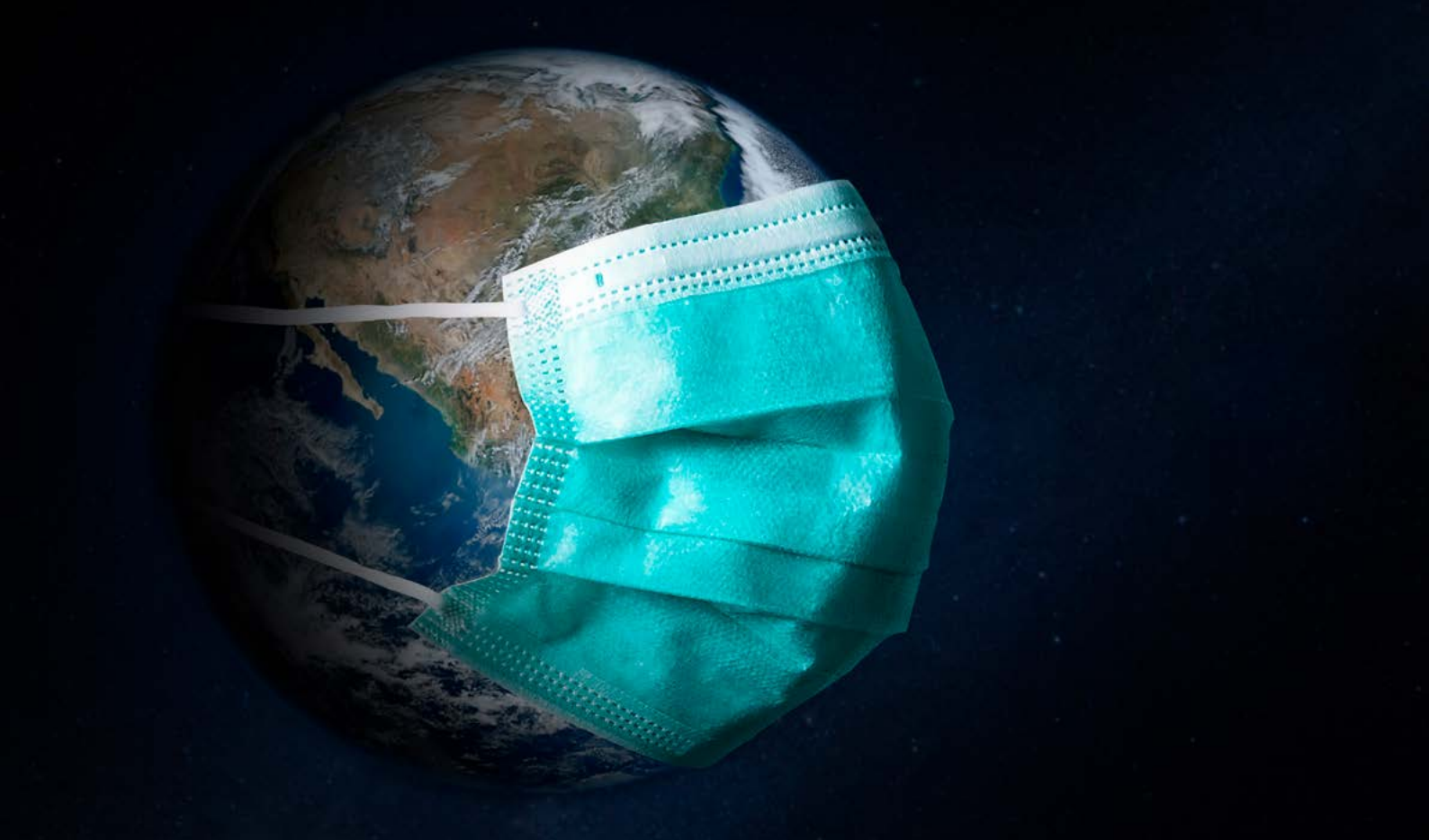




COVID AND FREE SPEECH

The impact of COVID-19 and ensuing measures on freedom of expression in Council of Europe member states



Peter Noorlander

Artificial Intelligence – Intelligent Politics
Challenges and opportunities for media and democracy
Background Paper, Ministerial Conference, Cyprus 2020



COUNCIL OF EUROPE
Conference of Ministers
responsible for Media
& Information Society
NICOSIA 2020



COVID AND FREE SPEECH

The impact of COVID-19 and ensuing
measures on freedom of expression
in Council of Europe member states

Artificial Intelligence – Intelligent Politics

Challenges and opportunities for media and democracy

Background Paper, Ministerial Conference,
Cyprus, 2020

Author:
Peter Noorlander

*The opinions expressed in this work are the responsibility
of the author and do not necessarily reflect the official
policy of the Council of Europe.*

All requests concerning the reproduction or translation
of all or part of this document should be addressed to
the Directorate of Communication (F-67075 Strasbourg
Cedex or publishing@coe.int). All other correspondence
concerning this document should be addressed to the
Directorate General Human Rights and Rule of Law.

Cover design and layout: Documents and Publications
Production Department (SPDP), Council of Europe
Photos: Shutterstock

This publication has not been copy-edited by the SPDP
Editorial Unit to correct typographical
and grammatical errors.

© Council of Europe, November 2020
Printed at the Council of Europe

Contents

INTRODUCTION AND METHODOLOGY	5
IMPACT ON LEGAL AND REGULATORY FRAMEWORKS	6
Access to information	6
Restrictions on “fake news”, “misinformation” or “causing panic”	7
The use of civil lawsuits	9
IMPACT ON THE SAFETY OF JOURNALISTS AND OTHERS WHO SPEAK UP	9
Rise in violence	9
Negative rhetoric	10
Criminal prosecutions and the use of COVID-19 as pretext	10
Whistleblowers and confidentiality of sources	11
IMPACT ON THE MEDIA ENVIRONMENT	11
IMPACT ON THE PROMOTION OF QUALITY JOURNALISM AND MEDIA LITERACY	13
SUMMARY OF CONCERNS AND CONCLUSIONS	14

INTRODUCTION AND METHODOLOGY

Freedom of expression and media freedom are crucial to the functioning of democratic society. This reality has been particularly underscored in 2020, in the context of the coronavirus pandemic. This unprecedented and global crisis has led to intense societal debate on issues ranging from healthcare and medicine to economics, politics, housing, education and sports– to name but a few.

This debate is a matter of utmost public interest and the media – print, broadcast and digital – have an important role to play in facilitating it. It is for this reason that journalists have been designated “key workers” in a number of countries.¹ They should have the freedom to gather and publish all relevant information, while abiding by the highest professional standards and ethics.

However, the very nature of the lockdown has imposed restrictions on a wide range of activities, extending also to the media: limitations on freedom of movement have made it harder for journalists to move around and report, while measures to combat disinformation have impacted on what the media can publish. Some countries have seen public unrest and a rise in incidents of violence against journalists (including at anti-lockdown protests).²

Compounding the impact of these restrictions, the pandemic has also exacerbated pre-existing weaknesses in freedom of expression protections in member states, including in relation to financial and economic pressures on the media, further undermining media independence and pluralism, growing violence against journalists and increasing polarisation of public discourse. Ironically, while a larger number of people have turned to the media for information, the economic downturn caused by the COVID-19 virus³ has led to dramatic falls in advertising and other income. Governments have tried to soften the financial blow, but impacts have still been devastating.

