UN Security Council Resolution 2222, 27 May 2015, UN Doc. S/Res/2222; UN General Assembly Resolution on the safety of journalists and the issue of impunity, 18 December 2014, UN Doc. A/RES/69/185; UNHRC Resolution on the safety of journalists, 25 September 2014, UN Doc. A/HRC/RES/27/5; UN General Assembly Resolution on the safety of journalists and the issue of impunity, 18 December 2013, UN Doc. A/RES/68/163; UNHRC Resolution on the safety of journalists, 27 September 2012, UN Doc. A/HRC/RES/21/12; UN Plan of Action on the Safety of Journalists and the Issue of Impunity, n. 7; UN Security Council Resolution 1738, 23 December 2006, UN Doc. S/Res/1738.

95. Communiqué No. 1/2019, OSCE Representative on Freedom of the Media.

collection, receipt, creation, distribution, storage or other use of information for the purpose of its distribution among an indefinite circle of persons through print media, television and radio organisations, news agencies, the Internet”, and provides protection to any journalist, whether employed or freelance (although in the latter case they would need to be a member of a journalists association).

Other European countries with criminal provisions that specifically protect journalists include the following:

- ▶ Sweden, where the offence is “unlawful coercion or making an unlawful threat with intent to influence the formation of public opinion ... and thereby endangers freedom of speech, assembly or association”.⁹⁶
- ▶ Armenia, where the offence is hindering journalistic work or forcing journalists to disseminate or not to disseminate information.⁹⁷
- ▶ France, where the 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”.⁹⁸
- ▶ Croatia, where the penal code criminalises denying freedom of speech or public expression, the freedom of the press or of other media, limiting the freedom to report of a journalist, and preventing publication, sale or broadcast of media works.⁹⁹
- ▶ Georgia, where the penal code criminalises unlawful interference with a journalist’s professional activities, specifically coercing a journalist into disseminating or not disseminating information.¹⁰⁰
- ▶ Serbia, where the Serbian penal code provides enhanced punishment for endangering the safety of a person, or threaten to do so, if the target is a journalist; unlawfully denying or restricting freedom of speech; and the prevention of printing and distribution of printed material and broadcasting.¹⁰¹
- ▶ Poland, where the penal code criminalises using violence or an unlawful threat to force a journalist to publish or refrain from publishing something, or obstructing or suppressing media criticism.¹⁰²

Several states have recently amended their legislation. For example, in 2022, the Danish Criminal Code was amended to make it an aggravating circumstance when a threat is aimed at preventing the victim from making use of their freedom of speech;¹⁰³ in Montenegro, the Criminal Code was amended in 2021 to provide more stringent penalties for attacks and threats against journalists and obstructing or

96. Swedish Penal Code, Section 5; see also Chapter 7, Freedom of the Press Act, Articles 2 and 11.

97. Armenian Penal Code, Article 164.

98. French Criminal Code, Articles 431-1, 431-2, 223-1-1.

99. Croatian Penal Code, Article 127.

100. Georgian Criminal Code, Article 154.

101. Serbian Penal Code, Articles 138, 148, 149.

102. Polish Penal Code, Articles 43, 44

103. Denmark: Law No. 2601/2021, 28 December 2021. Input from the Danish Government for the 2022 Rule of Law Report, p. 20; law Nr. 2601 of 28 December 2021, § 1(5).

preventing them from performing their work;¹⁰⁴ in Latvia, partly in response to concerns about aggression towards journalists, the Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language was amended to include sanctions for aggressive behaviour including threats to cause harm to the health or sexual integrity of a person or their relatives; threats to property; and harassment.

In other countries, judicial practices have changed to provide for greater protection for journalists. The Slovenian Supreme Court ruled in 2019 that threats, insults or verbal abuse of journalists should be prosecuted; the State Prosecution Service subsequently changed its legal guidance, recommending prosecution in a broad category of cases.¹⁰⁵ In Finland, the Supreme Court delivered a high-profile judgment upholding a conviction for harassment of a journalist.¹⁰⁶ Its reasoning referred to the challenges faced by journalists in modern society, including through online harassment, and cited case-law of the European Court of Human Rights and international recommendations related to the protection of journalists.¹⁰⁷

Some countries specifically criminalise online abuse. In Austria, ‘cyber-bullying’ is the criminal offence of injuring the honour of a person on the Internet in a way that is perceptible to a large number of people or making highly personal facts or images available to a large number of people.¹⁰⁸ The French Penal Code defines online abuse as including “[s]tatements or behaviours imposed to the same victim by several persons, in a concerted manner or by encouragement of one of them, even though they do not present a repetitive character”, as well as abuse that, although not coordinated, is perpetrated by individuals who are “aware that the victim is subject to repetitive behaviours or statements”.¹⁰⁹ To better combat online gender-motivated abuse, the law on sexual harassment defines sexual harassment as including “repeated sexual statements or behaviours directed towards a person that harm the person’s dignity through their degrading, humiliating character, or by creating an intimidating, hostile or offensive situation” and specifies that this includes online harassment.¹¹⁰

In Romania and in the Netherlands, it is an aggravating circumstance for any crime to be motivated by gender discrimination.¹¹¹

Employment law protections

Journalists who are employed by media outlets typically enjoy the same employment protections as other workers. In some countries, this includes so-called conscience clauses, allowing journalists to refuse assignments that contradict their

104. Montenegro: [Parliament of Montenegro unanimously adopts Amendments to the Criminal Code strengthening Criminal Protection of Journalists](#), 29 December 2021. See also 2022 Communication on EU Enlargement policy, Montenegro 2022 Report, SWD(2022) 335 final, 12 October 2022.

105. As reported in 2020 Rule of Law Report country chapter for Slovenia, p. 13.

106. Supreme Court, judgment of 18 February 2022, R2020/680, ECLI:FI:KKO:2022:8.

107. *Ibid.*

108. Austrian Criminal Code, Article 107c.

109. Article 11(b) of the Law No. 2018-703 of 3 August 2018 reinforcing the fight against sexual and gender-based violence.

110. Law No. 2018-703 of 3 August 2018 reinforcing the fight against sexual and gender-based violence.

111. As reported to the Secretariat of the Media and Internet Governance Division.

beliefs (discussed in Section A, above, under the heading of editorial independence of journalists).

Some states indicate that there are specific protections for freelance journalists, or for freelance workers in general:

- ▶ Under French employment law, freelance journalists benefit from a presumption of salaried employment.¹¹²
- ▶ In Germany, employment law regards pseudo-self-employed persons as employees. Fixed-term contracts may only be concluded if they are explicitly permitted by law, and they may not be treated less favourably than full-time workers unless justified on objective grounds.¹¹³

Some countries require media employers to ensure that journalists have appropriate insurance. In Germany, employed journalists are covered by statutory accident insurance which also covers psychological support after a work-related trauma. Self-employed journalists are subject to compulsory insurance under the Artists' Social Insurance Act.¹¹⁴ In the Netherlands and in Ukraine, employers are required to ensure that employee insurance is in place, including for journalists.¹¹⁵

To ensure fair pay for freelance journalists, the Dutch public broadcaster and some commercial broadcasters have agreed a pay scale that prices the work of freelancers at 150% of employed journalists (taking into account the lack of any sick pay or social protection for freelancers, and also providing a disincentive to media organisations hiring too many journalists on a freelance basis). In Denmark, the Union of Journalists has reportedly negotiated a collective agreement that provides freelancers equal rights and shields them against economic precariousness.¹¹⁶

D. SUGGESTIONS FOR IMPLEMENTATION

Criminal law protections

- ▶ Criminal law should provide enhanced penalties for violence or threats against journalists and others who regularly publish on matters of public interest.
- ▶ Online abuse should be recognized as a criminal offence and any such offences committed against journalists should attract enhanced penalties.
- ▶ States should criminalize any other interference or attempted interference with the exercise of the right to freedom of expression.
- ▶ There should be enhanced penalties for any offence motivated by gender or other forms of discrimination.
- ▶ Criminal laws should be reviewed to ensure that they sufficiently address gender-based violence including online abuse.

112. Article L. 7111-3 of the Labour Code.

113. German Act on part-time work and fixed-term employment

114. As reported to the Secretariat of the Media and Internet Governance Division.

115. As reported to the Secretariat of the Media and Internet Governance Division.

116. Henrik Kaufholz, et al., *Media Freedom in Scandinavia: Six examples of best practices*, ECPMF, EFJ, and OBCT, 2020, section 3.1.1.

Employment law protections

- ▶ Employment law should provide security of employment.
- ▶ Freelance journalists should enjoy similar employment protections as employed journalists, compensating them for their relative position of disadvantage in continuity of employment and potential lack of benefits such as pension contributions and sick pay.
- ▶ Employment law should provide that journalists may refuse editorial assignments when these conflict with their conscience or honestly held beliefs
- ▶ Employment law should require employers to ensure suitable insurance for their employees, including, for journalists, access to professional legal, social, or psychological support services

D. IMPLEMENTATION OF COMPREHENSIVE LEGISLATIVE FRAMEWORK THAT ENABLES JOURNALISTS AND OTHER MEDIA ACTORS TO CONTRIBUTE TO PUBLIC DEBATE EFFECTIVELY AND WITHOUT FEAR (PARAGRAPH 2 OF THE GUIDELINES, CONTINUED)

2. (...) The legislative framework, including criminal law provisions dealing with the protection of the physical and moral integrity of the person, should be implemented in an effective manner, including through administrative mechanisms and by recognising the particular roles of journalists and other media actors in a democratic society (...)

A. INDICATORS

Risks	Measures to avert/remedy the risks
No or ineffective implementation of legal framework for the protection of freedom of expression and media freedom	National strategy or action plan for the protection of the safety of journalists and other media workers
	Effective mechanism to ensure that legal framework for the protection of freedom of expression as well as criminal law provisions protecting physical and moral integrity of the person are implemented in an effective manner
	Recognition of the role and importance of journalists and other media actors
	Regular exchanges/joint trainings/agreements between law enforcement forces and media associations' representatives on ways to handle attacks against journalists
Insufficient protection against online abuse	National strategy or action plan analyses the risks posed by online abuse and harassment and provides corresponding preventive measures

Risks	Measures to avert/remedy the risks
Insufficient protection against specific threats and risks faced by female journalists and other media workers	National strategy or action plan analyses specific threats and risks faced by female journalists and other media workers and provides corresponding preventive measures

B. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW AND OTHER RELEVANT SOURCES

In the June 2021 Resolution on the Safety of Journalists, member states committed to “devise ... 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.”¹¹⁷ States also committed to a specific focus on gender-based violence against journalists, resolving to “promptly and decisively address the specific risks, challenges and threats that women journalists and other media actors face on account of their gender, also in the online sphere” as well as other forms of violence against journalists motivated by discrimination.”¹¹⁸

Furthermore, member states committed to strengthen the enforcement of employment laws “to better protect journalists and other media actors from arbitrary dismissal or reprisals, and from precarious working conditions that make them more vulnerable to attacks.”

Other INGOs have also emphasized the need for strong and urgent action by states to improve the safety of journalists. The UN Plan of Action on the Safety of Journalists and the Issue of Impunity, adopted in 2012, calls for a coalition-based and holistic approach to the issue, bringing together law enforcement, journalists, media, and other stakeholders.¹¹⁹ As well as strengthening UN mechanisms, the Plan of Action envisages and offers assistance with, amongst others, the adoption of appropriate legislation; measures to prevent attacks against journalists; the establishment of national emergency mechanisms; and international cooperation on the issue. It also encourages greater and deeper partnerships with specialised civil society organisations and professional associations, by information sharing as well as conducting joint missions and investigations into particular cases.

Recent UN General Assembly and UN Human Rights Council resolutions have called for effective protections for women journalists, who are exposed to particularly serious attacks both physically and online, including from politicians and public officials. The 2022 Resolution on the Safety of Journalists adopted by the

117. Conference of Ministers for Media and Information Society, Artificial Intelligence – Intelligent Politics: Challenges and opportunities for media and democracy, 10-11 June 2021, Resolution on the safety of journalists.

118. Conference of Ministers for Media and Information Society, Artificial Intelligence – Intelligent Politics: Challenges and opportunities for media and democracy, 10-11 June 2021, Resolution on the safety of journalists.