This report is intended as a stocktaking of the impacts of the pandemic as well as the measures that were introduced to contain the virus on the media and the enjoyment of the right to freedom of expression in Council of Europe member states. The aim of this report is to identify trends in 2020, identify promising practices and contribute to effective policy solutions in the face of a major crisis, thereby strengthening member states’ resilience against further challenges ahead.

In line with previous annual reports on freedom of expression, the report explores the impacts of measures taken by authorities to contain COVID-19 under four headings:

- a. legal and regulatory frameworks;
- b. the safety of journalists and others who speak up;
- c. the media environment; and
- d. the promotion of quality journalism and media literacy.

Under each heading, a trend analysis is conducted of the impact of measures introduced or incidents that occurred, positive as well as negative.⁴ Attention is paid to whether the restrictions that were imposed were time-bound, applicable only for the duration of the pandemic, or whether permanent restrictions have been brought in. Examples of good or concerning practices are provided to illustrate trends as well as possible long-term consequences of rapid response measures, drawing attention to emerging patterns in member states’ overall performance and resilience against crisis situations.

Conclusions and proposals for action are suggested in the final chapter.

-
1. Such as in the Netherlands, <https://nuj-netherlands.nl/news-summaries/266-journalism-and-corona>, and in the UK, <https://www.pressgazette.co.uk/government-gives-key-worker-status-to-all-journalists-reporting-on-coronavirus-pandemic/>.
 2. See the Council of Europe Platform to promote the protection of journalism and safety of journalists (Council of Europe Platform) at <https://www.coe.int/en/web/media-freedom>.
 3. The official name of the virus as agreed by the International Committee on Taxonomy of Virus is severe acute respiratory syndrome coronavirus 2 (SARS-COV-2).
 4. Not every single measure introduced or incident that occurred is recorded. Rather, this report will focus on incidents or measures that had a significant impact on the enjoyment of the right to freedom of expression (positive or negative), as well as measures and incidents that demonstrate a trend. This report has been compiled from various sources, including public data gathered through the Council of Europe Platform for the Protection of Journalism and Safety of Journalists and Council of Europe sources, as well as information gathered through trusted partners, including with the help of a questionnaire circulated to member states.

IMPACT ON LEGAL AND REGULATORY FRAMEWORKS

As the pandemic took hold, ten Council of Europe member states declared full or partial states of emergency,⁵ giving governments powers to take measures in an expedited manner with the stated aim of bringing the pandemic under control. Nine countries submitted notifications of derogation from the European Convention on Human Rights (the Convention), though none derogated specifically from Article 10, protecting the right to freedom of expression.⁶ Some member states declared emergencies for a set period of time; others indefinitely. By July 2020, the state of emergency had been lifted in nearly all Council of Europe member states.

The types of measures introduced under the states of emergency typically included prohibitions on breaking the “lockdown” that was introduced across Europe. Public gatherings of more than a certain number of people were prohibited⁷ and there were restrictions limiting mobility, including the use of public transportation. Non-essential businesses were often forced to close. Restrictions were also imposed on freedom of expression and access to information, and in some cases, these restrictions, imposed initially under emergency powers, were retained under permanent legislation.

Access to information

During a pandemic, access to information is crucial. To satisfy the demand for information, governments in most member states held regular press conferences which were led by senior government figures and health professionals, and sometimes (due to the health situation) only allowed a limited number of media representatives that conveyed the questions of media organisations. Governments also created dedicated hotlines to answer questions and set up websites that kept records of infection rates, the number of tests conducted and fatalities. The calculation methodology for the numbers of fatalities and those recovered differed from country to country and in some cases changed over time.⁸ While such changes and inconsistencies may be explained partially with the novelty of the virus, changes in methodology did not always occur in a transparent manner, raising questions about accuracy and intentions.⁹

The press conferences were generally good opportunities to gather accurate and updated information. However, in some countries there were reports that authorities sought to control them unduly, using them as opportunities to make announcements but not allowing journalists sufficient opportunity to question the information provided or the measures taken in response. For example, in Hungary, Serbia and Spain journalists complained that questions had to be submitted in advance and were pre-selected by the government (this practice was eventually abandoned in Spain and Serbia). Furthermore, some countries banned the publication of information related to COVID-19 from non-official sources. For example in Armenia, a regulation was introduced threatening a €1,000 fine for the publication in the media of information about COVID-19 from non-official sources.¹⁰ Following international criticism, the government amended the Decision clarifying that “information” was defined narrowly and that “the penalty could be applied only in case of non-publication of official refutation or clarification.”¹¹ Nonetheless, 22 media outlets were ordered to take down information pursuant to this law.¹²

5. France, for example, declared a health emergency (‘urgence sanitaire’). See <https://www.familles-de-france.org/fr/domaine-dexpertises/politique-familiale/la-france-en-etat-durgence-sanitaire>.

6. Reservations and Declarations for Treaty No. 005: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>. Armenia, Romania and Serbia’s declarations did not specify which Articles of the Convention they derogated from.

7. Ranging from 50 in the Russian Federation to 2 in Serbia, for example. For detail, see the International Center for Not-for-profit Law’s COVID-19 civic freedom tracker: <https://www.icnl.org/covid19tracker/>.

8. This happened across Europe, as described in, amongst others, The challenge of counting COVID-19 deaths, 2 May 2020: <https://www.politico.eu/article/coronavirus-the-challenge-of-counting-covid-19-deaths/>.

9. The leading investigative portal Balkan Insight reported that the number of deaths caused by COVID-19 in Serbia was as high as double of what was reported by the government. N. Jovanovic, “Serbia Under-Reported COVID-19 Deaths and Infections, Data Shows” <https://balkaninsight.com/2020/06/22/serbia-under-reported-covid-19-deaths-and-infections-data-shows/>, last accessed on 22 June, 2020. See also <https://www.cebm.net/covid-19/why-no-one-can-ever-recover-from-covid-19-in-england-a-statistical-anomaly/>, suggesting that COVID-19 deaths in the UK may have been significantly overestimated.

10. Decision of the Government of the Republic of Armenia No 298-N of 16 March 2020, <https://covid19.gov.am/en/v1>.

11. Council of Europe Platform Alert No. 32/2020, Emergency restrictions force media to suppress independent information on COVID-19, 25 March 2020, Government reply: <https://rm.coe.int/armenia-reply-en-emergency-restrictions-force-media-to-suppress-indepe/16809e4ace>. Similar regulations were passed in Serbia and the Republic of Moldova, but these were retracted following an outcry from civil society and international observers.

12. Council of Europe Platform Alert No. 32/2020. See also, IPI Tracker on COVID-19 and media freedom: <https://ipi.media/covid19-media-freedom-monitoring/>.

The pandemic also caused delays in processing access to information requests, and several states, including France, Georgia, Italy, Republic of Moldova and the United Kingdom, suspended deadlines or issued blanket extensions.¹³ In this context, it should be recalled that in line with the caselaw of the European Court of Human Rights (the Court) and the Convention on Access to Official Documents (“the Tromsø Convention”), any interference with the right to access information must be prescribed by law, necessary and proportionate.¹⁴ Requests for access to official documents are to be dealt with promptly and refusals should be subject to a court or other independent review procedure. There should also be an effective remedy available, both in theory and in practice, to secure the enforcement of court orders granting access to information.¹⁵

Restrictions on “fake news”, “misinformation” or “causing panic”

There has been widespread concern at the potential spread of panic among the population as a result of information considered “fake news” or “misinformation”. In February 2020, the World Health Organisation announced that the coronavirus pandemic was accompanied by an “infodemic” of mis- and disinformation, that, in itself, constituted a serious risk to public health and public action.¹⁶ The danger of coordinated disinformation campaigns cultivating distrust in the ability of democratic institutions to deliver effective responses has also been pointed out.¹⁷ Many Council of Europe member states therefore introduced measures, either outright restrictions or positive steps taken by governments and others to promote the circulation of information and analysis considered to be of high quality (see below).

Restrictions included the take down of information deemed “fake” or “distorted” and the criminalisation of “misinformation”,¹⁸ and were imposed in various ways. Some were included within regulations declaring states of emergency (or accompanying time-bound acts) which expired upon the lifting of the emergency.¹⁹ Other states, however, introduced permanent new legislation, some even introducing restrictions beyond the context of the COVID-19 pandemic.²⁰

The most severe restrictions were imposed on the publication of misinformation or the publication of information deemed to be “false”. The Russian Federation amended its Criminal Code, imposing fines of up to €23,000 (up to €117,000 for legal entities) and five years in prison on anyone found to have deliberately spread “false information” about serious matters of public safety such as COVID-19.²¹ The law is not limited to the duration of the pandemic. Media organisations reported that within the first three months of implementation, nearly 200 cases were launched, including arrests and the imposition of large fines as well as the issuance of orders to take down information.²² In Hungary, the Penal Code was amended to criminalise, for the duration of the state of emergency, the dissemination of “false or distorted facts ... capable of hindering or obstructing the efficiency of the protection efforts”.²³ When the COVID-19 state of emergency ended,

13. As documented by the Centre for Law and Democracy’s Global Right to Information Rating/COVID-19 tracker: <https://www.rti-rating.org/covid-19-tracker/>.

14. Council of Europe Treaty Series No. 205, 18 June 2009, set to enter into force on 1 December 2020. See also the European Court of Human Rights’ judgments in *Magyar Helsinki Bizottság v. Hungary* [GC], 8 November 2016, No. 18030/11; and *Kenedi v. Hungary*, European Court of Human Rights judgment of 26 May 2009, No. 3147505/05, § 48.

15. *Ibid.*

16. See WHO Situation Report No. 13 of 2 February 2020 at <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200202-sitrep-13-ncov-v3.pdf>.

17. See Europol Report “Catching the virus - cybercrime, disinformation and the COVID-19 pandemic”, 3 April 2020.

18. For example, in Armenia (Decree on the State of Emergency, 23 March 2020); Azerbaijan (Law “On Amendments to the Law of the Republic of Azerbaijan “On Information, Informatization and Information Protection”, 17 March 2020); Romania (Decree On the establishment of the state of emergency in the territory of Romania, 16 March 2020, English translation at <https://rm.coe.int/09000016809cee30>); Republika Srpska in Bosnia and Herzegovina (Decree on False News, 19 March 2020); Hungary (Emergency Law of 30 March 2020, see Council of Europe Platform Alert No. 30/2020, 23 March 2020); and Russian Federation (Article 207 of the Criminal Code, as amended).

19. For example, the above-mentioned emergency decrees in Armenia and Republika Srpska.

20. See the newly introduced legislation in Azerbaijan, Romania, and the Russian Federation.

21. Russian Federation: New Legislation Imposes Penalties and Prison Sentences for Spreading “False Information” on COVID-19, Council of Europe Platform Alert No. 41/2020, 15 April 2020.

22. Echo of Moscow Radio Station Fined Over COVID-19 Interview, Council of Europe Platform Alert No. 76/2020, 1 July 2020; see also International Press Institute, “New ‘fake news’ law stifles independent reporting in Russia on COVID-19” <https://ipi.media/new-fake-news-law-stifles-independent-reporting-in-russia-on-covid-19/>.

23. Hungary Seeks Power to Jail Journalists over “False Information” in COVID-19 Coverage, Council of Europe Platform Alert No. 30/2020, 23 March 2020. For detailed analysis, see Hungarian Helsinki committee, “Background note on act XII of 2020 on the containment of the COVID-19”; 31 March 2020: https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf.

legislation was passed enabling the government to more easily declare future states of emergency.²⁴ Similar restrictions were also imposed in Republika Srpska in Bosnia and Herzegovina,²⁵ Romania,²⁶ and Azerbaijan.²⁷

A central question raised by such measures, particularly in light of the fact that COVID-19 is a novel virus that is still being studied, is how to decide – and who decides – what is “false” or “distorted”. In the Court’s view, even in a state of emergency every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness.²⁸ Indeed, one of the principal characteristics of democracy, as interpreted by the Court, is the possibility that it offers of resolving emerging challenges through public debate.²⁹

A fundamental doctrine of the Court is further that legal provisions imposing any restrictions on the right to freedom of expression must be “clear” and “foreseeable”.³⁰ The Venice Commission has also emphasised that even in emergency situations, exceptions to freedom of expression must be narrowly construed and subject to parliamentary control to ensure that the free flow of information is not excessively impeded.³¹ It is doubtful whether restrictions on publishing “false” information about a disease that is still being studied can be in line with this requirement, unless it concerns blatantly false or outright dangerous assertions.³²

Secondly, restrictions should be imposed only for as long as their necessity can be established. Restrictions imposed during crisis situations, when prompt government action is required, based on often limited information and under pressure to prevent possibly devastating damage, should be reviewed regularly and in light of the evolving situation. This raises the question whether restrictions that were imposed during the height of the pandemic and then transferred into permanent legislation are consistent with the principles of strict necessity and proportionality required under Article 10 of the Convention.³³

Finally, while the subsequent softening of many of the restrictions imposed during the height of the pandemic is welcome,³⁴ interferences with the right to freedom of expression arise not only from sanctions that are actually imposed, but also from the fear of sanction and the broader legal and regulatory climate for journalists and the media.³⁵ Already prior to the pandemic, there existed in many countries across Europe a “chilling effect” resulting from the overuse of legal and regulatory sanctions in the field of freedom of expression or their mere existence. Restrictions introduced during the pandemic contributed further to this.

24. Hungary’s Two Pandemics: COVID-19 and Attacks on Media Freedom, European Centre for Press and Media Freedom, June 2020: https://www.ecpmf.eu/wp-content/uploads/2020/06/Legal-opinion-Hungary_2020.pdf.

25. OSCE Media Freedom Representative Désir and Head of Mission to Bosnia and Herzegovina Kavalec concerned about measures against coronavirus “fake news”, 23 March 2020: <https://www.osce.org/representative-on-freedom-of-media/449041>.

26. Romania, Decree on the establishment of the emergency situation on the territory of Romania, 16 March 2020, English translation at <https://rm.coe.int/09000016809cee30>. Several news sites were reportedly shut down pursuant to the decree: Romania shuts down websites with fake COVID-19 news, 13 May 2020: https://www.euractiv.com/section/all/short_news/romania-shuts-down-websites-with-fake-covid-19-news/.

27. Law “On Amendments to the Law of the Republic of Azerbaijan ‘On Information, Informatization and Information Protection’”, 17 March 2020.

28. *Mehmet Hasan Altan v. Turkey*, No. 13237/17, 20 March 2018 § 210; *Şahin Alpay v. Turkey*, No. 16538/17, 20 March 2018, § 180.

29. *Idem*. See also “Disease pandemics and the freedom of opinion and expression”, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/44/49, at <https://undocs.org/en/A/HRC/44/49>, suggesting that the penalisation of disinformation is disproportionate, failing to achieve its goal of tamping down information while instead deterring individuals from sharing what could be valuable information.