119. CI-12/CONF.202/6.

UN Human Rights Council calls on states to develop action plans and expresses concern about “the specific attacks on women journalists and media workers in relation to their work, such as gender-based discrimination, sexual and gender-based violence, threats, intimidation and harassment, online and offline.”¹²⁰

The Parliamentary Assembly of the Council of Europe has called on States to “set up national mechanisms consistent with the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity, ensuring that such mechanisms are designed and implemented under strong political and operational leadership, with proper inter-agency co-ordination and in genuine partnership with civil society, notably journalists’ associations and trade unions, and media freedom watchdog organisations.” It has also highlighted the need for States to “fight online harassment of journalists, particularly female journalists and journalists belonging to minorities, and enhance the protection of investigative journalists and whistle-blowers.”¹²¹

In its Decision 3/18 on the Safety of Journalists, the OSCE Ministerial Council expresses concern over “the distinct risks faced by women journalists in relation to their work, including through digital technologies”, and emphasizes “the importance to ensure their greatest possible safety and that the experiences and concerns of women journalists are effectively addressed”. The Decision goes on to call on States “to condemn publicly and unequivocally attacks on women journalists in relation to their work, such as sexual harassment, abuse, intimidation, threats and violence, including through digital technologies”.¹²² The Ministerial Council also calls on States to “[i]mplement more effectively the applicable legal framework for the protection of journalists”.¹²³ The OSCE Representative on Freedom of the Media has recommended that States should establish “regular multi-stakeholder dialogue involving all main actors, including female journalists and media organizations, intermediaries and state authorities to ensure a holistic and systematic response to online harassment [and] foster the development of innovative responses to online harassment, with the input of all stakeholders, in line with the international human rights standards”.¹²⁴

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

National action plans and working groups

Since 2016, several countries have adopted action plans to improve the safety of journalists. In Sweden, the National Action Plan “Defending free speech” was adopted in 2017 to address threats and hatred against journalists, elected representatives and artists. The action plan provides for protocols and cooperation

120. Resolution adopted by the Human Rights Council, 6 October 2022, UN Doc. A/HRC/RES/51/9.

121. Resolution 2317 (2020), Threats to media freedom and journalists’ security in Europe, 28 January 2020.

122. Decision 3/18, the Safety of Journalists, 7 December 2018, MC.DEC/3/18.

123. Decision 3/18, the Safety of Journalists, 7 December 2018, MC.DEC/3/18.

124. Communiqué No. 1/2019, OSCE Representative on Freedom of the Media.

between the media, law enforcement and ministry representatives. In 2020, the Swedish Police Authority launched specific actions to address the crimes committed against journalists. This included setting up national contact points, allocating additional staff to support victims of such crimes, and allocating additional funding to better investigate crimes against democracy and hate crimes.¹²⁵

In the Netherlands, '*PersVeilig*' (Safe press) is a joint initiative between the national association of journalists, the society of editors-in-chief, the police, and the public prosecution service to enhance the safety of journalists. It includes a safety plan that provides a protocol to report incidents as well as training for journalists and media outlets. There has been active communication, monitoring, and agreements between journalists and the media and law enforcement, and as a result police and prosecutors deal with violence and threats against journalists as a matter of high priority. In 2021, the police and prosecution protocol was reviewed and several improvements were implemented including in relation to the processing of complaints from journalists by police and prosecution services, better information sharing, improved awareness-raising, and improved communications between journalists and police and prosecution services generally. Additional improvements aim to further improve the safety of freelance journalists.¹²⁶

In 2022, the Danish Association of Journalists, Media, International Media Support, UNESCO Denmark, the Ministry of Justice and the Ministry of Culture agreed a joint action plan for safety for journalists.¹²⁷ It is explicitly based on Council of Europe Recommendation CM/Rec(2016)4 together with the UN Plan of Action, and is built on four pillars: (1) monitoring of incidents; (2) effective follow-up on reports; (3) ongoing dialogue between all stakeholders; and (4) international exchanges of experience and initiatives. The day-to-day running of the Action Plan will be managed in turn by the Danish Association of Journalists and Danish Media, with the involvement of the other stakeholders when relevant.

Greece adopted a national Action Plan for the safety of journalists in May 2022, through a Memorandum of Understanding on the Protection, Safety and Empowerment of Journalists and Other Media Professionals across several government ministries. The MoU commits to initiatives as regards legislative and non-legislative initiatives; monitoring and evaluating the institutional framework for safety of journalists; carrying out a thorough needs assessment; promoting information, education and awareness-raising; empowering the position of female journalists and those reporting on equality; mapping all current policies and initiatives in regards to online safety, digital literacy and empowerment of journalists; training programs for safety-related skills; and raising public awareness of the danger to democracy of attacks on journalists. A Task Force has been established to pursue these objectives. The MoU emphasises the need to act to ensure the safety of

125. Contribution from Sweden for the 2020 EU Rule of Law Report.

126. Input from the Netherlands to the 2021 Rule of Law Report; the proposals are detailed in a March 2021 letter from the Ministry for Justice and Security to the President of the House of Representatives: <https://www.rijksoverheid.nl/documenten/kamerstukken/2021/03/31/tk-functioneren-protocol-persveilig>.

127. See <https://www.justitsministeriet.dk/pressemeddelelse/ny-faelles-dansk-handlingsplan-for-sikkerhed-for-journalister/>.

female journalists and is complemented in this regard by the National Action Plan on Women, Peace and Security; and the National Action Plan for Gender Equality (2021-2025).

In the United Kingdom, a National Committee for the Safety of Journalists was established in 2019, co-chaired by two government ministers. The Committee meets regularly and convenes representatives from government, journalism, policing, prosecution authorities and civil society. In 2021, the Committee adopted the National Action Plan for the Safety of Journalists.¹²⁸ This covers five key areas:

- ▶ increasing the understanding of the problem among stakeholders;
- ▶ enhancing the criminal justice system response in tackling crimes against journalists;
- ▶ supporting journalists and their employers to build the resources they need to protect personal safety;
- ▶ helping online platforms to tackle the wider issue of abuse online;
- ▶ improving public recognition of the value of journalists.

As part of the UK Action Plan, there will be training for police forces as well as for media organisations and journalists.¹²⁹ All police forces are working towards appointing Journalist Safety Liaison Officers (as of 2022, around half of police forces have a dedicated officer); these roles will be publicised to journalists as a first point of contact to help deal with any attacks, threats or harassment. Further to this, the National Police Chief's Council (NPCC) has appointed a lead on crimes against journalists, to oversee the issue at a national level.

In Italy, although there is not an action plan as such, a Coordination Centre has been established to deal with threats and violence against journalists.¹³⁰ In 2017, the Ministry of the Interior established the Centre aiming at monitoring threats to reporters and developing the necessary protection measures. An ad-hoc Parliamentary Committees dedicated to "Mafia, Journalists and Information" was entrusted with the task of understanding, monitoring and evaluating the relationship between the mafia and information.

Improving communication and coordination between law enforcement and media

While not all countries have overarching action plans for the safety of journalists, there are valuable practices in some concerning improving communications between law enforcement and journalists. For example, in France, following the recommendations of an independent commission, a cooperation mechanism has been set up between the media and law enforcement authorities to improve communications during and around public demonstrations, which are often a flashpoint for

128. See <https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists>.

129. The commitments are shared by the Police, the National Union of Journalists, the Society of Editors, the National Council for the Training of Journalists, the News Media Association, and the BBC.

130. Coordination Centre for monitoring, analysis and permanent exchange of information on the phenomenon of intimidating acts against journalist.

violence, and to better ensure the safety of journalists.¹³¹ The mechanism meets on a monthly basis. In parallel, a working group, including representatives of journalists and their employers, journalism associations and the Commission for the Identity Card of Professional Journalists, was set up in July 2021 to discuss better identification of journalists for security purposes, particularly during public events. A new version of the National Law Enforcement Scheme was published on 16 December 2021, recognising the special role of journalists during demonstrations and requiring the authorities to guarantee the safety of journalists during demonstrations.

In Germany, the Press Council has proposed to update existing principles of conduct for the media and the police.¹³² The German provinces (the Länder) are currently assessing these; some Länder have taken measures to improve the relationship between journalists and the police.¹³³ Police authorities in some regions have reportedly increased efforts to protect journalists during protests; police in the Free State of Saxony, for example, have developed a media protection concept for journalists during police deployment situations.¹³⁴

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ Member states should adopt national action plans for the safety of journalists based on the following principles:
 - The action plan has high level political leadership;
 - There should be a risk analysis and needs assessment, including a clear gender analysis;
 - There should be strong operational leadership and inter-agency coordination;
 - There must be strong civil society partnership in design and implementation;
 - There should be a comprehensive and effective programme of activity that builds practice and evidence over time, with specific goals, targets and deadlines that are ambitious yet attainable, and that are likely to deliver real improvement;
 - Agencies responsible for the design, development, and implementation of actions are clearly identified;
 - There must be sufficient budget and resources allocated for the design, development, and implementation of actions;

131. The Delarue Commission: see https://www.gouvernement.fr/sites/default/files/document/document/2021/05/rapport_commission_independante_sur_les_relations_entre_le_presse_et_les_forces_de_lordre.pdf and <https://rsf.org/en/report-commission-relations-between-journalists-and-police-towards-improvement-ground>

132. German Press Council, Principles of conduct for the media and the police to prevent obstacles in the performance of police duties and the free exercise of reporting.

133. For example, Press Code of the Police of Baden-Württemberg, Ministry of the Interior for Digitisation and Municipalities, State-wide standards for press relations; as reported to the EU Rule of Law mechanism 2022.

134. As reported to the Secretariat of the Media and Internet Governance Division.

- There should be coordination with action plans and activities in related areas, such as plans for the protection of human rights defenders or gender equality.
- There is a commitment to regular review.
- ▶ If not through an action plan, states should ensure that the legal framework for the protection of freedom of expression and criminal law provisions protecting physical and moral integrity of the person is effectively implemented, including through:
 - agreements and regular exchanges and joint trainings between law enforcement agencies and media representatives on safety of journalists;
 - an analysis of the risks posed by online abuse and harassment and the provision of corresponding preventive measures, including, if needed, through law reform;
 - an analysis of the specific threats and risks faced by female journalists and other media workers and provide corresponding preventive measures, including, if needed, through law reform;
 - the designation of the protection of journalists as a priority area and the allocation of sufficient resources.

Handbooks and resources:

- ▶ [Taking Action to Protect Journalists and Other Media Actors](#), Guide to drawing up an Action Plan, Council of Europe 2020;
- ▶ [Human Rights Education for Legal Professionals Course on Safety of Journalists](#), Council of Europe;
- ▶ [Safety of Female Journalists Online Resource Guide](#), OSCE Representative on Freedom of the Media;
- ▶ [UN Plan of Action on the Safety of Journalists and the Issue of Impunity](#);
- ▶ To ensure effective implementation of a gender-responsive action plan, the UN has two resources that states can draw on:
 - (1) The [UN Women Handbook for National Action Plans on Violence against Women](#), which provides a reference point for integrating a gender-responsive approach within a plan of action for safety of journalists;
 - (2) the [UN Women Evaluation Handbook](#), How to Manage Gender-Responsive Evaluation.

E. INDEPENDENT, SUBSTANTIVE REVIEW OF LEGISLATIVE FRAMEWORK (PARAGRAPHS 3-5 OF THE GUIDELINES)

3. This legislative framework should be subject to independent, substantive review to ensure that safeguards for the exercise of the right to freedom of expression are robust and effective in practice and that the legislation is backed up by effective enforcement machinery. After an initial expeditious review, further reviews should be carried out at regular periodic intervals. The reviews of laws and practices should assess the compliance of the legislative framework and its application with authoritative European and international human rights standards, including all relevant positive obligations

of States, and contain recommendations on the basis of its key findings. The reviews should cover existing and draft legislation, including that which concerns terrorism, extremism and national security, and any other legislation that affects the right to freedom of expression of journalists and other media actors, and any other rights that are crucial for ensuring that their right to freedom of expression can be exercised in an effective manner.

4. The reviews may be carried out by one or more appropriate new or existing independent bodies that have authoritative mandates and are supported by sufficient resources. National authorities are urged to establish favourable conditions in which such reviews may take place, allowing for detailed public scrutiny and the drawing up of recommendations by organisations and experts acting independently of governmental, political, religious, commercial and other partisan influences. The reviewing body or bodies could be a national human rights commission, ombudsperson and/or another independent body established for the specific purposes described above. It is recommended that the reviewing body or bodies have an explicit mandate to collect, receive and use information from any source and be granted optimal access to documents and officials across all branches of State authorities. The review process should be transparent and include public hearings, facilitating the full and active participation of civil society, including representatives of journalist organisations, the media and other stakeholders.

5. Provision should be made for the review reports to be formally submitted to relevant State authorities, in particular ministries, requiring a timely response by those authorities, including, as appropriate, corrective or other follow-up action to the findings and recommendations of the reviews. The findings and recommendations of the reviews should also be systematically channelled into ongoing reporting, monitoring or information-sharing exercises at the Council of Europe, such as for the Committee of Ministers, the Parliamentary Assembly and the Commissioner for Human Rights. They may also be made available to similar exercises of other intergovernmental organisations, such as the UN Human Rights Committee, the UN Human Rights Council's Universal Periodic Review, UNESCO, the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media.

A. INDICATORS

Risks	Measures to avert/remedy the risks
No or insufficient review of whether legislative framework protecting media and journalists complies with authoritative European and international human rights standards, is backed up by effective enforcement machinery, and whether safeguards for the protection of freedom of expression are robustly and effectively implemented in practice	Independent, substantive review to ensure that legislative framework protecting media and journalists complies with European and international human rights standards
	Independent, substantive review to ensure that legislative framework protecting media and journalists is backed up by effective enforcement machinery
	Independent, substantive review to ensure that safeguards for the protection of freedom of expression are robustly and effectively implemented in practice

Risks	Measures to avert/remedy the risks
Draft legislation that affects the right to freedom of expression of journalists and other media actors, and any other rights that are crucial for ensuring that their right to freedom of expression can be exercised in an effective manner, does not comply with authoritative European and international human rights standards	Independent, substantive review to assess whether draft legislation that affects the right to freedom of expression of journalists and other media actors, and any other rights that are crucial for ensuring that their right to freedom of expression can be exercised in an effective manner complies with European and international human rights standards
Counter-terrorism, counter-extremism, or other national security measures fall outside the scope of the review or competence of the reviewing body.	Ensure that counter-terrorism, counter-extremism, or other national security measures are within the scope of the review and the competence of the reviewing body, or one of the reviewing bodies (there may be several bodies involved in the review).
Reviewing body or bodies lack independence.	Ensure the independence of the reviewing body or bodies in theory as well as in practice. The reviewing body or bodies could be a national human rights commission, ombudsperson, and/or an independent body specifically established for the purpose.
Review process lacks input from a diverse range of stakeholders	Ensure that the review process allows for detailed public scrutiny and the drawing up of recommendations by organisations and experts acting independently of governmental, political, religious, commercial, and other undue or partisan influences.
Reviewing body or bodies has insufficient mandate or powers	It is recommended that the reviewing body or bodies have an explicit mandate to collect, receive and use information from any source and that they are granted optimal access to documents and officials across all branches of State authorities.
Lack of transparency about or public and stakeholder trust in the review process	The review process should include public hearings and facilitate the full and active participation of civil society, including representatives of journalist organisations, the media and other stakeholders.