30. *Sunday Times v. the United Kingdom*, 26 April 1979, No. 6538/74.

31. Venice Commission, Respect for Democracy, Human Rights and Rule of Law during States of Emergency – Reflections, 26 May 2020: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)005rev-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)005rev-e).

32. See also Joint statement issued by freedom of expression monitors of the United Nations, the OSCE and the Inter-American Commission for Human Rights on 19 March 2020, pointing out that “any attempts to criminalise information relating to the pandemic may create distrust in institutional information, delay access to reliable information and have a chilling effect on freedom of expression”, at <https://www.osce.org/representative-on-freedom-of-media/448849>.

33. *Ibid*. See also ECHR jurisprudence, for example *Şahin Alpay v. Turkey*, 20 March 2018, No. 16538/17.

34. See Footnote 11, as occurred in Armenia, Serbia and the Republic of Moldova.

35. E.g. *Pedersen and Baadsgaard v. Denmark*, European Court of Human Rights judgment of 17 December 2004, No. 49017/99, § 78; *Yaşar Kaplan v. Turkey*, 24 January 2006, No. 56566/00, § 35; *Pentikäinen v. Finland*, 20 October 2015, No. 11882/10, § 113. In the context of the execution of the Court’s judgments, the Committee of Ministers has called for measures to ensure sufficient legal safeguards against potential overuse of detention as an administrative sanction, in particular in the context of freedom of expression (e.g. the Committee of Ministers’ decision in *Shvydka v. Ukraine*, adopted at the 1362nd CMDH meeting, 3-5 December 2019); and to reconcile freedom of expression with judicial independence (e.g. the Committee of Ministers’ decision in *Kudeshkina v. the Russian Federation*, adopted at the 1369th CMDH meeting, 3-5 March 2020).

The use of civil lawsuits

The systematic use of civil lawsuits to silence critical voices, known as “SLAPP” lawsuits (Strategic Litigation against Public Participation), was already a growing concern in many countries across Europe before the pandemic, particularly in relation to defamation cases.³⁶ While their use did not increase dramatically during the height of the pandemic, there is some concern that pandemic-related reporting will be subjected to SLAPP lawsuits and defamation cases in the future.

Two Polish journalists have been subjected to a SLAPP for their reporting on clothing company LLP, which they said had been sending masks to its factories in China, while there was a severe shortage of masks in Poland. LLP is seeking damages of €1m.³⁷ In a defamation lawsuit, a Turkish court granted a take-down request by a company whose factory had been reported to have had 26 factory workers test positive for COVID-19, on the grounds that the information, whilst true, was damaging to the company’s commercial reputation.³⁸

IMPACT ON THE SAFETY OF JOURNALISTS AND OTHERS WHO SPEAK UP

Rise in violence

The rise in violence against journalists and others who speak up in criticism of governments or other powerful actors has been previously documented across Europe.³⁹ Unfortunately, this trend was amplified during the pandemic. During the first six months of 2020, the Council of Europe’s Platform to promote the protection of journalism and safety of journalists reported a 60% rise of incidents.⁴⁰ The increase is largely due to COVID-19-related incidents, including incidents of violence as well as arrests and detentions of journalists.

Physical attacks and violence against journalists in relation to their coverage of the pandemic were documented across Europe, including in Albania, Croatia, France, Germany, Italy, Serbia, Ukraine, the United Kingdom and other countries.⁴¹ Many of these attacks were reportedly orchestrated by non-state actors, and often they took place during demonstrations or public unrest. For example, a Croatian journalist was attacked for filming an Easter Mass that took place in breach of lockdown near the city of Split;⁴² Spanish journalists were assaulted whilst reporting on a protest;⁴³ and during protests in Rome, journalists were attacked and labelled as “terrorists”.⁴⁴

It is welcome that these incidents have partially been investigated already, despite the strain placed by the health situation on many judiciary systems in member states.⁴⁵ However, in light of the previously identified trend of increased violence against media workers in many Council of Europe countries and in line with Council of Europe standards, it is of utmost importance that all incidents of violence are promptly investigated and that they are publicly condemned by senior politicians and public officials.⁴⁶

36. As highlighted in, amongst others, the 2020 Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists: <https://rm.coe.int/annual-report-en-final-23-april-2020/16809e39dd>.

37. Polish Clothing Company LLP Files Lawsuit against two Polish Journalists for Newsweek Poland Article, Council of Europe Platform Alert No. 42/2020, 20 April 2020.

38. As reported by the IPI media freedom tracker, 11 June 2020, <https://ipi.media/covid19-media-freedom-monitoring/>. See also <https://dokuz8haber.net/medya/basinozgulugu/oba-makarna-fabrikasinda-cikan-vaka-haberlerine-erisim-engelli-getirtti/>.

39. See consecutive Secretary General’s Annual Reports on the State of Democracy, Human Rights and the Rule of Law at <https://www.coe.int/en/web/secretary-general/reports-thorbjorn-jagland>.

40. Of a total of 104 incidents reported on the Platform in the first half of 2020, 32 were COVID-19 related. In the equivalent period of last year, 64 incidents were registered. See <https://www.coe.int/en/web/media-freedom/>.

41. According to information provided from member states representatives in questionnaires, at some demonstrations advocating for a quick end to the pandemic restrictions, journalists were attacked verbally but also physically. In May, at least two incidents of the latter sort took place in Berlin against journalists of the public broadcasting companies ARD and ZDF. In one case, members of a ZDF team were injured when 15 people (some of them equipped with metal rods) attacked and beat them. See <https://www.tagesschau.de/investigativ/zapp/hygiene-demos-101.html> and <https://www.dw.com/en/COVID-19-anger-foments-violence-against-journalists/a-53383927>.

42. “Croatia, journalists beaten up on a Ustasha Easter” <https://www.balkanicaucaso.org/eng/Areas/Croatia/Croatia-journalists-beaten-up-on-a-Ustasha-Easter-201041>, last accessed on 15 April, 2020.

43. Spanish Journalist Physically Assaulted while Reporting on Protests in Madrid, Council of Europe Platform Alert No. 64/2020, 5 June 2020.

44. Journalists Attacked and Labelled as “Terrorists” during Far-Right Protests in Rome, Council of Europe Platform Alert No. 66/2020, 10 June 2020.

45. For example, the Italian government responded that arrests had been made. <https://rm.coe.int/italy-reply-it-en-journalists-attacked-and-labelled-as-terrorists-duri/16809ee915>.

46. See <https://www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists>.

Although not directly related to COVID-19, the Latvian Association of Journalists signed a memorandum of cooperation with the state police during the pandemic, providing for a 24/7 police hotline to ensure a prompt response to reports on threats and instances when the safety of a journalist is at stake.⁴⁷

Negative rhetoric

Negative rhetoric towards the media has a strong impact on how society sees and treats journalists. In some countries, some senior politicians and public officials themselves led the anti-media rhetoric, which is particularly dangerous as it can create the impression that violence against journalists is not only condoned but encouraged. Like direct violence, this has been a growing phenomenon in some countries even before the pandemic and has been exacerbated by it. For example in Slovenia, the Interior Minister stated that journalists covering anti-lockdown protests should be prosecuted because they themselves violated lockdown measures, singling out the editor in chief of a newspaper known to be a government critic as having attended.⁴⁸ In the Russian Federation, the President of the Republic of Chechnya reportedly issued death threats against a journalist who had reported on human rights violations committed under the pretext of combating COVID-19.⁴⁹

It would appear that accusations of spreading fake news have become one of the primary tactics for discrediting media outlets critical of the government. In Slovenia, the government Crisis Management Centre retweeted a description of an investigative journalist as a “psychiatric patient who escaped quarantine”, resulting in intense online harassment, smears and death threats by far-right groups.⁵⁰

Criminal prosecutions and the use of COVID-19 as pretext

According to Council of Europe standards, crisis situations should not be used as a pretext for restricting the public’s access to information or clamping down on critics.⁵¹ Yet, during the coronavirus pandemic, a number of criminal prosecutions were initiated, or police investigations started, against journalists and others who voiced criticism of government actions or inaction. For example, Serbian journalist Ana Lalić was charged with causing panic and unrest for reporting that medical staff at the Vojvodina Clinical Centre lacked sufficient protective gear;⁵² Turkish journalist Can Tugay was summoned by cybercrime police and accused of “creating fear and panic amongst the public” for criticising a presidential campaign for donations;⁵³ and in several countries, lockdown restrictions on mobility were used to prosecute journalists.⁵⁴

But not only journalists have been targeted: in Turkey, restrictions extended to lawyers, doctors⁵⁵ and even social media users at large.⁵⁶ In one example, police suppressed a lawyers’ march to protest against a draft bill

47. <http://www.latvijaszurnalisti.lv/valdes-lemumi/2020/04/21/lza-un-vp-parakstitalis-sadarbibas-memorands-palidzes-noverst-zurnalistu-apdraudejumu/>.

48. Slovenia: Interior minister calls for criminal prosecution of journalists covering lockdown protest, Mapping Media Freedom Project, 27 April 2020: <https://mappingmediafreedom.ushahidi.io/posts/23283>.

49. Chechen President Threatens Journalist Elena Milashina with Death, Council of Europe Platform Alert No. 43/2020, 22 April 2020.

50. Slovenian Journalist Blaž Zgaga Targeted by a Defamation and Hate Campaign Led by the New Government, Council of Europe Platform alert 28/2020, 19 March 2020.

51. Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted by the Committee of Ministers on 26 September 2007. at the 1005th meeting of the Ministers’ Deputies.

52. Journalist Ana Lalić Detained Overnight after Reporting on Conditions in Hospital, Council of Europe Platform Alert No. 38/2020, 1 April 2020. She was later subjected to a prolonged smear campaign by government media, even after the government had dropped charges and issued an apology.

53. Turkish Journalists Summoned by Police over COVID-19 Coverage, Council of Europe Platform Alert No. 41/2020, 15 April 2020.

54. E.g. OSCE Media Freedom Representative concerned about pressure on KoSsev online portal and its editor-in-chief in Kosovo, 12 April 2020: <https://www.osce.org/representative-on-freedom-of-media/450085>. Other examples include North Macedonia, where it was alleged that an applications process whereby only certain “approved” journalists were exempted from curfew could be abused (see COVID-19: Media Freedoms Under Threat?, 20 April 2020: <https://safejournalists.net/covid19-media-freedoms-under-threat/>), and Poland, where journalists were prosecuted for allegedly failing to maintain distance from interviewees and participating in protests: Photojournalist Wojciech Atys Taken to Court after Reporting on a Protest, Council of Europe Platform Alert 49/2020, 7 May 2020.

55. “Turkey: Probes Over Doctors’ COVID-19 Comments” <https://www.hrw.org/news/2020/06/10/turkey-probes-over-doctors-covid-19-comments>, accessed June 10, 2020.

56. In Turkey, the Ministry of Interior announced that 316 social media account holders are facing legal actions for sharing information that “cause worry among the public, incited them to fear and panic.” Turkey, “Civic freedoms and the COVID-19 pandemic: a snapshot of restrictions and attacks” <https://monitor.civicus.org/COVID-1919/>; “316 people detained over COVID-19 posts” <http://bianet.org/english/health/221837-316-people-detained-over-COVID-19-posts>, last accessed on 23 March, 2020.

that would, in their view, restrict the independence of legal professionals.⁵⁷ The draft bill had been presented following criticism expressed by lawyers against Turkey's president of the Directorate of Religious Affairs for alleging that LGBTQ+ persons were the source of the Coronavirus.

Whistleblowers and confidentiality of sources

Whistleblowers – individuals who speak up on matters of public importance that they have come across during the course of their work – can be a critical source of information. This has particularly been so during the pandemic, which unfortunately showed a lack of preparedness in many countries. Many whistleblowers went public to raise alarm about the lack of protective equipment, including for hospitals and care staff, or the inadequacy of response measures. Unfortunately, they often suffered retaliation, with some losing their jobs, and they did not always receive protection of the law. For example, in Poland and the United Kingdom, nurses and home carers lost their jobs for raising alarm about understaffing and the lack of protective equipment.⁵⁸ Poland's ruling political party suspended several of its members who had spoken publicly about the poor levels of preparation with regard to the pandemic.⁵⁹

While human rights-related concerns regarding the use of tracking and tracing apps to detect possible coronavirus carriers more quickly have focussed on the right to privacy, there are also concerns about their possible impact on the protection of confidentiality of journalists' sources.⁶⁰ As contact-tracing apps continue to be developed and become operational, it is important to ensure that their impact on data protection rights, freedom of expression and other human rights remains proportionate at all times, particularly given the thus far limited effectiveness of such apps.⁶¹

IMPACT ON THE MEDIA ENVIRONMENT

The impact of COVID-19 on the media environment has been very significant. On the one hand, audiences, especially during lockdown, have flocked to the media for information, reversing the previous downward trend of media consumption.⁶² This has in turn led to higher costs: online media have had to invest in their infrastructure so as to be able to handle the high volumes of traffic, while media production costs have also gone up.⁶³ At the same time, the economic impact of COVID-19 on businesses and others has meant a loss of advertising and sales revenue that can only be described as dramatic.⁶⁴ Sales of print media, already in steep decline across Europe, decreased even further as shops and other sales outlets were closed. As a result, despite the increased demand for information and analysis, media companies are forced to cut costs and journalists

57. Council of Bars and Law Societies of Europe, "Turkey: Independence, integrity and freedom of expression of the legal profession at stake": https://www.cbbe.eu/fileadmin/speciality_distribution/public/documents/Pressreleases/2020/EN_HR_20200629_PR_0320.pdf?fbclid=IwAR11ZnzCUbyX7XGq4oGPRBXU6hQqUSR02gzWab7P8BcLo6KFTOMe-vS-LV8, last accessed on 29 June, 2020.

58. Protection of whistleblowers vital during COVID-19, Transparency International, 22 June 2020: <https://www.transparency.org/en/blog/protection-of-whistleblowers-vital-during-covid-19>. S. Murphy, "UK carers who lost jobs after raising safety fears consider legal action" <https://www.theguardian.com/society/2020/apr/30/uk-carers-lost-jobs-raising-safety-fears-consider-legal-action-covid-19-care-homes>.

59. Protection of whistleblowers vital during COVID-19, Transparency International, 22 June 2020: <https://www.transparency.org/en/blog/protection-of-whistleblowers-vital-during-covid-19>.

60. For example, there has been some discussion concerning the Norwegian tracking app "Smittestopp". The Norwegian Editors Association has developed guidelines for journalists use of the app: <https://www.nored.no/NR-dokumentasjon/Rapporter-og-veiledere/Smittestopp-appen-og-kildevernet>.