Risks	Measures to avert/remedy the risks
Lack of follow-up to the review.	Review reports to be formally submitted to relevant State authorities, in particular ministries, requiring a timely response by those authorities, including, as appropriate, corrective or other follow-up action to the findings and recommendations of the reviews.
	The findings and recommendations of the reviews should be channelled into ongoing reporting, monitoring or information-sharing exercises at the Council of Europe Committee of Ministers, Parliamentary Assembly, and the Commissioner for Human Rights; as well as with other relevant international bodies such as the UN Human Rights Committee, the UN Human Rights Council's Universal Periodic Review, UNESCO, the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media.

B. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW AND OTHER RELEVANT SOURCES

There have been several recommendations and resolutions that have called for a regular review of domestic legal frameworks with the requirements of the European Convention on Human Rights. Some of these have been sector-specific. For example, Recommendation CM/Rec(2022)16 of the Committee of Ministers to member states on combating hate speech calls for a review of hate speech laws and policy measures; Recommendation CM/Rec(2013)1 of the Committee of Ministers to member states on gender equality and media calls for a review of legislation that impacts on gender equality; Parliamentary Assembly Recommendation 1814 (2007) calls for a review of defamation laws. In the first Council of Europe Conference of Ministers Responsible for Media and New Communication Services, ministers resolved to regularly review national legislation and practice to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards.

There have also been calls for more all-encompassing reviews. Parliamentary Assembly Resolution 2317(2020) calls on member States to “review to ... their legislation, seeking to prevent any misuse of different laws or provisions which may impact on media freedom – such as those on defamation, anti-terrorism, national security, public order, hate speech, blasphemy or memory laws – which are too often applied to intimidate and silence journalists”¹³⁵

135. Adopted 28 January 2020.

Review should be regular; the 2014 Declaration on the protection of journalism and safety of journalists and other media actors calls on states to review at least once every two years the conformity of domestic laws and practices with the requirements of the European Convention on Human Rights.

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

Processes to review legislation and determine whether improvements can be made to enhance the safety of journalists have been ongoing in some European countries. Whilst no country has committed to an ongoing and regular review process, the following are representative examples of current practices:

- ▶ The Netherlands action plan on the safety of journalists, PersVeilig, was reviewed in 2021. The review, which reported to the Dutch parliament, recommended improvements including as regards the protection of freelance journalists; this resulted in the government allocating financial resources for their protection. The government continued its financial support to PersVeilig in 2022.¹³⁶
- ▶ In Sweden, an independent Commission was established to determine whether the criminal law can be strengthened. The Commission completed its assessment in 2022, concluded that the journalistic profession is highly vulnerable; and proposed enhanced criminal law protection for journalists and persons closely related to them.¹³⁷
- ▶ In Denmark, a Commission on Freedom of Expression¹³⁸ was established in 2017/2018, with the aim to assess the framework and general conditions for the freedom of expression. It reported in April 2020, contributing to broad political discussions regarding the status of freedom of expression in the Danish society and resulting in the launch, in 2022, of a national Action Plan on the Safety of Journalists and amendments to the Criminal Code.¹³⁹
- ▶ In Norway, a Governmental Commission on Freedom of Expression was established in 2020 to assess the social, technological, legal and financial framework for freedom of expression. Safety was part of its review and the Commission report, published in 2022, found that the situation for safety of journalists was good. It commended in particular that threats and violence against journalists are prioritised by the Norwegian Prosecuting Authority.¹⁴⁰

136. See https://commission.europa.eu/system/files/2022-07/nl_european_rule_of_law_mechanism_input_from_the_netherlands_2022_rule_of_law_report.pdf

137. Swedish Government, *En skärpt syn på brott mot journalister och utövare av vissa samhällsnyttiga funktioner (A tougher view of crime against journalists and practitioners of some socially useful functions)*, January 2022.

138. Input from Denmark for the 2020 Rule of Law Report, p. 20.

139. Danish Union of Journalists, *Action Plan on the Safety of Journalists*, 2022.

140. English summary available at <https://www.regjeringen.no/en/dokumenter/nou-2022-9/id2924020/>.

In Finland, a reform process to address the harassment of journalists online started in 2021. It focused on online abuse and anti-media hate speech, particularly hate speech targeted at female journalists, and culminated in law reform.¹⁴¹

In 2021, the French government commissioned an independent report¹⁴² which includes a set of proposals for measures geared at improving safety of journalists as well as their communication with police forces during protests and demonstrations.¹⁴³ This resulted in improved implementation, as set out under D., above.

An extensive review of Malta's laws and practices relevant to the safety of journalists was launched following the assassination of the investigative journalist Daphne Caruana Galizia. An independent Public Inquiry concluded that the State had failed in its duty to protect Ms Caruana Galizia and her right to exercise her profession in a free and secure manner and recommended a panoply of reforms which await full implementation.¹⁴⁴

Working groups and commissions to provide recommendations to improve the safety of journalists were active in several countries including Bosnia and Herzegovina, Greece, Lithuania, Malta, Montenegro, and Switzerland.¹⁴⁵

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ Member states should establish an independent, substantive review to ascertain:
 - whether their legislative framework protecting media and journalists complies with European and international human rights standards;
 - whether this legislative framework is backed up by effective enforcement machinery.
- ▶ This review should include an assessment of:
 - whether safeguards for the protection of freedom of expression are robustly and effectively implemented in practice

141. Report of the Government-appointed rapporteur on hate campaigns, Systematic harassment and targeting: an assessment of the legislation, 2022. More information about the working group is available at <https://oikeusministerio.fi/hanke?tunnus=OM015:00/2020>.

142. The report was submitted to the French prime minister on 3 May 2021, as reported to EU Rule of Law report 2021.

143. The French authorities declared that the recommendations in the report would be implemented jointly by the interior and culture ministers.

144. Board of Inquiry, Public Inquiry Report Daphne Caruana Galizia, 2021.

145. Greece: Inter-ministerial Memorandum of Understanding on the Protection, Safety and Empowerment of Journalists and Other Media Professionals, 23 May 2022; Montenegro: Commission for monitoring the actions of competent authorities in investigations of cases of threats of violence against journalists, murders of journalists and attacks on media property; Malta: Committee of Experts on Media, established 11 January 2022 as part of the follow-up on the recommendations of the Public Inquiry into the assassination of Daphne Caruana Galizia (see [Alert 275/2022](#) regarding civil society concerns); Lithuania: Ministry of Culture working group to coordinate the preparation of action plan on safety of journalists; Switzerland: working group on drafting national action plan, led by Swiss Federal Office of Communications.

- whether any draft legislation that affects the right to freedom of expression of journalists and other media actors complies with European and international human rights standards
- ▶ The review should include in its scope counter-terrorism, counter-extremism, or other national security measures; if to achieve this it is necessary that a separate review is conducted (for example because these are areas that are sensitive to national security) then a separate review may be established;
- ▶ States should ensure that the review process allows for detailed public scrutiny and the drawing up of recommendations by organisations and experts acting independently of governmental, political, religious, commercial, and other undue or partisan influences.
- ▶ The reviewing body or bodies should have an explicit mandate to collect, receive and use information from any source and be granted optimal access to documents and officials across all branches of State authorities.
- ▶ The review process should include public hearings and facilitate the full and active participation of civil society, including representatives of journalist organisations, the media and other stakeholders.
- ▶ Review reports should be formally submitted to relevant State authorities, in particular ministries, and should require a timely response by those authorities, including, as appropriate, corrective or other follow-up action to the findings and recommendations of the reviews.
- ▶ The findings and recommendations of the reviews should be channelled into ongoing reporting, monitoring or information-sharing exercises at the Council of Europe Committee of Ministers, Parliamentary Assembly, and the Commissioner for Human Rights; as well as with other relevant international bodies such as the UN Human Rights Committee, the UN Human Rights Council's Universal Periodic Review, UNESCO, the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media.
- ▶ Legal frameworks should be periodically reviewed and monitored to ensure that existing laws are being effectively implemented and that they are equally applicable online.

F. DEFAMATION LAWS INCLUDE FREEDOM OF EXPRESSION SAFEGUARDS THAT CONFORM TO EUROPEAN AND INTERNATIONAL HUMAN RIGHTS STANDARDS (PARAGRAPH 6 OF THE GUIDELINES)

6. As part of the reviews of laws and practices, member States which have defamation laws should ensure that those laws include freedom of expression's safeguards that conform to European and international human rights standards, including truth, public interest, fair comment defences and safeguards against misuse and abuse, in accordance with the European Convention on Human Rights and the principle of proportionality, as developed in the relevant judgments of the European Court of Human Rights. Furthermore, given the chilling effect that legislation criminalising particular types of expression has on freedom of expression and public

debate, States should exercise restraint in applying such legislation, where it exists. States should be guided in this regard by the European Court of Human Rights finding that the imposition of a prison sentence for a press offence is only permissible in exceptional circumstances, notably where other fundamental rights have been seriously impaired, for example, in the case of hate speech or incitement to violence. Such legislation should be subjected to similar critical scrutiny in the context of the reviews of laws and practices.

A. INDICATORS

Risks	Measures to avert/remedy the risks
National defamation legislation restricts freedom of expression beyond the extent permitted under the European Convention on Human Rights	National legislation pertaining to defamation includes specific safeguards for freedom of expression and media freedom, including defences of truth, public-interest, and fair comment, as well as effective other safeguards against misuse and abuse
Unnecessary, disproportionate, or otherwise illegitimate use of criminal laws that restrict freedom of expression.	States exercise restraint in applying legislation that criminalises particular types of expression, such as criminal defamation laws.
Journalists and other media workers risk imprisonment for press offences.	States should ensure that, in line with the jurisprudence of the European Court of Human Rights, the imposition of a prison sentence for a press offence is only permissible in exceptional circumstances, notably where other fundamental rights have been seriously impaired, for example, in the case of hate speech or incitement to violence.

B. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW AND OTHER RELEVANT SOURCES

The European Court of Human Rights has developed a rich body of jurisprudence concerning respect for the right to freedom of expression and the use of defamation laws which provides the parameters within which domestic defamation law must operate.

The Court follows two distinct approaches:

- (1) In cases that engage the right to respect for private life, which is the case for serious reputational allegations, the Court engages in a balancing exercise between the right to freedom of expression and the right to respect for private life.
- (2) In cases that do not engage the right to respect for private life as protected under Article 8 of the Convention, the Court engages in a proportionality test starting with the importance of the right to freedom of expression.

Defamation cases that invoke the protection of Article 8

In the first category of cases, the Court applies the criteria established in its privacy case-law as set out in Section II.B of this guide:

- (1) Whether the publication contributed to a debate on a matter of general interest;
- (2) Whether the person concerned was well-known or a public figure;
- (3) Whether the person concerned courted publicity or the issue has already been reported on;
- (4) How the information was obtained, and its veracity;
- (5) The content, form and consequences of the publication; and
- (6) In cases where a sanction has been imposed, the severity of that sanction.

A key consideration in deciding whether Article 8 is engaged is the seriousness of the allegation and the extent to which an individual has been prejudiced in the enjoyment of their right to respect for private life.¹⁴⁶ This will be the case when an individual's personal integrity has been compromised, or when the allegations were so severe that their publication had an inevitable direct effect on the claimant's life.¹⁴⁷ This can also include allegations that impact someone's professional reputation.¹⁴⁸

Core defences and the importance of freedom of expression

In the second category of cases, the starting point is the importance of the right to freedom of expression and whether the use of defamation law is a "necessary" restriction for the purpose of protecting reputation. An overarching consideration is the public interest: the Court has consistently held that there is little scope under the Convention for restrictions on political speech or on debate of questions of public interest.¹⁴⁹ National law should always allow for at least two core defences to a defamation charge: (1) a defence of truth (but, as emphasized above, this may not be *required* of journalists in every case);¹⁵⁰ and (2) a defence of good faith, which can be established by referring to the facts and circumstances of a case and, or, adherence to a code of professional ethics.¹⁵¹

A number of additional factors are also taken into account and need to be reflected in domestic defamation law and practice.

146. *Bédat v. Switzerland* [GC], No. 56925/08, 29 March 2016, par. 72; *Axel Springer AG v. Germany* [GC], No. 39954/08, 7 February 2012, par. 83; *A. v. Norway*, no. 28070/06, 9 April 2009, par. 64

147. *Toranzo Gomez v. Spain*, no. 26922/14, 20 November 2018, par. 51; *Karakó v. Hungary*, no. 39311/05, 28 April 2009, par. 23; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, 21 September 2010, par. 40; *Yarushkevych v. Ukraine* (dec.), no. 38320/05, 31 May 2016, par. 24.

148. For example, *Kanellopoulou v. Greece*, no. 28504/05, 11 October 2007; *Tănăsoaica v. Romania*, no. 3490/03, 19 June 2012.

149. *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, par 106; *Castells v. Spain*, 23 April 1992, Series A no. 236, par. 43; *Wingrove v. the United Kingdom*, 25 November 1996, Reports of Judgments and Decisions 1996-V, par. 58.

150. *Morice v. France* [GC], no. 29369/10, ECHR 2015, par. 155, and references therein.

151. For example, see *Stoll v. Switzerland* [GC], no. 69698/01, ECHR 2007-V, par. 104.

Distinguishing allegations of fact and value judgments

An important distinction is between statements of fact and value judgments. While the existence of facts can be demonstrated, value judgments cannot be proven true.¹⁵² Therefore, a journalist cannot be required to provide evidence of truth of a statement that has been found to be a value judgment.¹⁵³ This is particularly important in relation to allegations made in a political context: for example, calling someone a 'closet nazi' is not a statement of fact but a value judgment.¹⁵⁴ The circumstances of the case and the general tone of the remarks need to be taken into account;¹⁵⁵ this is particularly important in relation to satire.¹⁵⁶ However, even where a statement amounts to a value judgment, there must be sufficient factual basis to support it.¹⁵⁷ This assessment, too, needs to take into account the wider circumstances within which a statement was made and should not be treated as a requirement to adduce absolute proof.¹⁵⁸ This is a difficult area of law to get right and the Court has found numerous cases in which value judgments were erroneously classified as statements of fact to violate the right to freedom of expression.¹⁵⁹

In cases concerning clear allegations of fact, the Court has emphasized that only in exceptional cases can a media outlet be released from its ordinary obligation to verify allegations. This assessment depends on the nature and degree of the defamation and the extent to the media outlet's sources could reasonably be regarded as reliable.¹⁶⁰ For example, in *Thorgeir Thorgeirson v. Iceland*, the Court found that factual elements referred to in the impugned articles on the issue of brutality essentially consisted of references to rumours emanating from others. However, the articles related to a matter of serious public concern and it had not been established that the story was untrue. In this context, the journalist could not be required to adduce proof of the factual basis for the allegations; this would have been an unreasonable and even impossible requirement.¹⁶¹ The Court has also

152. *McVicar v. the United Kingdom*, no. 46311/99, ECHR 2002-III, par. 83; *Lingens v. Austria*, 8 July 1986, Series A no. 103, par. 46.

153. *Morice v. France* [GC], no. 29369/10, ECHR 2015, par. 126; *Dalban v. Romania* [GC], no. 28114/95, ECHR 1999-VI, par. 49; *Lingens v. Austria*, 8 July 1986, Series A no. 103, par. 46; *Oberschlick v. Austria*, 23 May 1991, Series A no. 204, par. 63.

154. *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, ECHR 2003-XI, par. 41.

155. *Brasilier v. France*, no. 71343/01, 11 April 2006, par. 37; *Balaskas v. Greece*, no. 73087/17, 5 November 2020, par. 58.

156. *Nikowitz and Verlagsgruppe News GmbH v. Austria*, no. 5266/03, 22 February 2007.

157. *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, ECHR 2004-XI, par. 76; *De Haes and Gijssels v. Belgium*, 24 February 1997, Reports of Judgments and Decisions 1997-I, par. 42; *Oberschlick v. Austria* (no. 2), 1 July 1997, Reports of Judgments and Decisions 1997-IV, par. 33; *Lindon, Otchakovsky-Laurens and July v. France* [GC], application nos. 21279/02 and 36448/02, ECHR 2007-IV, par. 55.

158. *Lopes Gomez da Silva v Portugal*, no. 37698/97, ECHR 2000-X; *Lombardo and Others v. Malta*, no. 7333/06, 24 April 2007, par. 60; *Dyuldin and Kislov v. Russia*, no. 25968/02, 31 July 2007, par. 49.

159. *OOO Izdatelskiy Tsentirnyy Ryad v. Russia*, no. no. 39748/05, 25 April 2017, par. 44; *Reichman v. France*, no. 50147/11, 12 July 2016, par. 72; *Paturel v. France*, no. 54968/00, 22 December 2005, par. 35; *Lindon, Otchakovsky-Laurens and July v. France* [GC], application nos. 21279/02 and 36448/02, ECHR 2007-IV, par. 55; *De Carolis and France Télévisions v. France*, no. 29313/10, 21 January 2016, par. 54.

160. *McVicar v. the United Kingdom*, no. 46311/99, ECHR 2002-III, par. 84; *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, ECHR 1999-III, par. 66.

161. 25 June 1992, Series A no. 239, par. 65; also *Dyuldin and Kislov v. Russia*, no. 25968/02, 31 July 2007, par. 35.

acknowledged that news is a “perishable commodity” and that to delay its publication, even for a short period, might well deprive it of all its value and interest.¹⁶²

Assessing context

In assessing the context within which an allegedly defamatory statement has been made, the Court has emphasized that national law and practice must take into account the following:

- ▶ the role and status of the person making the impugned statement: the right to freedom of expression is particularly important for ‘public watchdogs’ such as the media and non-governmental organisations, as well as for elected representatives;¹⁶³
- ▶ the means and form of expression: for example, with regard to satire, it has held that commentators are allowed to provoke and agitate; and with regard to journalists, the Court has emphasized that they do not need to systematically distance themselves from statements made by their interviewees;¹⁶⁴
- ▶ the target of the impugned statement:
 - political and public figures must tolerate greater criticism than ordinary individuals, and any law that grants enhanced protection to such figures – including heads of state – presumptively falls foul of the requirements of Article 10.¹⁶⁵
 - Government, public authorities and other public institutions must similarly tolerate greater criticism and should not be shielded by defamation laws.¹⁶⁶
 - Civil servants should also tolerate greater criticism, though not to the same level as politicians. The Court has accepted that it may necessary be to protect them from offensive and abusive verbal attacks when on duty.¹⁶⁷
 - Judges should tolerate criticism of their functioning as well, although they may be protected against destructive attacks that are essentially unfounded.¹⁶⁸
 - Private individuals who are engaged in public life must also tolerate greater criticism, though not to the same extent as politicians or public figures.¹⁶⁹

162. *Observer and Guardian v. the United Kingdom*, 26 November 1991, Series A no. 216.

163. For example, *Castells v. Spain*, 23 April 1992, Series A no. 236.

164. For example, *Eon v. France*, no. 26118/10, 14 March 2013; *Jersild v. Denmark*, 23 September 1994, Series A no. 298.

165. *Lingens v. Austria*, 8 July 1986, Series A no. 103; *Otegi Mondragon v. Spain*, no. 2034/07, ECHR 2011, par. 55; *Pakdemirli v. Turkey*, no. 35839/97, 22 February 2005, par. 52; *Artun and Güvener v. Turkey*, no. 75510/01, 26 June 2007, par. 31; *Ömür Çağdaş Ersoy v. Turquie*, no. 19165/19, 15 June 2021, par. 58; *Colombani and Others v. France*, no. 51279/99, ECHR 2002-V, par. 67.

166. *Castells v. Spain*, 23 April 1992, Series A no. 236, par. 46; *Tammer v. Estonia*, no. 41205/98, ECHR 2001-I, par. 62; *Margulev v. Russia*, no. 15449/09, 8 October 2019, par. 53; *Vides Aizsardzibas Klubs v. Latvia*, no. 57829/00, 27 May 2004, par. 46.

167. *Busuioac v. Moldova*, no. 61513/00, 21 December 2004, par. 64; *Lešník v. Slovakia*, no. 35640/97, ECHR 2003-IV, par. 53.

168. *Prager and Oberschlick v. Austria*, 26 April 1995, Series A no. 313, par. 34.

169. *Kuliš v. Poland*, application no. 15601/02, 18 March 2008.

- Associations and other non-governmental organisations lay themselves open to scrutiny when they enter public debate; they must tolerate greater criticism.¹⁷⁰
- While the corporate reputation of a company may be protected, it does not enjoy the same level of protection as an individual (it lacks the moral dimension).¹⁷¹

In *Kasabova v. Bulgaria*, the Court held that the ‘presumption of falsity’ in defamation law can have a chilling effect on the publication of material whose truth may be difficult to establish in court, for example because there is no admissible evidence or it would be excessively expensive to provide such evidence. In such cases, journalists may simply be required to show that they acted fairly and responsibly.¹⁷² The case of *Rumyana Ivanova v. Bulgaria* provides an example of a journalist failing to do this; the Court found that the applicant had not consulted trustworthy sources and had adopted incriminating allegations as her own. But even in such cases, caution is required and national courts must not go too far: in *Bozhkov v. Bulgaria*, the Court held that an overly rigorous approach to testing a journalist’s professional conduct can have a chilling effect on freedom of expression.¹⁷³

Procedural fairness and equality of arms

The Court has emphasized the need for procedural fairness between the claimant and the defendant. In *Steel and Morris v. the United Kingdom*, which concerned a dispute between two unemployed protesters and the large multinational company McDonalds, it held that there had been no equality of arms and that the lack of legal aid for the protesters had rendered the proceedings against them unfair.¹⁷⁴

Criminal defamation laws

While the Court has not ruled that criminal defamation laws as such violate the right to freedom of expression, it has held that states should show restraint in the use of criminal proceedings.¹⁷⁵ Where civil defamation laws are available, these are preferred over criminal laws.¹⁷⁶

170. *Jerusalem v. Austria*, no. 26958/95, ECHR 2001-II, par. 38; *Paturol v. France*, no. 54968/00, 22 December 2005, par. 46.

171. *Uj v. Hungary*, no. 23954/10, 19 July 2011, par. 22; *OOO Regnum v. Russia*, no. 22649/08, 8 September 2020, par. 66.

172. no. 22385/03, 19 April 2011, par. 61. See also *Wall Street Journal Europe Sprl and Others v. the United Kingdom* (dec.), no. 28577/05, 10 February 2009; *Radio France and Others v. France*, no. 53984/00, ECHR 2004-II, par. 24; *Standard Verlags GmbH and Krawagna-Pfeifer v. Austria*, no. 19710/02, 2 November 2006, paras. 16, 30, 57.

173. no. 3316/04, 19 April 2011, par. 51.

174. no. 68416/01, ECHR 2005-II, par. 95.

175. *Morice v. France* [GC], no. 29369/10, ECHR 2015, par. 176; *De Carolis and France Télévisions v. France*, no. 29313/10, 21 January 2016, par. 44; *Otegi Mondragon v. Spain*, no. 2034/07, ECHR 2011, par. 58; *Incal v. Turkey*, 9 June 1998, Reports of Judgments and Decisions 1998-IV, par. 54; *Öztürk v. Turkey* [GC], no. 22479/93, ECHR 1999-VI, par. 66; *Castells v. Spain*, 23 April 1992, Series A no. 236; *Dickinson v. Turkey*, no. 25200/11, 2 February 2021, par. 56.

176. *Raichinov v. Bulgaria*, no. 47579/99, 20 April 2006, par. 50; *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, ECHR 2004-XI, par. 115.

The imposition of a prison sentence for defamation, or any offence committed by means of the media, is not compatible with Article 10 unless there are exceptional circumstances, particularly when other fundamental rights have been seriously impaired. This is the case, for example, with incitement to violence or hate speech.¹⁷⁷ For 'regular' defamation cases, a sanction of imprisonment violates the right to freedom of expression.¹⁷⁸ In the case of *Fatullayev v. Azerbaijan*, the Court described the 30-month prison sentence that had been imposed on the applicant as "grossly disproportionate" and ordered the applicant's immediate release.¹⁷⁹

Civil damage awards and cost orders

Civil laws and practices that allow for excessive or disproportionate damage awards or similar financial sanctions, such as orders to pay excessive legal costs, violate the right to freedom of expression. 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".¹⁸⁰ 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.¹⁸¹ There must be adequate domestic safeguards so as to avoid disproportionate awards being granted. In *MGN v. UK*, the Court held that an award to pay legal costs that were very high and disproportionate to the damage award also violated the right to freedom of expression.¹⁸²

Council of Europe recommendations

The Parliamentary Assembly of the Council of Europe has repeatedly called on member states to review their laws and bring them in line with the case-law of the European Court of Human Rights. In its 2007 Resolution, *Towards the Decriminalisation of Defamation*, it called on member states to:

- ▶ abolish prison sentences for defamation;
- ▶ guarantee that there is no misuse of criminal prosecutions for defamation;
- ▶ define the concept of defamation more precisely in legislation so as to avoid an arbitrary application of the law and to ensure that civil law provides effective protection;
- ▶ remove from their defamation laws any increased protection for public figures;
- ▶ ensure that defendants have appropriate means of defending themselves;
- ▶ set reasonable and proportionate maxima for awards for damages in defamation cases; and

177. *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, ECHR 2004-XI, par. 115; *Ruokanen and Others v. Finland*, no. 45130/06, 6 April 2010, par. 50; *Balaskas v. Greece*, no. 73087/17, 5 November 2020, par. 51.

178. In *Mahmudov and Agazade v. Azerbaijan* (no. 35877/04, 18 December 2008), the Court stated that investigative journalists would be inhibited from reporting if they risk imprisonment for defamation.

179. §§ 129 and 177,

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

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

182. No. 39401/04, 18 January 2011.

- ▶ provide appropriate legal guarantees against awards that are disproportionate.¹⁸³

The Committee of Ministers has called on states to take steps to prevent so-called ‘forum shopping’ (sometimes referred to as ‘libel tourism’), the phenomenon by which a claimant maliciously seeks to introduce a case in a court or country where they know it will be difficult for a defendant to defend a case.¹⁸⁴

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

As is clear from the summary of European Court of Human Rights case-law in the previous section, this is a complex area of law. Decades after the European Court of Human Rights’ first judgment in a defamation case, these cases continue to make up a large part of the European Court’s docket and the Court continues to find violations in many of them. It is not possible to identify any country’s defamation law and state that it is completely aligned with European Court of Human Rights’ case-law. However, there are valuable practices on specific issues, as well as ongoing initiatives in some countries to reform and refine defamation laws. There are particular developments of interest in relation to the decriminalisation of defamation law, and legislation to curb the abuse of defamation law through so-called strategic lawsuits against public participation (often referred to as “SLAPPs”).

Decriminalisation of defamation

There has been a gradual development across many European countries to decriminalise defamation laws. Thereby, the sentence of imprisonment no longer looms over journalists, the state prosecutorial machinery cannot be invoked to silence critical reports that hold those in positions of power to account, and journalists need not fear having a criminal record. In short, journalism is no longer a potential crime.

Bosnia and Herzegovina, Ukraine, Montenegro, Estonia, and Georgia decriminalized defamation in the late 1990s and early 2000s; followed by Armenia, Moldova, North Macedonia, Romania, the United Kingdom, and Ireland. More recently, criminal defamation laws were repealed in Norway and in Malta. Four countries have implemented partial decriminalization: Bulgaria, Cyprus, Croatia, Lithuania and Serbia.¹⁸⁵

Some of these reforms came in direct response to rulings of the European Court of Human Rights, demonstrating strong compliance with judgments. North Macedonia abolished its criminal defamation and insult laws as part of its response

183. Resolution 1577(2007), Towards decriminalisation of defamation

184. Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, “Libel Tourism”, to ensure Freedom of Expression, 4 July 2012.