61. See, for example, the Joint Statement on Digital Contact Tracing by the Chair of the Committee of Convention 108, and the Data Protection Commissioner of the Council of Europe, 28 April 2020: <https://rm.coe.int/covid19-joint-statement-28-april/16809e3fd7>.

62. E.g. Nielsen, COVID-19: Tracking the Impact on Media Consumption, 16 June 2020: <https://www.nielsen.com/us/en/insights/article/2020/covid-19-tracking-the-impact-on-media-consumption/>; See also the UK's OFCOM survey and weekly updates of news and information consumption during the COVID-19 crisis: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/news-media/coronavirus-news-consumption-attitudes>.

63. Due to the implementation of COVID-19 hygiene adaptations. It should be noted that the production of much TV entertainment content (as opposed to news and current affairs) stopped during lockdown.

64. One business analyst estimated a revenue loss for private broadcasters of exceeding 50% in March, and up to 70% for April 2020. <https://www.intotheminds.com/blog/en/impact-covid-media-industry/>. In Germany, a 80% decline was reported the Council of Europe Secretariat; see also <https://www.spiegel.de/kultur/buzzfeed-deutschland-eine-redaktion-steht-zum-verkauf-a-513d854a-4afa-4b18-b6c1-32184190e04e>.

are being laid off across Europe.⁶⁵ Exacerbating previous trends, these developments have hit smaller outlets particularly hard, strongly impacting on local and regional media.⁶⁶ Public media in most if not all member states have been similarly hit.⁶⁷

This immense financial pressure on media is particularly alarming at a time when the editorial independence of private as well as public service media was already considered fragile, and the concentration of media ownership in the hands of few large entities coupled with the resulting decrease in media pluralism was a cause of serious concern.⁶⁸ The only media that have fared well during the coronavirus pandemic – extremely well, even – are online entertainment platforms: streaming services such as Netflix, Amazon Prime and Disney have seen a huge rise in subscriptions, beating all forecasts.⁶⁹

In response to the financial crisis in the news media, many member states have put together financial and fiscal support packages specifically for the media (over and above the support packages in place for all businesses). For example, the United Kingdom reduced tax on news media to 0%; in Germany, an overarching state aid programme was announced for the culture sector and onerous and costly regulatory requirements were relaxed;⁷⁰ and various other financial support schemes have been introduced in Latvia, Norway, Russian Federation, the Netherlands and Sweden (in Sweden, as an initiative by the Journalists Association).⁷¹

Despite these support measures, economic pressure on media will continue to have an adverse impact on media pluralism. Larger media conglomerates are in better shape to withstand the financial storm, with smaller, local and regional titles under threat and already closing down or reducing their operations. Some member states, conscious of this trend, have targeted support measures at local outlets. However, as these support measures are limited in both time and scope, a further deterioration of the situation seems inevitable. This increases the pressure on media to explore sustainable business models that allow them to function independently and maintain their important role of providing reliable, pluralist and diverse information to the public.⁷²

There is also a danger that because of their weakened financial position and potential dependence, either on government subsidies or on subsidies from owners with other interests, the independence of the media may be threatened.⁷³ Concerns have been raised as to media in some countries acting mainly as mouthpiece of governments, while neglecting their essential role of questioning government policy and holding power

65. As reported to the Council of Europe, in the UK, around 30 local publishers suspended titles and ITV and Channel 4 implemented budget cuts from £130-£245m; in France, TV-channel M6 was forced to implement €100m budget cuts; and media in Montenegro reported a 50% decline in print sales and advertising, and a virtual collapse of online advertising. See also, amongst others, Into the Minds, COVID-19: the impact on the future of the media industry, 4 May 2020: <https://www.intotheminds.com/blog/en/impact-covid-media-industry/>.

66. As reported to the Council of Europe, in Portugal, regional and local media have reduced distribution numbers and journalists have been laid off; in Switzerland, numerous smaller publications have had to close lay off journalists; in Latvia, one local newspaper declared that it will shut down and many others have reported having to restrict their operations.

67. The Swiss public broadcaster, for example, put part of its workforce on short-time work; German public service media expect a loss in advertising as well as licence fee revenue; the budget of the Serbian public service broadcaster has been reduced by 22%. See also Media Pluralism Monitor 2020, pointing to a high risk for media viability, with newspapers and local media industries most affected. <https://cmpf.eui.eu/mpm2020-results/>.

68. See “Freedom of Expression in 2018” Report DGI(2019)3. See also the results of the Media Pluralism Monitor 2020, showing a significant increase in risks to market plurality from 53% to 64% since 2017, with none of the 30 countries surveyed showing a low risk, at <https://cmpf.eui.eu/mpm2020-results/>.

69. As reported in, e.g. “Netflix pulled off a showstopper early in the pandemic, but will the sequel deserve the price?” Marketwatch, 16 July 2020: <https://www.marketwatch.com/story/netflix-in-the-age-of-covid-19-streaming-pioneer-may-have-new-edge-on-competition-2020-04-07>.

70. As reported to the Council of Europe in a questionnaire circulated to the Steering Committee on Media and Information Society. See also, Neustart Kultur: <https://neustartkultur.de/>.

71. As reported to the Council of Europe in a questionnaire circulated to Steering Committee on Media and Information Society. For the Swedish scheme, see <https://www.journalisten.se/nyheter/sa-manga-sokte-stod-ur-krisfonden>.

72. A theme that the Council of Europe has been working on already: e.g. Ljubljana conference, (Last) call for quality journalism, <https://www.coe.int/en/web/freedom-expression/qualityjournalism2019>, calling on states to enhance their efforts to understand the ever-changing media environment and enable news organisations to compete with online platforms on a more equal basis; Committee of Ministers Declaration on the financial sustainability of quality journalism in the digital age, https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168092dd4d; and the Council of Europe Study on Supporting Quality Journalism through Media and Information Literacy: <https://rm.coe.int/msi-joq-2018-10rev-en/168098f69c>.

73. See, for instance, the 2020 Rule of Law report of the European Commission raising concerns inter alia about dependence of the media on state support and untransparent allocation of funding. See also the results of the Media Pluralism Monitor 2020, which indicated a medium or high risk to the de facto independence of the media authority in more than half of the 30 countries surveyed, again in increase from 2017, at <https://cmpf.eui.eu/mpm2020-results/>.

holders to account.⁷⁴ It is of critical importance for media during crisis situations to ensure that they report impartially and comprehensively on the situation, providing analysis and access to the diversity of expert opinions that exist, whilst not endorsing unverified rumours.⁷⁵

A particular concern regarding lack of media pluralism has been voiced in relation to elections held during the pandemic. For example, the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which observed the Serbian parliamentary elections held on 21 June, 2020, raised concerns over the lack of media diversity and criticised government COVID-19 briefings for being used as a campaigning platform.⁷⁶ Similar concerns were expressed with respect to the Polish elections, with ODIHR criticising the public broadcaster for acting “as a campaign vehicle for the incumbent”.⁷⁷ A representative global survey commissioned by the Friedrich Naumann Stiftung in July 2020 revealed that 34% of Germans (even 38 % of the under 45 year olds) believed that traditional media were concealing facts about the coronavirus due to pressure from the government.⁷⁸

IMPACT ON THE PROMOTION OF QUALITY JOURNALISM AND MEDIA LITERACY

Quality journalism, trust in the media, and a media and information-literate public are interrelated and of great importance to the functioning of democracy. This holds true even more during a pandemic, when the public is actively seeking out quality journalism. Research showed that during April 2020, when most of Europe was in lockdown, there was a general mistrust of online news – and, in particular, social media – while many returned to television, radio and print media as a source of trusted information.⁷⁹ However, overall trust in the media remained worryingly low, with only 38% of people in a global survey saying that they trust the news media “most of the time”.⁸⁰ This indicates that much work remains to be done.