185. Rosario Soraide, The “misuse” of the judicial system to attack freedom of expression: trends, challenges and responses, UNESCO 2022.

to the European Court of Human Rights' ruling in *Makraduli v. North Macedonia*;¹⁸⁶ Montenegro decriminalised defamation and insult in response to the European Court's findings in a case concerning a suspended prison sentence for defamation of a public official in allegations of contaminated drinking water;¹⁸⁷ and Romania's decriminalisation of defamation came in response to the European Court of Human Rights ruling in the case of *Dalban*.¹⁸⁸

In France, the offence of insulting the head of state was repealed following two adverse rulings by the European Court of Human Rights.¹⁸⁹ In the Netherlands, the offences of *lèse-majesté* (insulting the monarch) and insulting a foreign head of state were removed from the Criminal Code in 2020 after a review found that these offences were not in keeping with the case-law of the European Court of Human Rights, despite there not having been a case against the Netherlands specifically.¹⁹⁰

Proposals to curb Strategic Lawsuits against Public Participation (SLAPP lawsuits)

The abuse of defamation laws through 'Strategic Lawsuits Against Public Participation' (usually referred to as SLAPP lawsuits, or SLAPPs for short) has come to constitute a serious threat to media freedom. Defamation law is uniquely suitable to silencing journalists: when allegations of wrong-doing are published against someone in a position of power, it is often very easy for them to file a defamation claim against the journalist or media outlet concerned, and disproportionately difficult and expensive for the defendant to defend such a case. Research has identified a surge in such cases across Europe,¹⁹¹ leading to concerns about 'lawfare' against the media.¹⁹² Recognising the threat that this phenomenon poses

186. Resolution CM/ResDH(2019)190, Execution of the judgment of the European Court of Human Rights, *Makraduli* against North Macedonia, 4 September 2019.

187. Resolution CM/ResDH(2016)44, Execution of the judgment of the European Court of Human Rights, *Šabanović* against Montenegro and Serbia, 30 March 2016.

188. *Dalban v. Romania*, no. 28114/95, 28 September 1999. Following domestic proceedings which included a finding by the Constitutional Court that the decriminalisation of insult and defamation was unconstitutional, in 2010 the Court of Cassation confirmed the decriminalisation of insult and defamation.

189. *Colombani and others v. France*, no. 51279/99, 25 June 2002; *Eon v. France*, no. 26118/10, 14 March 2013.

190. There are still criminal prosecutions for insulting monarchs under 'regular' criminal libel laws: in January 2020 an individual was found guilty of insulting the Dutch Queen. [Rechtbank Midden-Nederland, 23 January 2020](#).

191. Rosario Soraide, The "misuse" of the judicial system to attack freedom of expression: trends, challenges and responses, UNESCO 2022. See also the research published by the Coalition against SLAPPs in Europe: <https://www.the-case.eu/slapps/>.

192. See the Secretary General's 2023 Annual Report, 5 May 2023: <https://www.coe.int/en/web/portal/-/secretary-general-calls-for-action-against-democratic-backsliding-in-annual-report>; the 2023 Partners' Report of the Platform to Promote the Protection of Journalism and Safety of Journalists: <https://fom.coe.int/en/rapports>; the Commissioner for Human Rights' 2020 Comment, Time to take action against SLAPPs: <https://www.coe.int/en/web/commissioner/-/time-to-take-action-against-slapps>. The Parliamentary Assembly is working on a report and resolution, Countering SLAPPs: an imperative for a democratic society and the Committee of Ministers has established a Committee of Experts on Strategic Lawsuits against Public Participation (MSI-SLP) to draft a recommendation by the end of 2023.

to freedom of expression and the free circulation of information and ideas, several countries have or are in the process of introducing law reforms to counter the phenomenon.

The phenomenon of SLAPPs was first identified in the United States, and several US states have enacted so-called 'anti-SLAPP' laws. These laws provide protection against lawsuits that are "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech".¹⁹³ If a defendant shows that a case was brought in response to a statement on an issue of public interest, the claimant must show that there is a probability that they will prevail; if they cannot do that, the case must be dismissed.¹⁹⁴ Similar laws exist in Canada. The Quebec Civil Procedure Code provides that courts may declare a case to be abusive on the grounds that it is "clearly unfounded, frivolous or intended to delay or in conduct that is vexatious or quarrelsome"; or because it uses "procedure that is excessive or unreasonable or that causes prejudice to another person, or attempts to defeat the ends of justice, particularly if it operates to restrict another person's freedom of expression in public debate".¹⁹⁵ Ontario also has effective anti-SLAPP legislation: once a defendant establishes that the matter relates to an issue of public interest, the claimant must demonstrate that the case has "substantial merit", that the defendant has "no valid defence", and that the harm suffered from an early dismissal would outweigh the public interest in protecting expression.¹⁹⁶

In most European countries, while early dismissals are possible in theory, in practice there is a high threshold and a case needs to be litigated on its merits before a defendant can prevail.¹⁹⁷ This is expensive and burdens the defendant. Even in those European countries where a defendant can 'countersue' for vexatious litigation, such cases are rarely successful and require the defendant to go through yet another lengthy legal process. On the rare occasions that countersuits have succeeded, the penalty imposed on a SLAPP claimant has been light and unlikely to deter future claims.¹⁹⁸ Law reform is however under consideration or has been announced in some European countries:

- ▶ In Ireland, a formal review of the Defamation Act was published in March 2022 and the Irish government subsequently announced its intention to enact law reform focused on bringing down legal costs, limiting the high levels of

193. See, for example, California Code of Civil Procedure, Chapter 425.16 (<https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-425-16.html>).

194. California Civil Procedure Code, § 425.16(e)(1-4): <https://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-425-16.html>.

195. Quebec Code of Civil Procedure, Article 51: <https://www.legisquebec.gouv.qc.ca/en/document/cs/c-25.01>.

196. The Law Commission reviewed the law and found that it works well: Report on Defamation Law in the Internet Age, March 2020.

197. J. Bayer, P. Bárd, L. Vosyliute, N. C. Luk, Strategic Lawsuits Against Public Participation (SLAPP) in the European Union: A comparative study, 30 June 2021: https://ec.europa.eu/info/sites/default/files/slapp_comparative_study.pdf.

198. For example, in a case in France in which the claimant was found to have brought proceedings maliciously, damages of only €10,000 were awarded which does not constitute a deterrent for a multi-millionaire claimant: Paris Court of Appeal, Case No. 19/04979, 1 July 2020.

damages, imposing a higher threshold on the ability of claimants to bring litigation, and providing clearer protection for public interest journalism.¹⁹⁹

- ▶ In the United Kingdom, the government has announced that it will introduce a mechanism to allow for the early dismissal of SLAPPs and take action to limit legal costs. Under the announced reforms, a court will apply a three-part test to determine whether a case should be dismissed early: (1) it will assess if the case is against activity in the public interest; (2) it will examine whether there is evidence of abuse of process; and (3) it will review whether the case has sufficient merit. It has been announced that these measures will be introduced in parliament as a matter of urgency.²⁰⁰ In addition to these legal measures, the UK Solicitors Regulatory Authority has updated its guidance urging lawyers not to represent clients in SLAPP suits and to report any lawyers that do; more than 20 investigations have since been opened.²⁰¹
- ▶ In Lithuania, in order to tackle the problem of SLAPPs, legislative amendments to the Code of Civil Procedure and the Criminal Code have been prepared. The former provides a new possibility of early dismissal of a lawsuit in case a court establishes that it may be categorised as a SLAPP. The amendment to the Criminal Code revises the criminal liability for defamation, in order to strengthen the protection of journalists and other disseminators of public information from unjustified prosecution.

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ Ensure that national defamation law includes the following safeguards for freedom of expression:
 - defences of truth, public-interest, and fair comment
 - early dismissal of abusive or vexatious cases and other lawsuits that have the characteristics of a SLAPP lawsuit;
 - a distinction between allegations of fact and value judgments;
 - no enhanced protection for state bodies, state functionaries (including domestic and foreign heads of state), the monarchy or its members, the national flag or state emblems;
 - politicians, public servants, public figures, must tolerate greater criticism of their acts;

199. Report of the Review of the Defamation Act 2009, 1 March 2022: <https://www.gov.ie/en/publication/4478f-report-of-the-review-of-the-defamation-act-2009/>. For the subsequent announced law reform, see, amongst others, 'Plans for defamation law reform in Ireland unveiled as proposals published', Irish Mirror, 1 March 2022: <https://www.irishmirror.ie/news/irish-news/plans-defamation-law-reform-ireland-26360209>.

200. Crackdown on corrupt elites abusing UK legal system to silence critics, 20 July 2022: <https://www.gov.uk/government/news/crackdown-on-corrupt-elites-abusing-uk-legal-system-to-silence-critics>.

201. Conduct in disputes, 4 March 2022: <https://www.sra.org.uk/solicitors/guidance/conduct-disputes/>. Investigations were reported in June 2022: Law Gazette, 'SRA reveals number of open SLAPPs investigations', 24 June 2022: <https://www.lawgazette.co.uk/news/sra-reveals-number-of-open-slapps-investigations/5112901.article>.

- procedural fairness and equality of arms is ensured, including by the provision of adequate legal aid for defendants;
 - awards for damages and costs are proportionate;
 - courts take into account the importance of protecting the free flow of information, ideas, and opinions on matters of public interest when hearing defamation cases;
 - courts take into account context when hearing defamation cases, for example by recognizing that satirists have latitude to exaggerate.
- ▶ Decriminalise defamation and insult laws, or at a minimum remove the sentence of imprisonment except in cases that constitute hate speech or incitement to violence.

Handbooks and resources:

- ▶ [Thematic website on defamation and freedom of expression](#), Council of Europe 2018;
- ▶ [Factsheet on the Protection of Reputation](#), European Court of Human Rights 2023;

G. CLEAR LEGAL BASIS FOR SURVEILLANCE AND INTERCEPTION OF COMMUNICATIONS DATA THAT INCLUDES SAFEGUARDS AGAINST MISUSE AND ABUSE (PARAGRAPH 7 OF THE GUIDELINES)

7. Member States should clarify the legal bases of State surveillance and interception of communications data and the procedural safeguards against misuse and abuse, such as the possibility of review by a competent judicial authority, due process and user notification. Member States should ensure the effective operation of oversight mechanisms for State surveillance of communications, to ensure transparency and accountability for the scope and nature of such practices. A range of stakeholders should be represented on such oversight bodies, including journalists and their organisations and legal and technical experts.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Unregulated surveillance and interception of communications data threatens the safety of journalists and other media workers	Clear legislative framework that regulates all State surveillance and interception of communications data.
Misuse or abuse of powers of surveillance and interception of communications data	Effective safeguards against misuse and abuse, such as the possibility of review by a competent judicial authority, due process and user notification

Risks	Measures to avert/remedy the risks
Insufficient oversight, transparency, and accountability of the use of surveillance and interception of communications data of journalists and other media workers	Effective oversight mechanism for surveillance and interception of communications data
	A range of stakeholders are represented on oversight bodies, including journalists and their organisations and legal and technical experts.

B. EUROPEAN COURT OF HUMAN RIGHTS CASE-LAW AND OTHER RELEVANT SOURCES

The European Court of Human Rights has developed a settled body of case-law requiring that surveillance has a clear legal basis that provides safeguards for abuse. These safeguards must include that authorisation is granted by a judge or other independent body and must take into account the invasion of privacy that surveillance and the interception of communications represents. Any surveillance ordered against a journalist must take into account the risk that confidential sources of information may be intercepted and may be ordered only by a court, having due regard to the conditions established for the protection of journalistic sources (discussed under Section B of this Guide, on the protection of sources).

Mass surveillance – understood as surveillance that is not targeted at a specific individual but which intercepts the communications of a large number of individuals on the basis of certain criteria, such as keywords – poses a distinct regulatory challenge and calls for strict regulation. In its 2006 decision in *Weber and Saravia v. Germany*²⁰² the Court set six minimum standards that domestic law regulating surveillance must satisfy:

- (1) the law must specify the nature of the offences which may give rise to an interception order;
- (2) the law must include a definition of the categories of people liable to have their communications intercepted;
- (3) the law must set a limit on the duration of the interceptions;
- (4) the law must specify the procedure to be followed for examining, using and storing the data obtained;
- (5) the law must specify the precautions to be taken when communicating the data to other parties; and
- (6) the law must state the circumstances in which recordings may or must be erased, or the tapes destroyed.

²⁰². no. 54934/00, decision of 29 June 2006.

In *Big Brother Watch and Others v. the United Kingdom*,²⁰³ the Grand Chamber of the Court further elaborated this framework in the light of advances in surveillance technology (and especially in light of the revelations by NSA whistle-blower, Edward Snowden, of mass-scale surveillance programmes operated by the intelligence services of the United States of America and the United Kingdom). The Grand Chamber specified that domestic legal frameworks must clearly define:

- (1) the grounds on which bulk interception may be authorised;
- (2) the circumstances in which an individual's communications may be intercepted;
- (3) the procedure to be followed for granting authorisation;
- (4) the procedures to be followed for selecting, examining and using intercept material;
- (5) the precautions to be taken when communicating the material to other parties;
- (6) the limits on the duration of interception, the storage of intercept material and the circumstances in which such material must be erased and destroyed;
- (7) the procedures and modalities for supervision by an independent authority of compliance with the above safeguards and its powers to address non-compliance;
- (8) the procedures for independent ex post facto review of such compliance and the powers vested in the competent body in addressing instances of non-compliance.²⁰⁴

The Grand Chamber furthermore provided guidance regarding the precautions to be taken when communicating intercept material to other parties. It specified that:

“[T]he transmission by a Contracting State to foreign States or international organisations of material obtained by bulk interception should be limited to such material as has been collected and stored in a Convention compliant manner and should be subject to certain additional specific safeguards pertaining to the transfer itself. First of all, the circumstances in which such a transfer may take place must be set out clearly in domestic law. Secondly, the transferring State must ensure that the receiving State, in handling the data, has in place safeguards capable of preventing abuse and disproportionate interference. In particular, the receiving State must guarantee the secure storage of the material and restrict its onward disclosure. This does not necessarily mean that the receiving State must have comparable protection to that of the transferring State; nor does it necessarily require that an assurance is given prior to every transfer. Thirdly, heightened safeguards will be necessary when it is clear that material requiring special confidentiality – such as confidential journalistic material – is being

203. *Big Brother Watch and Others v. the United Kingdom* (GC), nos. 58170/13, 62322/14 and 24960/15, 25 May 2021. The Court's judgment in the companion case (decided on the same day) of *Centrum för rättvisa v. Sweden* (GC), 25 May 2021, no. 35252/08, sets the same standard.

204. *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13, 62322/14 and 24960/15, 13 September 2018, par. 361.

transferred. Finally, the Court considers that the transfer of material to foreign intelligence partners should also be subject to independent control.²⁰⁵

The Grand Chamber also specified that communications data other than content (technical details regarding email communications such as the recipient of communications and other technical data) is potentially as intrusive as the interception of content. The same safeguards that apply to the interception of the content of communications should therefore apply to the interception of communications data.²⁰⁶

The Venice Commission has issued a report on the Democratic Oversight of Signals Intelligence Agencies,²⁰⁷ indicating that the two most significant safeguards are authorisation procedures and the oversight of the process. Oversight must be performed by an independent, external body; and the Venice Commission recommended that independent controls in the system for authorisation and oversight should be assessed as a whole. The Venice Commission also considered that internal controls within the surveillance agencies were a “primary safeguard”, and that recruitment and training of personnel with regard to human rights are key issues. The agencies concerned should incorporate respect for privacy and other human rights as key internal values. The Venice Commission acknowledged that journalists require special protection, because of the risk that surveillance may compromise their confidential sources of information and the attendant risk to the safety of whistle-blowers. The Venice Commission noted that NGOs and bloggers who are regularly engaged in reporting on issues of public interest and whose output contributes to public debate and shaping public opinion could claim equivalent protection in this regard.

UN Human Rights Council Resolution on the Safety of Journalists of 6 October 2022 calls upon States to “ensure that targeted surveillance technologies are only used in accordance with the human rights principles of lawfulness, legitimacy, necessity and proportionality, and that legal mechanisms of redress and effective remedies are available for victims of surveillance-related violations and abuses”.

The UN Special Rapporteur on Freedom of Expression has recommended that States “should hold surveillance companies accountable for foreseeable use of their technology by their clients to target journalists, and amend sovereign immunity laws to permit civil action against States engaged in cross-border digital attacks on journalists.”²⁰⁸ The Special Rapporteur has also issued recommendations for companies that produce or sell surveillance technology, stating that they should “publicly affirm their responsibility to respect human rights in line with the Guiding Principles on Business and Human Rights and Organization for Economic Cooperation and

205. *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13, 62322/14 and 24960/15, 13 September 2018, par. 362.

206. *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13, 62322/14 and 24960/15, 13 September 2018, par. 363.

207. 2015 Report of the European Commission for Democracy through Law (“the Venice Commission”) on the Democratic Oversight of Signals Intelligence Agencies.

208. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Reinforcing media freedom and the safety of journalists in the digital age, 20 April 2022, UN Doc. A/HRC/50/29.

Development guidelines, and conduct and publicly disclose robust human rights due diligence for all proposed transfers of surveillance technology. They should refrain from exporting surveillance technology if there is a significant risk it will be used to commit human rights violations.”²⁰⁹

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

Only a few States indicated strong practices in this area:²¹⁰

- ▶ The French Code of Criminal Procedure prohibits any surveillance that results in the identification of a journalist’s confidential sources of information;²¹¹
- ▶ Belgium’s 2005 Act on the Protection of Journalistic Sources provides that surveillance may be instituted only by court order and when necessary to prevent crimes that pose a serious threat to the physical integrity of one or more persons, and only then if the information is of crucial importance for preventing such crimes and the information cannot be obtained by any other means;
- ▶ The Austrian Constitutional Court has required that surveillance is strictly regulated and subject to human rights standards; it has demonstrated strict scrutiny by repealing legislative provisions on data retention.²¹² Surveillance is regulated under the Federal Security Police Act, the Police State-protection Act, the Code of Criminal Procedure and the Telecommunications Act (TKG); these require a court order for communications surveillance, and provide that surveillance subjects are to be informed of any surveillance following the finalisation of an investigation;²¹³
- ▶ Under the German Code of Criminal Procedure, a court may authorise surveillance only if there is reasonable suspicion of the commission of a serious crime and other means of establishing the facts would be much more difficult or would offer no prospect of success;²¹⁴
- ▶ Latvia’s Operational Activities Law requires that any surveillance that is likely to result in a significant infringement of fundamental rights must be approved by the Chief Justice of the Supreme Court or by a Justice of the Supreme Court specially authorised by him or her;
- ▶ The Dutch 2017 Law on Intelligence and Security Services requires ministerial authorisation of any surveillance; if the target is a journalist this needs to be specifically noted. Any surveillance likely to result in the disclosure

209. Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Reinforcing media freedom and the safety of journalists in the digital age, 20 April 2022, UN Doc. A/HRC/50/29.

210. In response to the questionnaire circulated by the CDMSI secretariat.

211. Code of Criminal Procedure, Article 100-5.

212. Cf. VfSlg 19.702/2012 and VfSlg 19.892/2014 in conjunction with ECJ 08/04/2014, C-293/12 and C-594/12, Digital Rights Ireland and Seitlinger, among others.

213. Regarding the constitutional-law limitations of the powers and their permissibility under constitutional law, cf. VfSlg 18.830/2009 and VfSlg 19.657/2012.

214. Article 100a ff.

of confidential sources requires a court order which needs to be renewed every four weeks.

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ The legislative framework that regulates surveillance and interception of communications data should be clear and include the following safeguards against abuse:
 - authorisation by a judicial authority or other independent body
 - surveillance of journalists or interception of their communications may only be authorised for the prevention or investigation of cases involving national security, serious crime, or serious bodily harm, and if the relevant information is not likely to be obtainable through other means;
 - surveillance of journalists or interception of communications likely to reveal confidential journalistic sources should be subject to a higher level of judicial review and only be authorised in accordance with the same threshold safeguards as apply to the protection of sources;
 - the law must set a limit on the duration of the interceptions; specify the procedure to be followed for examining, using and storing the data obtained; specify the precautions to be taken when communicating the data to other parties; and state the circumstances in which recordings may or must be erased, or the tapes destroyed;
 - surveillance targets are notified as soon as the investigation finishes or the legitimate aim of preventing or detecting crime is no longer jeopardised;
 - review by a judicial authority.
- ▶ Oversight mechanisms for surveillance and interception of communications data should be independent, have effective powers and be sufficiently resourced, and represent a range of stakeholders including journalists and their organisations and legal and technical experts.

Handbooks and resources:

- ▶ [Factsheet on Mass Surveillance](#), European Court of Human Rights 2023;

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

A. RAISING AWARENESS OF SAFETY ISSUES; TRANSLATION AND DISSEMINATION OF THE RECOMMENDATION (PARAGRAPHS 28 AND 29 OF THE GUIDELINES)

28. Member states should promote the translation (into the national and minority languages of the country) and the widest possible dissemination of this recommendation, as well as awareness raising about its content in a variety of publicity materials. Information and awareness-raising strategies should include specific campaigns designed to capitalise on the publicity opportunities provided by internationally designated days such as World Press Freedom Day (3 May), International Day to End Impunity for Crimes against Journalists (2 November) and International Right to Know Day (28 September). Member States should co-operate fully with information-gathering, awareness-raising and other initiatives co-ordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors. In doing so, they should proactively highlight, as appropriate, gender-specific issues and those concerning impermissible grounds for discrimination.

29. Member States should encourage relevant bodies to give prominence to this recommendation – and educational materials dealing with all the issues it addresses, including gender-specific issues – in training programmes in journalism schools and as part of continuing education for journalists, and media and information literacy initiatives.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Lack of awareness and knowledge of gender-specific issues concerning the safety of journalists and other media actors	In their dissemination and awareness-raising activities, States proactively highlight gender-specific issues and issues concerning impermissible grounds for discrimination.

Risks	Measures to avert/remedy the risks
Lack of awareness and knowledge of safety issues prevents implementation of the Recommendation and endangers the safety of journalists and other media actors	Translation of the Recommendation into the national and minority languages of the country
	Ensure the widest possible dissemination of the Recommendation, in a variety of publicity materials.
	Capitalise on the publicity opportunities provided by internationally designated days such as World Press Freedom Day (3 May), International Day to End Impunity for Crimes against Journalists (2 November) and International Right to Know Day (28 September).
	Member states should co-operate with information-gathering, awareness-raising and other initiatives co-ordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors
	Journalism training school curricula pay prominent attention to the issue of safety of journalists and other media actors, including the Recommendation.
Media and information literacy initiatives pay prominent attention to the issue of safety of journalists and other media actors, including the Recommendation.	

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

In June 2021, the Committee of Ministers adopted a Resolution on the Safety of Journalists. In this, member states commit to cooperate to promote and raise awareness of the importance of improving the safety of journalists:

“We pledge to strengthen international collaboration to promote safety of journalists and continue to place the issue high on the agendas of global and regional organisations to which we belong. Furthermore, we fully support initiatives (such as the Media Freedom Coalition set-up in the context of the Global Pledge on media freedom), that call on States to speak out and act when violations of media freedom take place.”

Building on this commitment, in 2022 the Council of Europe designed a five-year Campaign focusing on the Safety of Journalists.²¹⁵ Under the motto “Journalists matter”, the continent-wide campaign aims at sensitising governments, citizens and journalists themselves to the importance of ensuring the safety of journalists to defend the very essence of a pluralistic democracy. The Campaign will also promote corresponding campaigns at national level, encouraging member states to take concrete steps towards developing and implementing national action plans, strategies or mechanisms aimed at implementing effective actions to ensure journalists’ safety. To facilitate exchange of experiences and learning, four annual thematic events will be organised around each of the four pillars of the Recommendation

215. <https://www.coe.int/en/web/freedom-expression/safety-of-journalists-campaign>.

(“prevention”, “protection”, “prosecution” and “promotion of information, education and awareness raising”).

The UN Plan of Action on the Safety of Journalists also emphasizes the importance of awareness raising. It seeks to sensitize member states on the importance of freedom of expression and the dangers that impunity for crimes against media professionals represents for freedom and democracy; as well as to sensitize journalists, media owners and policy-makers on existing international instruments and conventions, as well as various existing practical guides on the safety of journalists. It also emphasises the importance of raising awareness among the general public on the importance of the safety of journalists and the fight against impunity.

UN Human Rights Council Resolution on the Safety of Journalists of 6 October 2022 calls upon States to “support capacity-building, training and awareness-raising in the judiciary and among law enforcement officers and military and security personnel, as well as among media organizations, journalists and members of civil society, regarding States’ international human rights and international humanitarian law obligations and commitments relating to the safety of journalists”.

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

Awareness-raising activities

Only Bosnia and Herzegovina, Bulgaria, Serbia, and Ukraine reported that the Recommendation has been translated into national language and made available; the Netherlands responded that it is planning to do so. The Albanian translation was made available online.²¹⁶

France, Germany, Lithuania, the Netherlands, Portugal, Serbia, Azerbaijan, Switzerland, the United Kingdom reported engaging in specific awareness raising around World Press Freedom Day or other international days regarding freedom of expression and the media. The Netherlands reported that in 2020, the UNESCO World Press Freedom Conference was held in the Hague, resulting in more than 50 countries pledging to independently investigate and prosecute all forms of attacks on journalists and other media personnel, both online and offline. The United Kingdom reported that in 2021, it hosted a panel at the World Press Freedom Conference looking at the role of governments in promoting media freedom; and that it had signed up and supported numerous statements to mark World Press Freedom Day and the International Day to end impunity for crimes against journalists, both through the Media Freedom Coalition and various Groups of Friends in UN, OSCE and Council of Europe groupings. As part of World Press Freedom Day in both 2021 and 2022, Members of Parliament debated media freedom and journalist safety issues.

On 3 May 2023, the Swiss Federal Office of Communications announced a National Action Plan on the safety of journalists. It seeks to put the issue of the safety of

216. [Recommendation CM/Rec\(2016\)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors - Freedom of Expression \(coe.int\)](#)

journalists on the public agenda and raise awareness. Drawn up in cooperation with the media industry, it foresees measures including awareness raising, dialogue with law enforcement, industry dialogue, and an analysis of abusive lawsuits.²¹⁷

In Malta and in Slovakia, the murders of the journalists Daphne Caruana Galizia and Ján Kuciak and his fiancée Martina Kušnírová led to a wide-ranging societal debate on the safety of journalists, the risks that journalists face in carrying out their work, and the importance of their work to democratic society. Reforms to law and practice are underway in each of these countries, although civil society has criticised a lack of transparency and the slow pace of reforms as well as of the prosecution of not only suspects but also the ‘masterminds’ who ordered the murders.