Just prior to the pandemic, the Council of Europe published a Study on supporting quality journalism through media and information literacy prepared by the Committee of Experts on quality journalism in the digital age.⁸¹ The study analysed 68 media and information literacy (MIL) projects aimed at developing MIL skills and helping the public recognise quality journalism. It recommends that all stakeholders engaged in MIL, particularly member states, recognise and support the role of MIL in promoting and protecting quality journalism in the digital age, and that they, while learning from existing practices and fostering collaboration, create media literacy programmes that help citizens of *all* age groups, not only children and youth, to develop the MIL skills and knowledge that will support quality journalism.⁸² Through the promotion of MIL, the public should be made aware of how content is created, how to distinguish between facts and opinions, and it should learn about the role of the independent media, as well as the influence of technology and the importance of managing personal data.⁸³ Good practices were identified to help the development of future MIL programmes and strategies.

74. See, for instance, “Journalism in crisis: five deficits in Corona reporting”, at <https://meedia.de/2020/04/09/journalismus-in-der-krise-die-fuenf-defizite-der-corona-berichterstattung/>.

75. COVID-19 and media freedom – guidance based on the Council of Europe standards, <https://www.coe.int/en/web/freedom-expression/freedom-of-expression-and-information-in-times-of-crisis>.

76. Statement of Preliminary Findings and Conclusions. ODIHR Special Election Assessment Mission Republic of Serbia – Parliamentary Elections, 21 June 2020. See also “Serbian parliamentary elections well run, but ruling party dominance and lack of media diversity limited voters’ choice, international observers say”, OSCE Office for Democratic Institutions and Human Rights, 22 June 2020: <https://www.osce.org/odihr/elections/serbia/455173>.

77. Statement of Preliminary Findings and Conclusions. ODIHR Special Election Assessment Mission Republic of Poland – Presidential Election, 28 June 2020.

78. See the results of the Survey on “Corona-fakes” at https://www.freiheit.org/sites/default/files/2020-07/corona_fake_news_eg.pdf.

79. Reuters Institute for the Study of Journalism, 2020 Digital News Report: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2020-06/DNR_2020_FINAL.pdf.

80. See the Reuters Institute Digital News Report 2020, May 2020: <http://www.digitalnewsreport.org/>; as well as the EBU’s Trust in Media reports 2019 and 2020: <https://www.ebu.ch/home> (based on Eurobarometer surveys as well as Reuters’ data).

81. Martina Chapman and Markus Oermann, Council of Europe study DGI(2020)1, January 2020: <https://rm.coe.int/prems-015120-gbr-2018-supporting-quality-journalism-a4-couv-texte-bat-/16809ca1ec>.

82. See “Supporting Quality Journalism through Media and Information Literacy” at <https://rm.coe.int/draft-version-of-msi-joq-study-report-rev-v6-2/168098ab74>.

83. See also the Media Pluralism Monitor 2020, indicating that countries with a comprehensive media literacy policy have a higher share of the population with basic, or above basic, overall digital skills, as compared to those that have no, or only a limited policy in this field. <https://cmpf.eu.eu/mpm2020-results>.

Several member states' MIL initiatives launched during the pandemic aimed at strengthening critical thinking skills with campaigns such as Iceland's campaign "Stop, think, check"⁸⁴ In addition to these MIL programmes, and in response to concern about a flurry of theories about COVID-19, particularly on social media, member states as well as media themselves launched various information campaigns as well as a range of initiatives to warn of "fake news". Fact-checking initiatives that were already emerging prior to the pandemic turned their efforts to checking claims made about COVID-19, in particular online,⁸⁵ and government information campaigns provided further content to the media.

Whilst well-intentioned, some of the measures that were introduced could be a double-edged sword. Efforts to combat "fake news" or "misinformation" attracted criticism for potentially censoring legitimate content – who and how to decide what constitutes "misinformation"? – and in some member states, risking media pluralism by only promoting "the party line" as regards the pandemic.⁸⁶ Voices from the mainstream medical and scientific establishment were generally reported as being "correct" even before having been independently verified, with others receiving scant attention or even dismissed as "conspiracy theorists"⁸⁷ Promoting only information conveyed by official or government-backed sources and neglecting to investigate all possible aspects and implications of the pandemic, coupled with a strong focus on the statistics and fatalities, are inevitably going to fail at providing a complete picture of the crisis. In order to ensure pluralistic reporting on the pandemic, media should invest in scientific journalism capable of following the different developments and contextualising them, keeping open channels of communication with all established scientific institutions.

Such reporting might act to curb the currently polarised public debate where sensationalist narratives and unverified stories dominate the information environment, especially online, threatening trust in the media.⁸⁸ The COVID-19 pandemic has thus underscored the necessity for media to remain an independent source of trusted information by practicing responsible journalism supported by transparent and independent self-regulatory mechanisms.

SUMMARY OF CONCERNS AND CONCLUSIONS

The coronavirus pandemic constitutes an unprecedented and global crisis, which has forced Council of Europe member states to take extraordinary measures on the basis of constantly evolving and sometimes conflicting insights and information. The news media have played an important role in providing information about COVID-19 and associated measures, and news consumption has increased drastically. At the same time, concern about the quality of information has led a number of states to take steps that have significantly impacted on the enjoyment of freedom of expression across the continent. While a temporary restriction of clearly false and potentially dangerous information may be in conformity with Article 10, it is doubtful whether vaguely phrased limitations of "distorted facts" about a disease that is still being studied can be in line with the principles of necessity and proportionality, particularly when, as witnessed in some member states, transferred into permanent legislation.

84. A collaboration between the Media Commission, the Directorate of Health and the University of Iceland's Web of Science, with support from Facebook, sought to enhance critical thinking and highlight the importance of professional media and journalism, whilst spreading awareness of false and misleading information on social media. The initiative is based on the Norwegian Media Authority's campaign and is similar to others such as Stop, Think, Check in Ireland, the UK SHARE campaign (<https://sharechecklist.gov.uk/>) and several separate media and information literacy initiatives launched in the Netherlands (<https://www.mediawijzer.net/challenge-nlmediawijz-deze-6-initiatieven-maken-mensen-mediawijzer-in-en-na-coronatijd/>).

85. See <https://www.tagesschau.de/faktenfinder/faktenchecks-corona-101.html> for Germany and https://www.bbc.com/news/reality_check for the UK. The WHO also partnered with governments across Europe in fact-checking initiatives.

86. This was reported to the Council of Europe in a questionnaire circulated to the Steering Committee on Media and Information Society.

87. See, for example, the highly polarised reporting on and blocking of research and articles concerning the use of hydroxychloroquine for the treatment of COVID-19 patients following a study by the medical magazine "The Lancet" which was withdrawn shortly after publication. See "Hydroxychloroquine and the Political Polarization of Science", Boston Review 4 May 2020 at <http://bostonreview.net/science-nature-politics/cailin-oconnor-james-owen-weatherall-hydroxychloroquine-and-political> and <https://www.statnews.com/2020/06/04/lancet-retracts-major-covid-19-paper-that-raised-safety-concerns-about-malaria-drugs/>. See also <http://www.francesoir.fr/interview-exclusive-simone-gold-medecin-urgentiste-censuree-par-facebook-licenciee>.