Educational activities / training of journalists and law enforcement

In Greece, the Peace Journalism Lab of the School of Journalism and Mass Communications of the Aristotle University of Thessaloniki has implemented training on safety of journalists since 2019.²¹⁸ The “Journalists Field Safety” Training School addresses issues ranging from physical security and protective equipment to data security, stress management, and environmental health. In 2023, it was decided to step up this work and establish an International Training Centre for the Safety of Journalists and Media Professionals, to provide specialized training and support, as well as conduct research. Trainings will continue to be provided by the Aristotle University of Thessaloniki, in cooperation with a large network of partners. In addition, the development of a new common interdepartmental academic course on the safety of journalists has been announced to form part of the curriculum of the Journalism and Communication departments of Greek universities.

In France, the training program for magistrates and law enforcement officers reportedly includes specific training on media freedom and the safety of journalists. Bulgaria reported extensive training activities for law enforcement authorities, provided through the National Institute of Justice. This reportedly includes specific attention to hate speech and hate crimes against journalists, in line with the Recommendation. Serbia reported the development of online courses on “Freedom of Expression” and “Protection and Safety of Journalists” through the joint European Union and Council of Europe’s action on “Freedom of Expression and Freedom of the Media in South-East Europe (JUFREX)”, in cooperation with the Council of Europe’s HELP Programme, with the support of experts including lawyers from the Registry of the European Court of Human Rights. A Training of Trainers on Methodology for the implementation of online courses has been organised to equip future tutors – judges, prosecutors and university professors – with the skills to lead courses at the local level. In the Netherlands, the *PersVeilig* program provides training in schools, at universities, and at media companies on improving the resilience of journalists against aggression and intimidation.

217. <https://www.bakom.admin.ch/bakom/en/homepage/electronic-media/media-policy/national-action-plan.html>.

218. Journalists Field Safety Training School: <https://pjl.jour.auth.gr/journalists-field-safety-training-school/>.

Sweden also reported several educational activities. Linnaeus University's Media Institute Fojo has been funded to run workshops, lectures, and training courses concerning hatred and threats against journalists with a particular focus on reaching smaller editorial offices and freelancers. It has trained special investigators of democracy and hate crimes at the Police Academy; it also provides support and advice for journalists and newsroom editors. The Swedish Crime Victim Authority has been funded to develop training courses and information material to support those who are at risk of being exposed to threats and hatred, including journalists; and the National Police Authority has put in place awareness raising campaigns aiming at helping journalists who face harassment.

In the United Kingdom, training for both police forces and journalists is being updated to improve each of these stakeholders' understanding of the role of their counterpart. This includes a requirement for journalists' training courses to teach the relationship between journalists and the police; ongoing engagement between the College of Policing and journalist organisations concerning public order training; and initiatives led by the National Council for the Training of Journalists and the National Union of Journalists such as the 'Storysmart' online training program which includes modules on topics such as hostile environment training, psychological trauma and wellbeing, cyber risks, and dealing with injury.²¹⁹

Media and information literacy initiatives

While most European States have strategies for media and information literacy strategies and activities in place, none reported including the safety of journalists as a specific topic.

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ The Recommendation should be translated into the national and minority languages;
- ▶ States should ensure the widest possible dissemination of the Recommendation, in a variety of publicity materials, including in print as well as on the websites of local, regional and national bodies with a mandate for the promotion of media or the protection of democracy, and by making it freely available to libraries, schools (including journalism schools), and media outlets;
- ▶ States should use the publicity opportunities provided by internationally designated days such as World Press Freedom Day (3 May), International Day to End Impunity for Crimes against Journalists (2 November) and International Right to Know Day (28 September) to raise awareness of the safety of journalists to the functioning of democracy;
- ▶ Member States should co-operate with information-gathering, awareness-raising and other initiatives co-ordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors;

219. See <https://www.nuj.org.uk/learn/storysmart.html>.

- ▶ Journalism training school curricula should pay prominent attention to the issue of safety of journalists and other media actors;
- ▶ Media and information literacy initiatives should pay prominent attention to the issue of safety of journalists and other media actors;
- ▶ In their dissemination and awareness-raising activities, States should proactively highlight gender-specific issues and issues concerning impermissible grounds for discrimination.

B. PARTNERSHIPS WITH CIVIL SOCIETY (PARAGRAPH 30 OF THE GUIDELINES)

30. Member States should develop a partnership with civil society and the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity. This should involve putting into practice the principles of open government and open justice and adopting a constructive and responsive attitude to civil society and media reporting on threats and violence against journalists and other media actors, highlighting gender-specific and other issues, as appropriate. It should also involve active co-operation in publicising and educating about relevant issues and standards.

A. INDICATORS

Risks	Measures to avert/remedy the risks
Ineffective implementation of the Recommendation because of a lack of collaboration between member States, media, and civil society organisations.	Member States should develop partnerships with civil society and the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity.
	Member States should adopt a constructive and responsive attitude to civil society and media reporting on threats and violence against journalists and other media actors.
	Member States should actively co-operate with media and civil society organisations in publicising and educating about safety issues and standards.

B. REFERENCE TEXTS AND OTHER RELEVANT SOURCES

The Resolution on the Safety of Journalists adopted by the 2021 Conference of Ministers responsible for Media and Information Society, meeting in Cyprus, emphasized that “the effective involvement – at all stages – of civil society, academia, journalists and their professional associations are instrumental to the success” of dedicated national action plans on the safety of journalists.²²⁰ Ministers committed to working with and supporting civil society efforts to this end.

²²⁰ Conference of Ministers responsible for Media and Information Society, Resolution on the safety of journalists, 10-11 June 2021.

The Parliamentary Assembly of the Council of Europe has called on States to “develop constructive, non-discriminatory mechanisms of dialogue with media and journalists’ standing or ad hoc committees, bringing together politicians, judges, public prosecutors, police officers, journalists and editors, to discuss problems concerning journalists’ security, and look for solutions in a collaborative framework, also paying specific attention to the need to ensure effective protection for investigative journalists, as well as to the higher vulnerability of women journalists and the particular vulnerability of freelance journalists.”²²¹

In its work on the issue of the Safety of Journalists, the European Commission has also emphasized the importance of effective cooperation between civil society, law enforcement bodies, and government agencies. Commission Recommendation (EU) 2021/1534 emphasizes that states should set up coordination centres and protocols of cooperation, and engage in a continuous dialogue between law enforcement authorities and journalists on ways to improve the safety of journalists.²²²

The Council of Europe’s Platform to promote the protection of journalism and safety of journalists is an important example of a partnership between civil society, States and an intergovernmental organisation.²²³ The Platform helps dialogue between governments and journalists’ organisations of journalists by facilitating the compilation and dissemination of information on serious concerns about incidents that affect media freedom and safety of journalists in Council of Europe member states. Through the Platform, civil society organisations issue alerts which are brought to the attention of the state(s) concerned, which are invited to respond and take protective action as appropriate. Through this mechanism, the Platform can have an impact on individual cases whilst the ongoing collection of data through the alerts helps identify trends, issues of concern, and the formulation of adequate policy responses.

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

Several countries have established formal civil society partnerships as part of comprehensive national action plans on the safety of journalists. This is the case in, for example, Sweden, the Netherlands, Denmark, and the United Kingdom; the relevant initiatives are described in greater detail in Section II.D, above. Germany (at the level of the Länder), Greece, Lithuania, and Ukraine also reported that formalized partnerships had been developed between civil society and different government entities on the issue of safety of journalists, whilst France reported providing funding for a newly created Council of Journalistic Ethics and Mediation.

There have also been – and continue to be – multi-stakeholder meetings, working groups, and workshops to discuss the safety of journalists and develop improved

221. Resolution 2317 (2020), Threats to media freedom and journalists’ security in Europe, 28 January 2020.

222. Recommendation (EU) 2021/1534 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, 16 September 2021.

223. See <https://fom.coe.int/>.

policy responses. A long-standing example of this can be found in Serbia, where a Standing Working Group for the Safety of Journalists was established in 2016 by the Public Prosecutor's Office, the Ministry of Internal Affairs and seven journalists and media associations. In 2020, to increase the efficiency of the response and monitor the effectiveness of actions taken to protect the safety of journalists, Working Group for the Safety and Protection of Journalists was formed which is attended by the Prime Minister and the Deputy Prime Minister, as well as other government and law enforcement representatives. The government also provides funding for conferences on the issue of the safety of journalists. The Public Protector established a Platform to record attacks and pressures against journalists, in cooperation with journalist associations and trade unions.

In Greece, a Task Force has been established comprised of law enforcement and government representatives as well as representatives from academia and journalists' associations, with a mandate to conduct a review of the current situation and needs, analyse international best practices, solicit proposals from across society, and develop new legislation, policies, and tools to improve the safety of journalists. The Task Force has high level representation from each of its members to ensure follow-up and that the issue receives appropriate attention, and has established subgroups on specific issues such as SLAPPs, and violence against journalists. In March 2023, the Task Force submitted its first Progress Report to the European Commission.²²⁴

In other countries, civil society organisations are integrated in government and regulatory training programmes, including on the safety of journalists. In Austria, civil society organisations play an important part in human rights training – including on freedom of expression issues – for government officials and in raising public awareness on key human rights issues; to enable them to play this role, the Press Subsidies Act 2004 provides that they may receive public funding from the state, the Provinces and the municipalities. In Germany, there are similar projects at Länder level in which the expertise of the judiciary, Media Authorities and media companies is brought together.²²⁵ In Belgium, local authorities provide funding to journalists' associations which is used, in part, for journalists' safety initiatives.²²⁶

D. SUGGESTIONS FOR IMPLEMENTATION

- ▶ There should be ongoing dialogue with a broad range of civil society groups and representatives from the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity;
- ▶ Member States should develop partnerships with civil society and the media to find and implement solutions to threats to the safety of journalists and other media actors and for combating impunity;

224. Under Commission Recommendation (EU) 2021/1534.

225. For example, see: Justiz und Medien – konsequent gegen Hass, <https://www.blm.de/konsequent-gegen-hass.cfm>; KeineMachtDemHass, <https://keinemachtdemhass.de/>;

226. See, for example, the various safety training courses offered to these members, such as <https://journalist.be/vvj-toolbox>; and <https://ajpro.ajp.be/cap-sur-la-summer-school-2022/>. Subsidies are also planned for the European Journalism Fund: (<https://www.journalismfund.eu/>).

- ▶ Member States should adopt a constructive and responsive attitude to civil society and media reporting on threats and violence against journalists and other media actors;
- ▶ Member States should actively co-operate with media and civil society organisations in publicising and educating about safety issues and standards.

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 Prevention and Promotion pillars of the Guidelines of Recommendation CM/Rec(2016)4

Question	State Reply
POLITICAL COMMITMENT/STRATEGY	
<p>Since the adoption of the Recommendation in 2016, and the follow-up commitment expressed in 2021, has the Government expressed (for example 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?</p>	
<p>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?</p>	
<p>Does the government and do high-level politicians, from ruling and opposition parties, systematically and unequivocally denounce acts of violence or threats against journalists when these occur?</p>	
PREVENTION	
<i>Legal framework to ensure independence of the media and safeguard media pluralism (paragraph 1 of the Guidelines)</i>	
<i>Constitutional protection</i>	
<p>Is there effective constitutional protection of the right to freedom of expression, and how is this implemented in practice? Does constitutional protection expressly include:</p>	
<p>▶ editorial freedom of journalists</p>	
<p>▶ the right of access to information</p>	
<p>▶ the protection of confidential sources of information</p>	
<p>▶ media pluralism</p>	

How are media freedom and its components as detailed above protected in national legislation or regulatory frameworks, and how is this implemented in practice?	
<i>Media pluralism, transparency of ownership, and avoiding concentration of ownership</i>	
Does legislation require transparency of media ownership, including with regard to the beneficial owners of media companies, and is the resulting register accessible to the public?	
Is concentration of media ownership restricted including by promoting effective competition and ensuring that no particular individual, company, or consortium of companies can acquire ownership or control of a large percentage of the media market within a sector or across different sectors?	
Is there a regular independent monitoring and evaluation of the state of media pluralism and independence of the media?	
How is the availability, findability and accessibility of the broadest possible diversity of media content promoted?	
Have strategies and mechanisms to support professional news media and quality independent and investigative journalism been developed in a multi-stakeholder environment?	
Is there a comprehensive regulatory framework for media ownership?	
<i>Public support measures for media, especially independent media including regional, local, minority, and not-for-profit community media</i>	
Is there public support measures for media, especially independent media including regional, local, minority, and not-for-profit community media?	

Are support measures should be based on clear, precise, equitable, and transparent criteria?	
Do support measures respect the editorial and operational autonomy of the media?	
Are support measures administered in a non-discriminatory and transparent manner by an independent body?	
Are there annual reports on the use of public funds to support media?	
Has a needs assessment of the financial sustainability of quality journalism been carried out?	
Is there targeted support for specific types of journalism?	
Is there support for the provision of local news in the public interest, and have measures been implemented to ensure that community and independent media have sufficient resources?	
Are there viewpoint-neutral tax policies to support media innovation?	
Are media outlets allowed to operate as non-profits and receive appropriate tax benefits?	
Is there support for the innovation and the development of digital strategies and new services?	
<i>Public service media</i>	
Is the editorial independence and operational autonomy of public service media, including by limiting the influence of the state?	
Are the supervisory and management boards of public service media independent?	
Is funding for public service media stable, long-term, sustainable, transparent and adequate?	

<i>Legislative framework guarantees public access to information, privacy and data protection, confidentiality and security of communications and protection of journalistic sources and whistle-blowers (paragraph 2 of the Guidelines)</i>	
Does the national legislative framework recognize the right of journalists and other media workers to have access to information? In particular:	
▶ Is access to information refused only if there is a clear risk of harm to a legitimately protected interest, and there is no overriding public interest in disclosure?	
▶ Is access to information granted in a timely manner?	
▶ Can journalists appeal refusals?	
▶ Is there an oversight body that has the resources to carry out effective supervision of the implementation of the law?	
▶ Are journalists not held liable for the publication of information on issues of public interest that has been 'leaked' to them?	
How does the national legislative framework effectively protect personal privacy and personal data protection for journalists and other media workers, in theory as well as in practice. In particular:	
▶ Does privacy and data protection law recognise a defence of publication in the public interest?	
▶ Do data protection laws effectively implement the journalistic exemption?	
▶ Do privacy and data protection laws effectively protect the privacy and data protection rights of journalists?	

<p>How does the national legislative framework effectively protect confidentiality and security of communications of journalists and other media workers, in theory as well as in practice? In particular:</p>	
<ul style="list-style-type: none"> ▶ Are journalists targeted for surveillance, in particular investigative reporters who may be researching issues of corruption or organised crime? 	
<ul style="list-style-type: none"> ▶ What recourse do journalists have if they have been targeted with surveillance? 	
<p>How does the national legislative framework effectively protect confidentiality of journalistic sources of information, in theory as well as in practice? In particular:</p>	
<ul style="list-style-type: none"> ▶ Does national law recognise an absolute privilege for the protection of journalists' sources? 	
<ul style="list-style-type: none"> ▶ Does national law only allow orders for the disclosure of journalists' sources to be made for the prevention or investigation of cases involving national security, serious crime, or serious bodily harm, if the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, and reasonable alternative measures to the disclosure do not exist or have been exhausted? 	
<ul style="list-style-type: none"> ▶ Are journalists protected from being forced to disclose confidential sources of information in defamation cases? 	

<p>How does the national legislative framework effectively protect whistle-blowers against reprisals for disclosures made in the public interest, provided they have reasonable grounds to believe that the information concerned is true and disclosure is in the public interest, in theory as well as in practice? In particular:</p>	
<ul style="list-style-type: none"> ▶ Is whistle-blowing to the media allowed when internal reporting is unreliable or ineffective and there is a low prospect of the breach or alleged wrong-doing being effectively addressed? 	
<ul style="list-style-type: none"> ▶ Does it protect whistle-blowers against reprisals of any sort, including not only dismissal but also other measures such as demotion or re-assignment? 	
<ul style="list-style-type: none"> ▶ Is there practical assistance to whistle-blowers, including legal aid if needed? 	
<p><i>Legislative framework guarantees effective protection of all journalists and other media actors (paragraph 2 of the Guidelines)</i></p>	
<p>Does criminal law provide enhanced penalties for violence or threats against journalists and others who regularly publish on matters of public interest?</p>	
<p>Has online abuse been recognized as a criminal offence and do any such offences committed against journalists attract enhanced penalties?</p>	
<p>How does the criminal code effectively address the gender-dimensions of attacks against journalists and other media actors, including online? Has there been a review to determine whether this is effective?</p>	

How does employment law effectively protect and contribute to the safety of journalists, in particular with regard to:	
▶ Protection against arbitrary dismissal or reprisals;	
▶ Ensuring that journalists may refuse editorial assignments when these conflict with their conscience or honestly held beliefs;	
▶ Adequate working conditions;	
▶ Ensuring suitable insurance for journalists, including access to professional legal, social, or psychological support services.	
Do freelancers have similar employment protections as employed journalists, and are they compensated for their relative position of disadvantage in continuity of employment and potential lack of benefits such as pension contributions and sick pay?	
<i>Implementation of comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear (paragraph 2 of the Guidelines, continued)</i>	
Is there a national strategy or action plan that focuses on the continuous improved implementation of a comprehensive legislative framework that enables journalists and other media actors to contribute to public debate effectively and without fear?	
If so:	
▶ Does it have high level political leadership – specify how?	
▶ Is it based on a thorough assessment of the threats to journalists’ safety, including a clear gender analysis?	
▶ Does it include steps to prevent or mitigate gender-based threats and risks?	

<p>▶ How does it ensure that all relevant risks are addressed (physical safety as well as digital risk, risks caused by precarious employment or working conditions, legal threats, threats to mental well-being, and any other relevant risks)?</p>	
<p>▶ Is there strong operational leadership and inter-agency coordination?</p>	
<p>▶ Has the action plan been drawn up in consultation with all stakeholders?</p>	
<p>▶ Does it engage journalists and civil society in genuine partnership in implementation?</p>	
<p>▶ Does it set specific goals, targets, and deadlines that are ambitious yet attainable, and that are likely to deliver real improvement?</p>	
<p>▶ Does it clearly identify which agencies are responsible for the design, development, and implementation of actions?</p>	
<p>▶ Does it provide sufficient budget and other resources for the design, development, and implementation of actions?</p>	
<p>▶ Does the action plan include a commitment to regular review?</p>	
<p>▶ Is there coordination with coordination with action plans and activities in related areas, such as plans for the protection of human rights defenders or gender equality?</p>	

<p>If there is no action plan, what other effective mechanism is there to ensure that criminal law provisions protecting physical and moral integrity of journalists are implemented in an effective manner? In particular:</p>	
<ul style="list-style-type: none"> ▶ are there agreements and regular exchanges and joint trainings between law enforcement agencies and media representatives concerning the safety of journalists; 	
<ul style="list-style-type: none"> ▶ has there been an analysis of the risks posed by online abuse and harassment and have corresponding measures been introduced, including, if needed, through law reform; 	
<ul style="list-style-type: none"> ▶ has there been an analysis of the specific threats and risks faced by female journalists and other media workers and have corresponding measures been introduced, including, if needed, through law reform; 	
<ul style="list-style-type: none"> ▶ has the protection of journalists been designated as a priority area and have sufficient resources been allocated? 	
<p>How is the role and importance of journalists and other media actors recognised in national law and practice?</p>	
<p><i>Independent, substantive review of legislative framework (paragraphs 3-5 of the Guidelines)</i></p>	
<p>Is there independent, substantive review to ensure that the legal and policy framework for the protection of the safety of journalists complies with European and international human rights standards and is backed up by effective enforcement machinery? If so, does it address the following points (specify how, don't just answer 'yes' or 'no'):</p>	

<ul style="list-style-type: none"> ▶ safeguards for the protection of freedom of expression are robustly and effectively implemented in practice; 	
<ul style="list-style-type: none"> ▶ draft legislation that affects the right to freedom of expression of journalists and other media actors complies with European and international human rights standards; 	
<ul style="list-style-type: none"> ▶ it includes in its scope counter-terrorism, counter-extremism, or other national security measures (through a separate review if necessary); 	
<ul style="list-style-type: none"> ▶ the review process allows for detailed public scrutiny and the drawing up of recommendations by organisations and experts acting independently of governmental, political, religious, commercial, and other undue or partisan influences; 	
<ul style="list-style-type: none"> ▶ the reviewing body or bodies has an explicit mandate to collect, receive and use information from any source and is granted optimal access to documents and officials across all branches of State authorities; 	
<ul style="list-style-type: none"> ▶ the review process includes public hearings and facilitates the full and active participation of civil society, including representatives of journalist organisations, the media and other stakeholders; 	
<ul style="list-style-type: none"> ▶ review reports are formally submitted to relevant State authorities, in particular ministries, and require a timely response by those authorities, including, as appropriate, corrective or other follow-up action to the findings and recommendations of the reviews; 	

<ul style="list-style-type: none"> ▶ the findings and recommendations of the reviews are channelled into ongoing reporting, monitoring or information-sharing exercises at the Council of Europe Committee of Ministers, Parliamentary Assembly, and the Commissioner for Human Rights; as well as with other relevant international bodies such as the UN Human Rights Committee, the UN Human Rights Council's Universal Periodic Review, UNESCO, the UN High Commissioner for Human Rights and the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media. 	
<ul style="list-style-type: none"> ▶ legal frameworks are periodically reviewed and monitored to ensure that existing laws are being effectively implemented and are equally applicable online. 	
<p><i>Defamation laws include freedom of expression safeguards that conform to European and international human rights standards (paragraph 6 of the Guidelines)</i></p>	
<p>Does national legislation pertaining to defamation (including 'insult' laws) include specific safeguards for freedom of expression and media freedom, including:</p>	
<ul style="list-style-type: none"> ▶ A defence of truth; 	
<ul style="list-style-type: none"> ▶ A defence of fair comment on an issue of public-interest; 	
<ul style="list-style-type: none"> ▶ Early dismissal of SLAPP cases and the implementation of such other measures as needed to ensure that defamation laws cannot be abused to silence critical voices; 	
<ul style="list-style-type: none"> ▶ A distinction between allegations of fact and value judgments; 	

<ul style="list-style-type: none"> ▶ There is no enhanced protection for state bodies, state functionaries (including domestic and foreign heads of state), the monarchy or its members, the national flag or state emblems; 	
<ul style="list-style-type: none"> ▶ Politicians, public servants, public figures, must tolerate greater criticism of their acts; 	
<ul style="list-style-type: none"> ▶ Procedural fairness and equality of arms is ensured, including by the provision of adequate legal aid for defendants; 	
<ul style="list-style-type: none"> ▶ The law limits civil defamation awards and cost orders to what is proportionate; 	
<ul style="list-style-type: none"> ▶ Courts take into account the importance of protecting the free flow of information, ideas, and opinions on matters of public interest when hearing defamation cases; 	
<ul style="list-style-type: none"> ▶ Courts take into account context when hearing defamation cases, for example by recognizing that satirists have latitude to exaggerate. 	
Has defamation been decriminalised?	
If defamation has not been decriminalised, has the sanction of imprisonment been removed from the statute books except in cases that constitute hate speech or incitement to violence?	
<i>Clear legal basis for surveillance and interception of communications data that includes safeguards against misuse and abuse (paragraph 7 of the Guidelines)</i>	
Is there a clear legislative framework that regulates the surveillance of journalists and interception of their communications data by state agencies? If so, does it include the following safeguards against abuse:	
<ul style="list-style-type: none"> ▶ authorisation by a judicial authority or other independent body; 	

<ul style="list-style-type: none"> ▶ surveillance of journalists or interception of communications may only be authorised for the prevention or investigation of cases involving national security, serious crime, or serious bodily harm, and if the relevant information is not likely to be obtainable through other means; 	
<ul style="list-style-type: none"> ▶ surveillance of journalists or interception of communications likely to reveal confidential journalistic sources is either prohibited or subject to a higher level of judicial review and may only be authorised in accordance with the same threshold safeguards as apply to the protection of sources; 	
<ul style="list-style-type: none"> ▶ the law sets a limit on the duration of the interceptions; specifies the procedure to be followed for examining, using and storing the data obtained; specifies the precautions to be taken when communicating the data to other parties; and states the circumstances in which recordings may or must be erased, or the tapes destroyed; 	
<ul style="list-style-type: none"> ▶ surveillance targets are notified as soon as the investigation finishes or the legitimate aim of preventing or detecting crime is no longer jeopardised; 	
<ul style="list-style-type: none"> ▶ there is review by a judicial authority. 	
<p>How is effective oversight for surveillance and interception of communications data ensured? In particular:</p>	
<ul style="list-style-type: none"> ▶ How is the independence of the oversight mechanism safeguarded? 	
<ul style="list-style-type: none"> ▶ Do oversight bodies have sufficient resources and powers to carry out their mandate? 	

<p>► Are a range of stakeholders are represented on oversight bodies, including journalists and their organisations and legal and technical experts?</p>	
PROMOTION	
<i>Raising awareness of safety issues; translation and dissemination of the Recommendation (paragraphs 28 and 29 of the Guidelines)</i>	
<p>Has the Recommendation been translated into the national and minority languages of the country?</p>	
<p>Has the Recommendation been widely disseminated, including in print as well as on the websites of local, regional and national bodies with a mandate for the promotion of media or the protection of democracy, and has it been made available to libraries, schools (including journalism schools), and media outlets?</p>	
<p>Are the publicity opportunities provided by internationally designated days such as World Press Freedom Day (3 May), International Day to End Impunity for Crimes against Journalists (2 November) and International Right to Know Day (28 September) used to raise awareness of the need to protect the safety of journalists?</p>	
<p>Do public authorities cooperate with information-gathering, awareness-raising and other initiatives coordinated by international and regional intergovernmental organisations concerning the safety of journalists and other media actors?</p>	
<p>Do journalism training school curricula include the Recommendation and pay prominent attention to the issue of safety of journalists and other media actors?</p>	

Do media and information literacy initiatives include the Recommendation and pay prominent attention to the issue of safety of journalists and other media actors?	
Are gender-specific issues and issues concerning impermissible grounds for discrimination proactively highlighted in dissemination and awareness-raising activities?	
<i>Partnerships with civil society (paragraph 30 of the Guidelines)</i>	
Is there ongoing dialogue with a broad range of civil society groups and representatives from the media for the promotion of best practices for the protection of journalists and other media actors and for combating impunity?	
Is there a requirement for public authorities to respond constructively to reports by civil society and media on threats and violence against journalists and other media actors?	
Do public authorities engage in effective and ongoing partnership with a broad range of civil society groups and representatives from the media to find and implement solutions to threats to the safety of journalists and other media actors and for combating impunity?	
Do public authorities actively cooperate with media and civil society organisations in publicising and educating about safety issues and standards?	

Violence, harassment and threats against journalists and other media actors violate the right to freedom of expression of journalists, lead to self-censorship, and pose serious risks to the right of society as a whole to receive information. In 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 providing guidelines on four thematic pillars: prevention; protection; prosecution and promotion of information, education and awareness raising. In 2020, the Council of Europe issued an Implementation Guide to the Recommendation, focusing on the 'Protection' and 'Prosecution' pillars, to provide member States with concrete responses to the question what can and should be done to protect journalists and other media actors.

The current Extended Implementation Guide complements the 2020 Guide by providing guidance on the implementation of the 'Prevention' and 'Promotion' pillars. For each of the thematic areas identified, the Extended Implementation Guide establishes indicators to assess progress in the implementation of the Recommendation; provides background information, including references to the case-law of the European Court of Human Rights case-law; highlights valuable practices; makes suggestions to state authorities; and, 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.

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