88. Media were criticised, for example, for being extremely focused on reporting statistics, but not being sufficiently inquisitive to look "behind" the statistics and engage in independent analysis, which may have contributed to a heightened sense of panic amongst the population. E.g. Global Media Forum tackles role of media in COVID-19 reporting, <https://www.dw.com/en/global-media-forum-tackles-role-of-media-in-covid-19-reporting/a-53934262>.

At the same time, the crisis has amplified important pre-existing challenges to free expression. Restrictions appear to have been applied most forcefully in those member states where freedom of expression was already in decline. In some countries, independent media have been scapegoated and there has been negative rhetoric and a concerning number of incidents of violence against journalists. Overall, the steady deterioration of freedom of expression across Europe, as evidenced in successive Annual Reports of the Secretary General of the Council of Europe and emphasised by the Committee of Ministers at their 129th meeting in Helsinki in May 2019,⁸⁹ has weakened member states' resilience in the face of the crisis and must be addressed. Member states should closely cooperate with the Platform to promote the protection of journalism and safety of journalists and ensure that all incidents of violence against journalists are promptly and effectively followed up.⁹⁰

The success of efforts to contain the spread of the virus is largely dependent on access to accurate, reliable, diverse and timely information by all – public authorities, media, medical and other technical staff and, equally important, the population. A free and pluralistic public debate is crucial for the public's understanding of the situation and for their ability to make informed decisions, limit rumours, recognise disinformation and foster solidarity and trust in measures taken to address the crisis. By contrast, restrictions on free access to information, instead of allaying public concerns, are more likely to erode trust and undermine the efficiency of crisis-response measures.

The pandemic has demonstrated a great desire for quality information, with a significant part of the public returning to traditional and public service media as main source of news. Member states should capitalise on this newly re-discovered trust in the traditional media and redouble their efforts to promote quality journalism by creating a favourable environment and supporting sustainable, pluralist journalism, including at local level.

However, while demand for quality news and information has gone up, the ability of the media to deliver has been greatly diminished. The economic impact of the pandemic has meant a collapse of advertising and other income, hitting all media but especially small and local outlets, a number of which have been forced to close. This has come on top of a pre-existing trend of financial constraints,⁹¹ which has seen the ranks of professional journalists diminished and the diversity of sources and viewpoints greatly reduced. This has weakened the media's ability to hold those in power to account, constitute a vital conduit for information and views on all matters of public interest, and enable societies to effectively exercise democratic control over governing structures.

In response to this financial challenge, many member states have provided support to the media, either in the form of finance, by easing burdensome regulatory requirements or by providing content in the form of COVID-19 public information. While welcome, these targeted measures are unlikely to fully compensate lost income, and, given the enormous economic burden that member states already shoulder, it is also unlikely that they will be lasting. There is a risk that only the largest conglomerates will be able to weather the financial storm, threatening media pluralism. In addition, there is also a risk that earmarked support measures (such as to combat COVID-19-related "fake news") may render media dependent on government support and threaten editorial independence. Already, some member states governments' have been criticised for using their dominance of the information sphere for electoral gain.

In order to promote independent media and foster a climate that encourages nuance, analysis and diversity of opinion over sensationalist and polarising content, freedom of expression protections must be strengthened overall. Article 10 of the Convention safeguards free expression as a pillar of democratic society by listing strict conditions of legality, necessity and proportionality under which restrictions may be imposed. The caselaw of the European Court of Human Rights leaves no doubt that these conditions must be construed narrowly and must serve to protect the opinions of those who speak up, including opinions that are undesirable because they shock, disturb or offend. In the same sense, measures to counter disinformation should not undermine press freedom or lead to content being unduly blocked on the internet.⁹²

89. See Helsinki Declaration at https://search.coe.int/cm/pages/result_details.aspx?objectId=090000168094791d.

90. See, among others, the call by Secretary General of the Council of Europe, Marija Pejčinović Burić, upon member states to carry out investigations and prosecutions that bring the murderers of journalists to justice and work with the Council of Europe, journalists and civil society to bring domestic laws and practices in compliance with the obligations under the Convention. <https://www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists>.

91. As described in, amongst others, the Council of Europe's Information Society Department Report, Freedom of Expression in 2018, DGI(2019)3.

92. Press freedom must not be undermined by measures to counter disinformation about COVID-19, Statement by the Council of Europe Commissioner for Human Rights, 3 April 2020: <https://www.coe.int/en/web/moscow/-/statement-by-the-council-of-europe-commissioner-for-human-rights-dunja-mijatovic>.

Finally, COVID-19 has accentuated the important role of media literacy for freedom of expression and freedom of information. Media and Information Literacy (MIL) is a key factor of empowering individuals with the necessary cognitive, technical and social skills to analyse information critically, distinguish facts from fakes, and have the confidence and competence to make informed decisions about which media they use and how they use them.

In view of the findings as laid out in the present report, the Council of Europe, with its member states and in cooperation with the media should pay special attention to the following conclusions on action to be taken with a view to protecting and promoting freedom of expression in times of crisis:

- ▶ Ensure that any emergency response measures are firmly anchored within the requirements of Article 10 of the Convention, including by regularly reviewing their ongoing necessity and rolling back any restrictions that are no longer necessary; and promote access to timely and reliable information, including through the media, for the whole population, including in remote areas;
- ▶ Verify that existing criminal and civil laws are not misused to clamp down on journalists or others who speak up against crisis-related action or inaction by government; take determined steps to end the abuse of civil law litigation and lawsuits to silence critical voices;
- ▶ Prioritise the implementation and further ratification of the Tromsø Convention on Access to Official Documents; ensure that access to information systems are backed up and running as soon as reasonably feasible during crisis situations;
- ▶ Adopt National Plans of Action for the safety of journalists, pursuant to Committee of Ministers Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, and effectively implement them including during times of crisis;
- ▶ Publicly and promptly condemn all acts of violence against journalists and carry out efficient investigations and prosecutions that bring those responsible to justice;
- ▶ Co-operate closely with journalists and media associations to explore the long-term structural conditions needed to promote an enabling economic environment for media, fostering the resilience of media freedom in the face of crisis by generating a pluralistic range of voices and opinions and guarding against reducing their role to fact-checkers or publishers of government messages;
- ▶ Create an enabling environment for quality journalism, including by promoting media pluralism, promoting secure working conditions for journalists and ending undue political or business interference in editorial policies, thereby strengthening safeguards for the independence of public media during crisis situations.
- ▶ Promote media and information literacy to empower people to recognise quality journalism and ignore the disinformation that accompanies most crisis situations, thereby strengthening public trust in independent quality media across Council of Europe member states.

The coronavirus pandemic constitutes an unprecedented and global crisis, which has forced Council of Europe member states to take extraordinary measures on the basis of constantly evolving and sometimes conflicting insights and information. The news media have played an important role in providing information about COVID-19 and associated measures, and news consumption has increased drastically. At the same time, the crisis has amplified important pre-existing challenges to free expression. The steady deterioration of freedom of expression across Europe in the recent years has weakened member states' resilience in the face of the crisis and must be addressed.

The success of efforts to contain the spread of the virus is largely dependent on access to accurate, reliable, diverse and timely information by all – public authorities, media, medical and other technical staff and, equally important, the population. A free and pluralistic public debate is crucial for the public's understanding of the situation and for their ability to make informed decisions, limit rumours, recognise disinformation and foster solidarity and trust in measures taken to address the crisis.

www.coe.int/freedomofexpression

www.coe.int

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

